



# Doing Business In Turkey

## ABOUT US

Ketenci & Ketenci ILP is a leading Turkish law firm with a top-tier global reputation in both advisory and contentious matters.

Our team of international lawyers and advisors combines dynamism with a 40-year senior experience in legal practice. We offer an international approach when providing comprehensive legal services to our well-respected clients globally. We understand our clients compelling needs, and we are fully committed to our clients success.

Our core practice areas are corporate law, litigation and dispute resolution, arbitration, energy law, real estate law, commercial and regulatory matters as well as corporate finance and M&A, corporate immigration and citizenship. We advise a wide array of respected clients including corporations, multinationals, international banks and financial institutions as well as global Private Equity funds, hedge funds and family offices.

We are mainly based in Istanbul, though we provide advice and legal services to our respected corporate and private clients in all over Turkey, its close region as well as on a global scale. We have our

presences in Ankara, the capital of Turkey, Izmir, Bursa, Eskisehir and Antalya. We additionally assist our international clients on a global scale through our affiliations with respected law firms and our advisors based in New York, Los Angeles, London, Geneva, Athens, Milano, Dubai, and Tehran.

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### **PREAMBLE**

This publication has been prepared solely for the purpose of providing a general overview on the investment climate, business types and the respective legal regulations applicable in Turkey.

Any review and opinion included in this text is drawn up in accordance with the current laws, regulations and practices applicable in Turkey.

Ketenci & Ketenci ILP reserves that the legislation in Turkey may be very variable, as the relevant laws, court precedents, practices etc. can be amended/abolished from time to time.

Ketenci & Ketenci ILP also reserves that this work outlines a general summary on Turkish Labor Law and any query which may arise in relation hereof shall be examined on a case-by-case basis, in accordance with the nature of the related transaction.

Any information hereof is presented to the discretion of the readers, to be evaluated and applied on the grounds of commercial decisions.

Respectfully submitted.

## I. TURKISH BUSINESS ENVIRONMENT IN A NUTSHELL

Turkey, as being one of the largest emerging markets in the world, is a highly regarded target for investors, since it is an efficient production center with its young population, rich natural resources, expatriate-friendly culture and a domestic market of over 70 million people.

When we look up in the history of Turkey, it can be observed that investments have been gradually developed after 1980's after the

liberalization of markets and privatization of state enterprises, where government's role in the economy has significantly decreased. As of the 2000's, as a result of structural reforms, political stability and economic growth, the share of Turkey in the worldwide investments increased annually. We may well state that Turkey has indeed become an investor-friendly jurisdiction as a result of these developments. Certain incentives and tax expenditures are made available as well for the promotion of investment in selected sectors and regions.

Turkey is rapidly emerging as a high-growth market in various sectors. With its young workforce and geographical importance, it is an attractive destination for investment and already one of the largest economies in the world. According to the OECD, the country is expected to become the second fastest growing country in the world as of 2018.

It is also an important base for delivery of products and services via land transportation, sea-shipment etc. with its unique location serving as a gateway between Europe and Asia that enables access to a wide range of markets from Western Europe, Middle East, Gulf region, Mediterranean, Black Sea and Turkish republics of Central Asia.

Turkey's effort to be attuned to European Union rules and practices is also an important factor attracting foreign investors to the country. In this respect, the ongoing EU accession negotiations are a key factor for the development of business opportunities. In addition; the country is a member of various multilateral organizations such as G-20, OECD, ILO, WTO, IMF and party to several international contracts and tax

treaties.

We can sincerely advice to the potential investors to enter into Turkish market considering the facts that the territory is a gateway to several markets worldwide, European business ethics and modern management practices are implemented in the business life, use of English in business is increasing, the population is the youngest and fastest growing in Europe. Potential investors should also consider the benefits they may enjoy here i.e. incorporating a company and starting business in Turkey takes an average of 6-7 days. Investors may also consider benefiting from Turkey or Turkish partners, who know the neighboring markets well, to access other business opportunities throughout Asia, the Caucasus, the Middle East and North Africa.

## II. MAIN BUSINESS STRUCTURES

The basic legislation governing legal entities and corporate law principles is the Turkish Commercial Code numbered 6102 and dated July 1, 2012 (the “TCC”). This Code actually replaced the previous Commercial Code which was effective for more than 50 years without a fundamental change, with a view to modernize Turkish commercial, financial and capital markets.

On the other hand, Turkey started to improve its legislation to encourage foreign investment, as of 2003. FDI Law numbered 4875 was entered into force to that end in June 2003, with an aim to attract more international investors to the country. In general, Turkish legislation adopts “equal treatment principle” which enables foreign

investors to be subject to the same rules and procedures set forth for Turkish citizens and companies, when starting business in Turkey. Foreign real or legal persons can enjoy all the investment types and forms of doing business in Turkey, that are available to Turkish citizens or companies.

Accordingly, entities can be set up in various forms in Turkey such as capital companies, branches, liaison offices and joint ventures.

## II.I. Capital Companies

The most preferred types of capital companies in Turkey are joint stock and limited company types. In both Joint Stock Companies and Limited Companies, fields of activity, operations, and other corporate matters are governed by articles of association (similar to certificate of incorporation and bylaws in Europe), within the framework set out by the TCC.

### Joint Stock Companies

- At least one shareholder (real person or legal entity) and a minimum capital of TRY 50,000 are required. If the shares are subscribed in cash, at least 25% of the share capital must be paid up before registration and the remaining share capital shall be paid within 24 months following the registration.
- Board of directors can be comprised of a single person. Board members are not required to be a shareholder. A legal entity can also be a board member; however in this case, a real person must be designated to represent the legal entity.
- Ordinary General Meeting of shareholders shall be conducted within 3 months following the end of accounting year. Extraordinary General Shareholders' Meeting can also be called whenever required.

- We can say that the legal framework on corporate governance of Joint Stock Companies are better developed and more flexible.
- Limited Companies
- At least one shareholder (real person or legal entity) and a minimum capital of TRY 10,000 are required. Share capital must fully be paid in.
- Limited Companies are managed and represented by all shareholders. A manager or managers can be appointed for the management of the company from outside, to be authorized to represent the company together with the shareholders, provided that one of them is a shareholder to the company. If the company has more than one manager, one of them shall be appointed as the chairman of its board of managers by the general assembly. Work permit can also be required for foreign managers. If you cannot designate a manager at the beginning of incorporation process, we can appoint a temporary manager in consideration of a monthly service fee.
- Limited Companies are generally used for projects and investments in smaller scale.

## II.II. Branches

Branch offices have autonomous capital and accounting to carry out commercial transactions with third parties, although they are closely associated with the parent company in respect of internal management. This means that rights, debts, profits and losses of the branch offices are assumed by the parent company. A branch office can only engage in activities of its parent company. It cannot provide goods and services or engage in any commercial activities that are not specified in the parent company's articles of association.

Although there is no legal capital requirement for branch offices, it is required that the incorporating company maintains a capital sufficient

to run the branch office in practice.

A branch office shall use the same corporate name as that of the parent company by indicating that it is a branch office and also contain the location of the head office and the branch office. A fully authorized commercial representative (branch office manager) residing in Turkey needs to be appointed in order to run day-to-day business of the branch office.

### **II.III. Liaison Offices**

Under Turkish law, a liaison office cannot deal with any commercial or cash generating activities. It can only conduct „non-commercial activities“ such as market research, customer services, gathering information, carry out advertising and promotional activities in Turkey and contact with the customers or suppliers of the parent company. A liaison office cannot repatriate funds except for termination or liquidation proceeds of the liaison office.

Foreign companies are allowed to establish liaison offices in Turkey subject to the permission of the Ministry of Economy. The amount of capital invested must be in-proportion to the proposed expenditures of the liaison office.

### **II.IV. Joint Ventures**

“Joint Venture” is defined as the engagement of two or more real or legal persons cooperating with the purpose of executing a particular commercial undertaking, under Turkish Law.

According to Turkish Law, a joint venture may be formed in two

different ways;

### **i. Commercial Company under TCC**

Joint Ventures can be established in the following company forms, according to the TCC;

- General partnership,
- Limited partnership,
- Joint Stock Company,
- Limited company
- Cooperative company

The most preferred types of Joint Venture in Turkey are Joint Stock Companies and limited companies.

### **ii. Ordinary Company under Turkish Code of Obligations**

Ordinary Companies governed by the Turkish Code of Obligations, are not considered as legal entities. As per a joint venture established as an ordinary company, parties would determine the terms and conditions thereof in written, by means of an agreement, however in case parties do not execute an agreement, the joint venture would be subject to the provisions governing Ordinary Companies under Turkish Code of Obligations.

There are two types of Ordinary Companies;

- Normal ordinary partnership
- Consortium

In Normal Ordinary Partnership, parties are jointly liable for the success or failure of the venture whereas in consortium each party would be liable only for their contribution to the project, dependent

on the consent of the creditor. However, such separate liability is only applicable to the liabilities against creditors.

Upon the establishment of the joint venture in one of the company forms explained above, the General Directorate of Foreign Investment shall be informed of such establishment.

### III. OTHER TYPES OF DOING BUSINESS

Until a foreign businessman or entity reaches the adequate personnel and resources to implement the foregoing business structures in Turkey, entering into transactions in Turkish market can be realized through qualified representatives or efficient sales channels. Personal contacts are extremely important in Turkish business life, so this will help the foreign entrepreneurs to overcome complicated bureaucratic procedures and the language barrier.

#### Agency

Agency agreements are regulated under the TCC. In accordance with the relevant provisions, "Agent" is identified as "a person who, without the title of commercial representative, commercial agent, sales officer or employee, is contracted to intermediate or enter into agreements on behalf of an enterprise in a specific place or territory, on a continuous basis."

Agents cannot execute agreements on behalf of their clients, unless they are granted with this power in written. In case the Agent enters into an agreement as exceeding its authority, the Agent itself shall personally be liable from the called for liabilities, unless the client

gives consent to the validity of the agreement.

The most noteworthy provision on agencies introduced by the TCC is regarding the termination of the agency contract, which states that the agent acquires an indemnification claim at the end of the agreement if certain requirements are met (Article 122), which is called as the “Clientele/Portfolio Compensation”.

Other than the clientele indemnification, the agent may also request loss of profits, compensation for the investments made for its activities within the scope of the agreement and its non-pecuniary damages pursuant to the general provisions of TCC and Turkish Code of Obligations.

## Distribution

Distribution agreements are not clearly defined and regulated in the Turkish legislation as a specific type of agreement.

Distribution agreements usually include the following features;

- Continuity
- Validity for a certain region
- Distributor acts on its own behalf
- Distributor to promote and take necessary measures in order to protect the reputation of products

The difference between an agent and a distributor is that the distributor buys, markets and undertakes the risk of the product however the agent only acts as the intermediary and realizes the sales on behalf and for the account of its supplier.

It is stated in the TCC Article regulating the above-cited Portfolio

Compensation for Agencies, that this rule shall also apply to exclusive distributorship and similar continuous contract relations which grants monopoly right, provided that claiming for such indemnification is not against good faith.

## Franchising

Franchise has been in a rapid growth in the recent years in Turkey, especially in the sectors of food, fast-food, service and textile, that have been the most preferred areas of investment for franchising so far.

Franchising relations are not regulated under a specific category in Turkish laws, rather it is regarded as a mixed type of contract. In practice, provisions on Agency of the TCC are applied, due to certain similarities. Franchisor vests license rights to the franchisee and supports the franchisee continuously during its business activity, whereas the franchisee undertakes to pay a franchise fee and a royalty to the franchisor, by supporting the franchisor's sale of products or services. During its business activity, franchisee adapts the franchisor's system exactly and abide by the franchisor's instructions. Royalty amount varies on the franchisor.

Turkish franchising market provides various opportunities to the investors intending to give or acquire franchise in Turkey. After the economic crisis on global scale, franchising became a more preferred investment in Turkey, than capital investments. Funding support of Banks has also provided franchisors to obtain loans more easily. Foreign investors should also consider the advantage that franchising

will allow them to penetrate to the related market and reach to the target customer group in Turkey more effectively, via Turkish franchising partners who know the market demands and have experience on customer behaviors in Turkey.

## **IV. EMPLOYMENT**

It is possible to enter into employment contracts with employees both for definite and indefinite durations in Turkish Law. Contracts with a term of one year or more have to be in written form. Trial periods up to two months in case of individual contracts (and four months in case of collective contracts) may be agreed upon provided that the employee is paid for his work during such period.

### **Working Hours**

The maximum hours an employee can work in a week is 45 hours. Overtime work is permitted provided that the employee's consent is obtained and the Regional Labor Directorate of the Ministry of Labor and Social Security is notified in advance. The overtime request should occur as a result of a solid reason such as specifics of work or increase of production in a workplace. Overtime work cannot exceed 270 hours in a year. An overtime-working employee is entitled to receive 150% of his normal hourly working salary, if the overtime work exceeds 45 hours in a week. The overtime salary would be 125% of the normal hourly salary if the normal working hours plus overtime work are below 45 hours a week.

### **Annual Paid Leave**

An employee, who has completed one year in the same workplace, including the trial period, is entitled to annual paid vacation. The minimum period of vacation varies between 14 to 26 business days depending on the years of employment. An employment contract may provide for longer vacation periods.

## Social Security and Pension Funds

All employees must be covered by the social security system and pay social security contributions. According to the provisions of the Social Insurance Law, workers employed automatically become insured under the coverage of the said Law. The rights and liabilities of the insured workers as well as their employers start as of the date of employment. The right and liability to become insured cannot be renounced.

In addition to the social security system, employee may participate to a private pension fund established by pension companies. The employer may also participate in the fund on behalf of the employee at its sole discretion. The pension fund system, which was recently introduced to the Turkish labor environment, aims to enable the individuals to make a safe saving to be used in their elderly years. Such savings may be claimed either as a retirement salary or a lump-sum payment. However, this law does not totally provide for an alternative to the existing social security system.

## Remunerations

Employees are entitled to receive a salary in cash in return for work. As a general rule, employees' salaries are to be deposited to a bank account in Turkish Liras at least once a month. It is, however, possible

for the employee and the employer to agree on the remuneration in a foreign currency and the payment thereof in such currency. The parties to the employment contract are free to determine the amount of salary provided that such salary shall not be below the minimum wage applicable as determined by the Minimum Wage Determination Committee.

In addition to the salary, fringe benefits cost employers about 30-40% of blue-collar worker's gross wages and 25-30% of white collar salaries. The most common fringe benefits are meals, transportation, and yearly bonuses of two or four month's salaries. In addition, cash benefits payable in the event of births, marriage, etc. and heating and clothing allowances are provided through collective bargaining agreements.

## V. FOREIGN PERSONNEL

In order to be able to work and reside in Turkey, all non-residents must obtain a work permit from the Ministry of Labor and Social Security and a residence permit from the Ministry of Internal Affairs.

According to the Law on Foreigners' Work Permits numbered 4817, there are some requirements to be fulfilled in Turkey in terms of work permits, some of which can be listed as follows;

- At least five Turkish citizens must be employed at the workplace, for which a work permit is requested. In case the foreigner requesting work permit is a partner of the company, the aforementioned condition will be required for the last 6 months of one-year work permit to be granted by the Ministry.
- Paid-in capital of the workplace must be at least TRY 100,000 or the lowest figure for its gross sales amount must be equal to TRY

800,000 or its export amount in the last year must be at least USD 250,000.

- If the foreigner requesting work permit is a partner of the company, (s)he must hold at least 20% shares in the company, provided that such percentage corresponds to at least TRY 40,000.

Also, recruiting foreigners within the scope of Foreign Direct Investment Law shall be made in accordance with the “Communiqué on Employing Foreigners in Foreign Direct Investments”. As per the Foreign Direct Investment Law, the followings are regarded as ‘foreign investor’;

- real persons residing abroad having a foreign nationality and Turkish citizens residing abroad,
- foreign legal entities established under the laws of foreign countries,
- international institutions, which effect “foreign direct investments” in Turkey.

According to the said Communiqué, foreigners having “key personnel” status who are employed in “foreign direct investments with exceptional features” shall be subject to a separate procedure for work permits. There are specific features for a company, branch or liaison office to be considered as “foreign direct investments with exceptional features”. On the other hand, there are also certain conditions to be met to fall under the definition of “Key Personnel”. However, even for the companies which are deemed as “Direct Foreign Investments with Special Features”, the general provisions on work permits (Law on Foreigners’ Work Permits numbered 4817 and relevant regulations) shall be applied for other foreign employees who are not

regarded as “key personnel”.

## VI. TRADEMARK PROTECTION

A trademark registration in another country does not give automatic protection for the same trademark in Turkey. In order to benefit from trademark protection in Turkey, the trademark needs to be registered with the Turkish Patent Institute (the “TPI”).

In fact, the owner of a trademark does not need to apply to registration proceedings to technically own exclusive rights to the trademark, as the actual use of the trademark will automatically grant exclusive rights to the owner. However, the owner of the registered trademark will be in a considerably more advantageous position in respect of protection and will benefit favorable outcomes of the registration. These, include, among others (i) evidence to owner’s exclusive rights of which burden of proof of contrary vests in the opposing party (ii) notice to those conducting trademark searches (iii) facilities in obtaining fast and effective precautionary injunctions from courts (iv) priority right in international registration applications filed within 6 months following national application.

Under Turkish trademark protection system, the person who, without the consent of proprietor of the trademark, produces, sells, distributes, puts to commercial use or, imports for these purposes or keeps in possession for these purposes, the products under the trademark shall be liable to remedy the illegality and to compensate the damages caused.

Once registered, the trademark will be protected for a period of 10 years beginning from the filing date of the application and registration may be renewed for an unlimited periods of successive 10 years. The rights conferred by a registered trademark shall prevail against third parties from the date of publication of the trademark registration.

## Domain Names

Internet domain name registries, ending with extensions as “.com”, “.net” are performed by various companies under the supervision of ICANN with the “first applicant takes” rule. Various right losses are occurring due to buying of Internet domain names by persons other than the real right holders. In such case, a cautionary junction verdict may be requested within the frame of the provisions of unfair competition or trademark violation.

Two letter domains, such as “.tr” (which is the domain name extension in Turkey) are called country code top-level domains and correspond to a country, territory, or other geographic location.

The official entity which is assigned to register top level such domains in Turkey is Middle Eastern Technical University.

Below are some of the available domains under the domain name ".tr":

- “.com.tr”, “.biz.tr” and “.info.tr” are sub-domain names for individuals and organizations involved in commercial activities according to certificate
- “.net.tr” is a sub-domain name for institutions and organizations which offer internet supply services, value-added wide-scale services such as web, portal, scanning, e-mail, etc. over the internet and application supply services;

- ".org.tr" is a sub-domain name for institutions and organizations such as foundations, associations, NGOs and alike;
- ".web.tr" and ".gen.tr" are sub-domain names for which individual and organizational applications (general) can be made and the allocation is made on a "first come, first served" and "domain name-individual/organization relation is not required" basis;
- ".gov.tr" is a sub-domain name for Turkish governmental organizations and institutions;
- ".av.tr" is a sub-domain name for freelance lawyers, law offices and lawyer partnerships
- ".name.tr" is a sub-domain name for the personal use of Turkish citizens and foreigners living in Turkey;

Some of above mentioned sub-domain names does not require any documents from the applicant, for instance ".web.tr" and ".gen.tr". However, if one wants to apply for a sub-domain name such as ".com.tr", ".biz.tr", ".info.tr", ".org.tr", ".net.tr", ".org.tr", ".gov.tr", ".av.tr", ".k12.tr", ".edu.tr", ".pol.tr" or ".mil.tr", the appropriate documents are required to be provided. Though, please note that if ".tr" registration application is based on foreign originated documents, the applicant will be requested to prove that the name it has chosen as the domain name is either used in Turkey by the rightful owner or that they are in business venture. In other words, applicants shall have business activity in Turkey or have business relationship with a company which is present in Turkey (via distribution agreement etc.). Otherwise it is not possible for a foreign individual or company to register ".tr" domain name.

Turkish domain names can be registered from one to 5 years where upon completion of the protection period it can be renewed from one

to 5 years with the payment of the respective renewal fee.

## VII. COMPETITION AND ANTI-TRUST

Competition rules are mainly regulated under the Law on the Protection of Competition numbered 4054 (“Competition Law”).

Turkish Competition Authority is the competent authority supervising the competition in Turkey.

Agreements, Concerted Practices and Decisions Limiting Competition

According to the Article 4 of the Competition Law;

“Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.

Such cases are, in particular, as follows:

- a) Fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any terms of purchase or sale,
- b) Dividing the markets for goods or services, and sharing or controlling all kinds of market resources or elements,
- c) Controlling the amount of supply or demand in relation to goods or services, or determining them outside the market,
- d) Impeding and restricting the activities of competing undertakings, or excluding firms operating in the market by boycotts or other

behaviour, or preventing potential new entrants to the market,

e) Except for exclusive dealership; applying different terms to persons with equal status for equal rights, obligations and acts,

f) Contrary to the nature of the agreement or commercial practices, obliging to purchase other goods or services together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or putting forward terms as to the resupply of a good or service supplied.

In cases where the existence of an agreement cannot be proved, the similarity of the price changes in the market or the balance of demand and supply or the operational areas of undertakings with the markets where competition is prevented, distorted or restricted, constitutes a presumption that the undertakings are engaged in concerted practice.

Each of the parties may relieve itself of the responsibility by proving not to engage in concerted practice, provided that it is based on economic and rational facts.”

In Article 5, exemptions to this provision are set forth as follows;

“The Competition Board, in case all the terms listed below exist, may decide to exempt agreements, concerted practices between undertakings, and decisions of associations of undertakings from the application of the provisions of article 4:

a) Ensuring new developments and improvements, or economic or

technical development in the production or distribution of goods and in the provision of services,

- b) Benefiting the consumer from the above-mentioned,
- c) Not eliminating competition in a significant part of the relevant market,
- d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b).

Exemption may be granted for a definite period, just as the granting of exemption may be subjected to the fulfillment of particular terms and/or particular obligations. Exemption decisions are valid as of the date of concluding an agreement or committing a concerted practice or taking a decision of an association of undertakings, or fulfilling a condition if it has been tied to a condition.

In case the terms mentioned in the first paragraph are fulfilled, the Board may issue communiqués which ensure block exemptions for the types of agreements in specific subject-matters and which indicate their terms.

#### Abuse of Dominant Position

Other important term in Turkish Competition Law is the “Abuse of Dominant Position” regulated under Article 6. “Dominant Position” is explained as; “The power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers” in the Definitions section of the Law.

Accordingly, it is stated in Article 6 that;

“The abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the country on their own or through agreements with others or through concerted practices, is illegal and prohibited.

Abusive cases are, in particular, as follows:

- a) Preventing, directly or indirectly, another undertaking from entering into the area of commercial activity, or actions aimed at complicating the activities of competitors in the market,
- b) Making direct or indirect discrimination by offering different terms to purchasers with equal status for the same and equal rights, obligations and acts,
- c) Purchasing another good or service together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or imposing limitations with regard to the terms of purchase and sale in case of resale, such as not selling a purchased good below a particular price,
- d) Actions which aim at distorting competitive conditions in another market for goods or services by means of exploiting financial, technological and commercial advantages created by dominance in a particular market,
- e) Restricting production, marketing or technical development to the

prejudice of consumers."

## VIII. PROPERTY ACQUISITION

Real estate acquisition by foreign real and legal persons is regulated under the Land Registry Law numbered 2644. New fundamental principles were adopted with this law for the acquisition of real estate by foreign real persons and companies.

Before this Law, it was stipulated that the rights granted by a foreign country to its own citizens or companies should also be granted to the citizens and companies of the Republic of Turkey. With the new regulation, such "reciprocity principle" has been removed in order to facilitate the real estate acquisition for foreigners.

Accordingly, real persons, companies established in foreign countries and foreign-capital companies are entitled to acquire real estate in Turkey under the conditions of the Land Registry Law.

The terms "Foreign Company" and "Foreign-Capital Company" stand for different meanings in Turkish legislation. Foreign-Capital Companies are accepted as the companies incorporated in Turkey where foreign investors hold 50 % or more shares individually or collectively or where they are entitled to appoint or remove the managers on condition that the said company has a legal personality in Turkey, whereas a "foreign company" represents any company established abroad.

Foreign companies are entitled to acquire real estate and limited property rights in Turkey under special laws such as the Petroleum Law, Law on the Encouragement of Tourism and Law on Industrial

Zones.

With regard to the property purchase of Foreign-Capital Companies, the "Regulation on Real Estate Purchase and Acquisition of Real Property Rights by Foreign-Capital Companies" (the "Regulation") applies. The procedures have been accelerated for the minimization of bureaucracy and limitation of the required documents under the related rules. In previous regulations; time limits, definitions and the required documentation were not clear enough, which was causing the related procedures to be longer and more difficult.

Accordingly, Foreign-Capital Companies can acquire ownership of a real property or in rem rights if such acquisition is in relation to the scope of activities stipulated in their Articles of Association. However, acquisition of a real property or limited rights in a Military Restricted Zone, Military Security Zone or a Strategic Zone is subject to the approval of the commanderies, which are authorized by the General Staff. The acquisition is also subject to the Governorate's approval where the immovable is located, if such location falls within a special security zone.

It should be noted that foreign foundations and associations cannot acquire real estates or limited property rights in Turkey yet.

## IX. M&A TRANSACTIONS

The new TCC, which is primarily based on Swiss Mergers Code and EU directives, provided significant easiness on the procedure of mergers and acquisitions in practice.

According to Article 136 of the TCC; there are mainly 2 ways for the merger of companies;

**Merger through Incorporation of a New Company:** In this method, first a new company is established and merging companies dissolve without liquidation process, where the assets of the new company will consist of the assets of the merging companies by way of succession/subrogation. Shareholders of the merging companies will become shareholders to the new company, by operation of law.

All assets and liabilities of merging companies become assets and liabilities of the new company and the shareholders of the merging companies become the shareholders of new company, pro rata to their previous shareholdings in the merging companies.

We do not encounter much with this method of merger in practice. Generally, “Merger by Acquisition” is a more preferred way by commercial enterprises. Such way is much more practical than the “Merger through Incorporation of a New Company”.

**Merger By Way of Acquisition:** One or more companies merge(s) into another company, as a result of which, the merging company dissolves and the acquiring company takes over all its assets by succession and remains as one company.

Shareholders of the merging companies become shareholders of the acquiring company, by receiving shares in such company. The merging company is dissolved without exercising a liquidation process and the shareholders will automatically become the shareholders of acquiring

company, pro rata to their shareholding in the merging company.

All assets and liabilities of merging company automatically become assets and liabilities of the acquiring company and appear in the balance sheet of the company.

Mergers in Turkey are generally conducted via a “merger agreement” which shall be approved by the shareholders’ general assemblies of the acquiring and target companies. Once the merger resolutions are adopted in this manner, companies should apply to the competent Trade Registry to register the transaction and announce it with the Trade Registry Gazette. 30 days before such general assembly meetings, companies participating to the merger shall submit to the inspection of shareholders the merger agreement, merger reports, financial tables and annual reports pertaining to the previous 3 years, holders of profit-sharing certificates, bearers of securities issued by the company and other relevant parties and, for public joint-stock companies, at locations determined by the Capital Markets Board.

### Simplified Merger

The new Turkish Commercial Code also provides for “simplified merger”, which may be applied in below cases;

- In case the transferee company directly owns all the shares of the assignee company which provide voting rights, such companies may merge according to the simplified procedure.
- In case a certain company (or companies) owns the shares of two merging companies with voting rights, these two are able to merge under the procedure of simplified merger.
- If the transferee company owns 90% of the shares of the assignee company which provide voting rights, simplified procedure can

again be applied.

## Competition Aspects

Mergers and acquisitions in Turkey are subject to certain competition rules. Article 7 of the Law on the Protection of Competition numbered 4054 is regulating the general competition rules on mergers and acquisitions. Under this provision, the Law empowers Turkish Competition Board to determine and publish the categories of mergers and acquisitions which to be considered as legally valid, require a prior notification to the Board.

Within this context, Communiqué numbered 2010/4 on the “Mergers and Acquisitions Subject to the Approval of the Competition Board” is adopted by the Board. The Communiqué sets forth that following transactions will be subject to the Competition Board approval;

- In case total turnover of the parties realized in Turkey is exceeding 100.000.000.-TL and Turkish turnovers of at least two of the parties are exceeding 30.000.000.-TL separately; or
- If the asset or facility subject to acquisition or, in case of a merger, one of the transaction parties’ turnover realized in Turkey exceeds 500.000.000.-TL and one of the other transaction parties’ worldwide turnover exceeds TL 30.000.000.-TL

## Labor Law perspective

According to Turkish Labor Code, in case a company is transferred to another partially or wholly as a result of a legal transaction, employment contracts will pass on to the transferee side, with all the related rights and obligations. The transferor or transferee is not authorized to terminate the employment contracts solely for the reason of a merger transaction, nor shall the employee is entitled to

terminate the contract for a rightful reason. If there is a collective labor agreement, the provisions of such agreement should be taken into account during the determination of the obligations of the transferor and transferee parties against the employee.

## X. TAXATION

### V.I. Corporate Income Tax

Income and earnings of corporations, companies, Turkish branch offices of foreign firms, joint ventures, cooperatives and public enterprises are subject to corporate income tax in Turkey.

#### Residence

Residence is of considerable importance for corporate income taxation. Residents are fully liable under the Turkish tax system (that is, they pay taxes based on their worldwide income). Non-residents have limited liability, as being subject to tax on only their business earnings derived in Turkey.

Corporations have full liability against Turkish taxation if their legal headquarters (as indicated in the taxpayer's Articles of Association) or their business centers are in Turkey. Business center means the place where business transactions are actually concentrated or carried out. All companies established with foreign capital under the TCC have full liability in this sense.

Foreign companies investing in Turkey may have corporate status abroad, in such case their legal and business headquarters are outside of Turkey. For this reason, foreign companies or foreign members of

joint venture companies are usually regarded as having limited liability under the Corporate Income Tax Law and are subject to tax only on their business income and earnings derived in Turkey.

#### Tax Rate

Taxable corporate income is determined by taking into consideration all business-related expenses, income, tax losses and deductions in accordance with the provisions of Articles 8, 9, 10 and 11 of the new Corporate Income Tax Law.

Corporate income tax rate is currently 20%.

#### Dividend Withholding Tax

The dividend withholding tax rate is 15% on distributions of profit to non-resident shareholders and amounts repatriated by a branch to its head office. Dividends distributed by a resident Turkish entity to another resident Turkish entity continue to be exempt from dividend withholding tax.

### V.II. Major Transaction Taxes

#### i. Value Added Tax (VAT)

Deliveries of goods and services are subject to VAT at rates varying from 1% to 18%. The general rate applied is 18%. VAT payable on local purchases and on imports is regarded as “input VAT” and VAT calculated and collected on sales is considered as “output VAT”. Input VAT is offset against output VAT in the VAT return filed at the related tax office. If output VAT is in excess of input VAT, the excess amount is paid to the related tax office. Conversely, if input VAT exceeds

output VAT, the balance is carried forward to the following months to be offset against future output VAT. With the exception of a few situations, such as exportation and sales to an investment incentive holder, there is no cash refund to recover excess input VAT.

There is also a so-called “reverse charge VAT mechanism”, which requires the calculation of VAT by resident companies on payments to foreign countries. Under this mechanism, VAT is calculated and paid to the related tax office by the Turkish company. The local company treats this VAT as input VAT and offsets it in the same month. This VAT does not create a tax burden for the Turkish and the non-resident company, except for its cash flow effect for the former, if there is no sufficient output VAT to offset there from.

## ii. Special Consumption Tax

There are four main product groups that are subject to special consumption tax at different tax rates:

- Petroleum products, natural gas, lubricating oil, solvents and derivatives of solvents
- Automobiles and other vehicles, motorcycles, planes, helicopters, yachts
- Tobacco and tobacco products, alcoholic beverages
- Luxury products

Unlike VAT, which is applied on each delivery, this tax is charged only once.

## iii. Property Tax

Buildings and land owned in Turkey may also be subject to real estate tax at different rates.

#### iv. Stamp Tax

Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payrolls. Stamp tax is levied as a percentage of the monetary value stated on the agreements at rates ranging from 0.15% to 0.75%. Please note that salary payments are subject to stamp duty at the rate of 0.6% over the gross amounts paid, whereas a lump sum stamp tax is calculated for financial statements.

#### v. Withholding Tax

Under the Turkish tax system, certain taxes are collected through withholding by the payers in order to secure the collection of taxes. These include income tax on salaries of employees, lease payments to individual landlords, independent professional service fee payments to resident individuals; and royalty, license and service fee payments to non-residents.

Companies in Turkey are responsible for withholding such taxes on their payments and declaring them through their withholding tax returns. However, please note that local withholding tax rates may be reduced based on the available bilateral tax treaty provisions.

## XI. FREE ZONES IN TURKEY

Free Zones are the special sites considered outside the customs area, although being located within the political borders of a country. These zones are designed to increase the number of export-focused investments. Legal and administrative regulations in commercial,

financial and economic fields applicable within the customs area are either not implemented or partially implemented in such Free Zones.

In general all kind of activities can be performed in Turkish Free Zones such as manufacturing, storing, packing, trading. Investors are free to construct their own premises, while zones have also available office spaces, ateliers, or warehouses on rental basis with attractive terms. All fields of activities are open to Turkish and foreign enterprises.

## XI.I. Starting to Operate in Free Zone

In order to engage in operations in free zones, an Operating Licence has to be obtained from Undersecretariat for Foreign Trade Directorate General of Free Zones. The firms, which are found appropriate to obtain an Operating Licence, intend to rent an open area are obliged to sign a rental contract with the Zone Operator, Founder/Operator Company.

Term of the Operating Licence is 10 years for tenant users who intend to rent a completed office, and 20 years for investor users who intend to build their own offices. However, this term is 15 years for tenant users and 30 years for investor users who are engaged in production activities. If the users engaged in production activities intend to operate in other fields of activities, then the term of the Operating Licence is 20 years on the condition that they operate in their same offices. If the investor users holding an Operating Licence in the field of activities other than production then the term of the Operating Licence is also 20 years.

Users may start to operate upon the receipt of their Operating Licences.

## XI.II. Subsidies Offered in Free Zones

i. Free zone users that operate under production licence are exempted from the income or corporate taxes until the end of the taxation period of the year Turkey becomes full member of the European Union.

The free zone users obtained operating licence other than production, before the date of 06.02.2004, the income or corporate tax exemption continues during the validity period of the operating licence. The free zone users operating in a field other than production, after the date of 06.02.2004, do not enjoy income or corporate tax exemption, meaning that the firms operating in production activities can still benefit from income or corporate tax exemption in free zones (until the end of the taxation year including the date Turkey becomes a full member of the European Union).

ii. Since the trade conducted between Turkey and the free zones is subject to the foreign trade regime, free zone users can purchase goods and services from Turkey without paying Value Added Tax.

iii. The wages of the employees of the users which export at least 85% of the FOB value of the goods they produce in the free zones are exempted from income tax.

iv. The transactions and arranged documents related to the activities carried out in the zones by the manufacturer users are exempt from stamp duties and fees.

- v. There is no limitation on the proportion of foreign capital participation in investment within the Free Zones.
- vi. There are no procedural restrictions regarding price, standards or quality of goods in the Turkish Free Zones.
- vii. Contrary to most Free Zones in the world, sales to the domestic market are allowed.
- viii. The goods can remain in the zones without any time limit.
- ix. The advantages provided in the free zones are available to all firms regardless of their origin.
- x. Since free zones are part of the Turkey-EU Customs Territory, the goods in free circulation can be sent to the EU Countries by an A.TR certificate. Customs duties for the goods of third country origin are also not paid at the entry into the free zones. However, the goods of third country origin that are not in free circulation can be sent to the EU countries by an A.TR certificate, only after the customs duties are paid over the rates determined in the Common Customs Tariff.
- xi. The goods in free circulation can be sent to Turkey or to the EU countries from the free zones without any customs duty payment. Moreover, no customs duty is applied on the goods of third country origin at the entrance into the free zones and exit to the third countries.

In accordance with the above, operating in a free zone can be more advantageous for the firms which;

- Sell abroad the goods they produce with imported inputs,
- Engage in re-export and/or barter transactions
- Prefer to use foreign currency in all transactions (wholesalers, manufacturers).

## XI.III Costs

### Application Fee

In order to operate in free zone, an application fee of \$5.000 shall be paid.

### Rentals

Each free zone is entitled to determine and apply its own designated rent amount. Enterprises may also purchase property, within specific free zone areas.

Undersecretariat of Foreign Trade issues a tariff every year, to constitute guidance for the rentals or sales prices to be applied in free zones.

### Monthly Service Charges

There are also monthly service charges determined by each free zone management, for the usage of electricity, natural gas, water, telephone, weighing machines, handling services, entry of vehicles, disposal of garbage etc.