

Establishing a financial institution in Turkey

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A Q&A guide to establishing a financial institution in Turkey.

This Q&A gives an overview of the key issues in establishing a financial institution in Turkey, including the principal governing regulations, the commonly used legal structures, the licences and authorisations, and the tax position.

To compare answers across multiple jurisdictions, visit the *Establishing a financial institution in... Country Q&A Tool*.

This article is part of the global guide to establishing a business worldwide. For a full list of contents, please visit global.practicallaw.com/ebi-guide.

Market trends

1. What were the main trends in the financial services industry in the last 12 months?

Banking institutions

In the last 12 months, protection measures have been taken to protect Turkish financial markets from the significant volatility of Turkish currency.

The most critical measure taken introduced a set of new restrictions concerning foreign exchange borrowings. The foreign exchange legislation was substantially amended, effective 2 May 2018, concerning borrowings made by Turkish residents in foreign exchange currencies. In this respect, certain procedures and limitations in relation to borrowings made by Turkish resident legal entities from abroad were introduced into the foreign exchange legislation. According to these recent amendments, Turkish resident legal entities with no foreign currency earnings may not borrow foreign currency loans from abroad unless they have a credit balance above USD15 million as of the loan utilisation date. There are certain exceptions to this rule, such as:

- Loans to be extended within the scope of an investment incentive certificate.
- Loans extended to borrowing entities engaged in defence industry projects approved by the Ministry of National Defence.

- Loans to be utilised by public authorities and institutions, banks, financial leasing companies, factoring companies, and financing companies.
- Loans extended to the borrowing entities awarded domestic tenders which were also open to international bidders.

For Turkish resident legal entities that do have foreign currency earnings, there is quantitative criteria that must be met in order to qualify for foreign currency borrowings. Turkish legal entities that have foreign currency earnings, but whose credit balance is below USD15 million when the loan is utilised, may only utilise a foreign-currency loan if the aggregate of the new loan and its credit balance do not exceed its foreign-currency earnings from the last three financial years.

The ratio of non-performing loans has risen over the last few years and more companies are seeking to restructure their debt. In this respect, the Regulation on the Restructuring of Debts Owed to the Financial Sector (Regulation) was published in the *Official Gazette* (dated 15 August 2018, No. 30510), and came into force on 15 August 2018. The purpose of this Regulation is to allow debtors who are in a credit relationship with banks and financial leasing, factoring, and finance companies operating in Turkey to fulfil their repayment obligations, and continue to contribute to employment, with precautions taken within the scope of a framework agreement. The scope of this framework agreement was identified in the Regulation's provisions. After this Regulation was published, the Regulation Amending the Regulation on the Restructuring of Debts Owed to the Financial Sector (Amending Regulation) then also entered into force through publication in the *Official Gazette* (dated 21 November 2018, No. 30602). With this Amending Regulation, the definition of some terms including "debtor" were inserted into the Regulation and some other provisions were also amended. According to the Regulation, debtors who are expected to gain the financial ability to repay their obligations in a reasonable time may be subject to financial restructuring. The financial restructuring measures that can be taken through such framework agreements are as follows:

- Extension of loan maturities.
- Renewal of loans.
- Provision of additional loans.
- Waiver of a portion of, or the entire principal amount of, interest, profit or other receivables related to the relevant loan.
- Conversion of a portion of, or the entire principal amount of, interest, profit or other receivables related to the relevant loan into equity.
- The transfer, assignment, or sale of a portion of, or the entire principal amount of, interest, profit or other receivables related to the relevant loan. Additionally, according to the Regulation Amending the Regulation on Debit Cards and Credit Cards published in the *Official Gazette* (dated 11 January 2019, No. 30652), the instalment period for the payment of goods and services procured, or cash withdrawn, by credit card is determined by the Banking Regulation and Supervision Board, taking into account the opinions of the Turkish Republic Presidency Strategy and Budget Office, the Ministry of Treasury and Finance, and the Ministry of Commerce. Under this amendment, the Board is directly authorised to regulate the number of credit card instalments. In the Board's announcement dated 26 February 2019, the Board increased the instalment periods from nine to 12 months in some sectors.

Insurance institutions

The Treasury and Finance Minister presented the New Economic Plan on 20 September 2018. This plan includes some major amendments regarding the private pension system. The plan intends to make workers stay in the system for a period of three years. In the current system, workers who do not want to be part of the system can exit the system after a two-month period and are reimbursed their savings. Before 20 September 2018, 60% of the 12 million workers included in the system chose to exit the plan. Under the provisions of the New Economic Plan, workers would be obliged to stay in the system for the first three years. Although it is under discussion, no legal framework has yet been drafted to implement this plan.

Investment institutions

The Regulation on the Sale of Receivables of Publicly Funded Banks and Financial Institutions with Associated Partnership Qualifications to Asset Management Companies was published in the *Official Gazette* (dated 11 August 2017, No. 30151) (Sale Regulation). The main purpose of the Sale Regulation is to provide a framework for the sale of non-performing bank loans that are directly or indirectly owned by the public, or controlled by public and financial institutions with associated partnership qualifications to asset management companies. The qualifications of the non-performing loans that will be subject to this sale were also identified in the Sale Regulation.

Regulatory framework

2. What are the relevant principal regulations for financial services in your jurisdiction?

Banking institutions

The Banking Law (Law No. 5411) and a broad range of secondary legislation issued under the Banking Law govern banks and other financial institutions that provide financial services in Turkey, including:

- Deposit banks.
- Participation banks.
- Development banks.
- Investment banks.
- The Turkish branches of deposit banks, participation banks, development banks and investment banks established abroad.
- Financial holding companies.

The Banking Law is the main legislation that regulates the principles and procedures regarding the financial markets, the credit system, the composition and functioning of banks, and the protection of the rights and interests of depositors. The secondary legislation is relatively broad, regulating various particular banking services as well as the operations of asset management companies.

The establishment and operation of financial leasing, factoring and financing companies are governed under the Financial Leasing, Factoring, and Finance Companies Law (Law No. 6361). This Law also sets out the principles regarding financial leasing, factoring and financing agreements.

The rules and procedures for payment and security settlement systems, payment services, payment institutions and electronic money institutions are regulated by the Payment and Security Settlement Systems, Payment Services, and Electronic Money Institutions Law (Law No. 6493). It was followed by secondary legislation, including:

- The Regulation on Payment Services, Electronic Money Issuance, Payment Institutions, and Electronic Money Institutions.
- The Communiqué on the Management and Inspection of Information Systems of Payment and Electronic Money Institutions.

The Financial Leasing, Factoring and Finance Companies Law (Law 6361) sets out the principles governing financial leasing, factoring and finance companies.

Insurance institutions

The Insurance Law (Law No. 5684) and the Regulation on the Principles for Incorporation and Operation of Insurance and Reinsurance Companies are the main pieces of legislation that govern the principles concerning insurance and reinsurance activities by insurance companies, reinsurance companies, intermediaries, actuaries and insurance experts in Turkey. Additionally, the establishment and operation of pensions funds is governed by the Private Pension Law and the Regulation on Incorporation and Governance of Private Pension Companies.

Investment institutions

Investment institutions and intermediary companies' activities are mainly governed by the Capital Markets Law (Law No. 6362). This Law aims to ensure the functioning and development of capital markets in a secure, transparent, efficient, stable, fair, and competitive environment, and to protect the rights and interests of investors. Additionally, various pieces of secondary legislation focused on different investment services and institutions thoroughly regulate the establishment, authorisation, activities, supervision and services of investment institutions.

Asset management companies

Asset management companies, which are authorised to take over for banks and manage the collection process of non-performing loans' due and payable receivables which were not paid on the due date, are mainly governed by the Banking Law (Law No. 5411), and the Regulation on Establishment and Activities of Asset Management Companies is the main piece of secondary legislation.

3. What are the principal regulatory bodies for financial services in your jurisdiction?

Banking Regulation and Supervision Agency

The Banking Regulation and Supervision Agency (BRSA) (<https://www.bddk.org.tr/>) fulfils the duties of regulation, supervision and implementation in order to provide stability and reliability in the financial markets. The BRSA maintains the financial markets, provides for the efficient operation of the credit system, protects the rights and interests of savers, and encourages development in the financial sector with its strategic plans. The BRSA is responsible for regulating banks, financial holding companies, and with some legislative exceptions, leasing, factoring, and finance companies. This includes overseeing and supervising their establishment, operation, management, organisational structure, mergers and acquisitions, exchanges of shares, and liquidations. One of the main missions of the BRSA is to ensure that financial institutions and bodies subject to its governance perform their operations in a stable manner in accordance with the applicable law. The executive body of the BRSA is the Banking Regulation and Supervision Board (Banking Board).

The BRSA and the Turkish Central Bank (TCB) also supervise payment services and e-money activities. While the TCB is authorised to grant licences to system operators, the BRSA has the authority to grant operation licences to payment institutions and e-money institutions, as well as to oversee the activities of asset management companies.

Central Bank of the Republic of Turkey

Under the Law on the Central Bank of the Republic of Turkey (Law No. 1211) the Central Bank of the Republic of Turkey (TCB) (<https://www.tcmb.gov.tr/wps/wcm/connect/en/tcmb+en>) is authorised to directly determine monetary policies for the purpose of achieving and maintaining price stability, which is its primary duty. Its other duties include carrying out open market transactions, taking necessary measures to protect the domestic and international value of Turkish currency, managing gold and foreign exchange reserves, regulating the volume and circulation of Turkish currency, conducting rediscount and advance operations, taking necessary precautions to enhance stability in the financial markets, and monitoring financial markets. The TCB is the sole authority for issuing banknotes. It is also authorised to extend loans to banks, as the lender of last resort, and to set interest rates.

Capital Markets Board

The Capital Markets Board of Turkey (CMB) (<http://www.cmb.gov.tr/>) has the authority under the Capital Markets Law (Law No. 6362) to publish regulations and supervise institutions that are subject to the capital markets regulations. The CMB's mission is to ensure fairness, efficiency and transparency in Turkish capital markets, to improve their international competitiveness, and to enhance investor protection.

Ministry of Treasury and Finance of the Republic of Turkey

The legal structure and framework of the Undersecretary of the Treasury and the Ministry of Finance was changed under Presidential Decree No. 1 on 10 July 2018 and these two institutions were merged into one institution, the Ministry of Treasury and Finance of the Republic of Turkey (<https://en.hmb.gov.tr/>). As a result, the main purposes and liabilities of the Undersecretary of the Treasury were absorbed into the Ministry of Treasury and Finance. The main duty of the Ministry of Treasury and Finance is assisting in the preparation and application of economic and fiscal policies, conducting research on revenue regulation, and preparing any relevant legislation. It also co-ordinates international economic relations in co-operation with all economic actors. As a result, within the functions of the Undersecretary of the Treasury, the Ministry of Treasury and Finance aims to strengthen sustainable development and the stability of the insurance sector and create an effective private pension system. Within the functions of the Ministry of Finance, the Insurance Supervision Board supervises, audits and investigates the activities of insurance companies.

4. What financial services (if any) fall outside the scope of/are exempted from regulation?

All banking, insurance and investment services are strictly subject to legislation and supervising authorities. The legislation is generally inclusive enough to involve almost all activities and institutions in each sector. However, certain services are exempt from the scope of the laws. For example, the Insurance Law stipulates that social security institutions, the Export Credit Bank of Turkey (Eximbank) and other establishments operating in the insurance sector in accordance with their special laws are not subject to the Insurance Law (other than the relevant provisions governing supervision of the Insurance Law).

Conversely, the TCB is subject to its own special law (Law No. 1211). The aim of this special law is to establish the TCB, to outline its powers and duties, and to specify its exclusive privilege to issue banknotes.

Legal structures

5. What are the most commonly used legal structures for establishing a financial institution?

Local companies

All local and foreign banks, financial leasing, factoring and finance companies, payment and e-money institutions, and intermediary and investment companies established in Turkey must be established as a joint-stock company (JSC). In addition, a bank must also meet certain other bank-specific criteria provided in the Banking Law (Law No. 5411) and the Regulation on the Transactions of Banks Subject to Approval and Indirect Shareholding (Banking Regulation). These include having:

- Registered shares that are issued in cash and to a name.
- A minimum amount of share capital.
- Founders and board members who meet certain qualifications indicated in Law No. 5411.
- A transparent and open partnership structure and organisational chart that will not constitute an obstacle for the efficient supervision of the institution.
- Envisaged fields of activity that will be in harmony with a planned financial, managerial and organisational structure.

An insurance or reinsurance company in Turkey can be formed as a JSC or a co-operative company. Co-operative companies have advantageous budget requirements, but in practice insurance and reinsurance companies are most frequently established as a JSCs. These companies must not engage in activities other than insurance activities and activities directly related with insurance activities.

Foreign companies

Foreign banks and branches of foreign banks can carry out banking activities in Turkey under the condition that they obtain the necessary local licences and approvals (*see Question 6*) and comply with all other requirements for establishing a local bank as indicated above. In addition, the primary activities of a foreign bank wishing to establish a branch in Turkey must not have been prohibited in the country where it is headquartered, and the supervisory authority in that country must have no opposition to the bank's operations in Turkey.

A foreign bank established abroad also has the right to open up a representative office in Turkey with the permission of the BRSA, provided that it does not accept deposits or participation funds. Only one person who has a representative title can work at the representative office of a bank. Moreover, banks wishing to open up a representative office in Turkey must fulfil the following requirements:

- A strong financial structure.
- Equity not less than the minimum paid capital required for establishment of a bank in Turkey.
- No restrictions on its activities
- In operation for at least three years.

Foreign-owned insurance and reinsurance companies can be established in the same manner as Turkish insurance and reinsurance companies.

Authorisation or licensing

6. What licences or authorisations are required to provide financial services in your jurisdiction?

Banking institutions

There is a two-tier licensing procedure for establishing a bank in Turkey. A bank must obtain both an:

- Establishment licence.
- Operating licence.

Only banks licensed by the BRSA and branches of foreign banks are authorised to carry out banking activities in Turkey. Conducting any banking activity without a licence is a crime under the Banking Law (Law No. 5411) and may lead to monetary fines and imprisonment for the persons involved.

Licence applicants must make all licence payments indicated under the Law on Charges (Law No. 492) and payments that are relevant to its banking licence or the provision of financial services. Besides the Banking Law, the Banking Regulation governs the establishment and operation principles of banks.

For an establishment licence, the applicant must submit its application along with the documentation required under the Banking Regulation. An establishment licence does not authorise a bank to commence its operations. Once an establishment licence has been granted, the bank must be established as a legal entity (see [Question 5](#)). Once established, the bank must register with the Trade Registry and an announcement of its establishment must be made in the *Trade Registry Gazette*.

An application for an operating licence must then be filed before the BRSA and banks must make an application for an operating licence within nine months of the issuance of the establishment licence, otherwise the establishment licence will be cancelled by the Banking Board.

Similar to an establishment licence, when considering an application for an operating licence, the Banking Board evaluates certain criteria, such as the payment of system entrance fees and share capital being fully paid to enable the execution of planned activities. The BRSA must notify the applicant of its decision regarding an operating licence within three months of the first application date or the date on which the applicant provides any missing application documents. If any missing document is not provided within six months, the application becomes invalid. Permits that are granted will be valid from the date of their publication in the *Official Gazette*.

If the Banking Board does not approve an application for an operating licence, the establishment licence will be cancelled.

An operating licence will be cancelled if a bank:

- Fails to commence operations within six months.
- Is inactive for an uninterrupted period of six months within any given year.
- Has obtained the operating licence based on a non-factual declaration.

The Banking Board will cancel the operating licence of a foreign bank's branches in Turkey if the following situations occur in the country where the bank's headquarters is located:

- Its operating licence has been cancelled.
- Its activities have been suspended.
- It has declared bankruptcy, liquidation or concordatum in the country where it is established.

Financial leasing, factoring and finance companies

Financial leasing, factoring, and finance, companies must also apply to the Banking Board for an establishment licence and an operating licence. If an applicant meets the criteria set out under the Financial Leasing, Factoring,

and Finance Companies Law (Law No. 6361), which are similar to the criteria applicable to banks under the Banking Law, the application process will be successfully concluded. The qualification requirements, time period for the application, and the requirement to pay all fees must be met by the financial leasing, factoring, and finance companies. However, these companies have one year from receiving the operating licence to begin operations or their operating licence will be cancelled.

System operators, payment service institutions, and e-money institutions

System operators must apply to the TCB under the e-Money Law (*see Question 3*) in order to receive an operating licence to operate systems, other than those operated by banks. The criteria are similar to the requirements for banking institutions (*see above, Banking institutions*). The process will be completed by the TCB within six months of submitting all of the documents. As with a bank, a systems operator's operating licence will be cancelled if it fails to initiate operations within six months of receiving its operating licence.

Payment institutions and electronic money institutions that are performing their activities (for example, the issuance of electronic money) through banks must apply to the Banking Board to obtain an operating licence. To be successful in their application they must fulfil the obligations under the e-Money Law, which parallel the requirements for system operators. The Banking Board consults the TCB during the application process and may cancel a payment institution's operating licence for either:

- Failure to commence operations within one year of receipt of the operating licence.
- Renouncement of its licence by the payment institution.
- Detection of the submission of non-factual declarations or documents submitted by the institution for obtaining the operating licence.
- Failure to meet the criteria decided under the e-Money Law in order to obtain an operating licence.
- Failure to inform the BRSA of any change in the required information and documents.
- Evaluation by the Banking Board that the activities of the payment institution endanger the safety of payments.

Under Article 18/5 of the e-Money Law, pre-paid cards that are used to purchase a certain group of goods or service or solely used in a certain service network are exempt from the above restrictions as those are stated to be completely excluded from the scope of the e-Money Law.

Insurance institutions

An insurance company must obtain an establishment licence from the Ministry of Treasury and Finance (*see Question 3*) for each insurance branch it intends to operate. After completion of the establishment formalities and requesting an operating licence, an insurance company must increase its paid-up capital to an amount to be determined by the Ministry of Treasury and Finance.

If an application is successful, an initial licence will be granted within three months of receipt of all required documents and each subsequent licence will be granted within two months. Within the scope of insurance services, insurance and reinsurance brokerage activities can only be performed under a licence granted by the Ministry of Treasury and Finance.

Pension funds

The Pension Law requires private pension companies to apply to the Ministry of Treasury and Finance. If an application is successful, an establishment licence will be granted within two months of receiving all of the required documents.

Investment institutions

An investment institution must fulfil the conditions stipulated under the Capital Markets Law (Law No. 6362) to obtain an establishment license from the Capital Markets Board (CMB). After its establishment, a company must apply to the CMB for an operating licence within six months of receiving the establishment licence. The CMB will decide on the operating licence within six months of receiving all of the required documents. If the application is approved, the investment institution must pay a fee under the Law on Charges. After that, the investment institution has one month to submit a receipt regarding payment to the CMB, otherwise the operating licence will be cancelled.

Appeal process

A party can request an administrative authority to revoke, withdraw, or procure a new licence decision. The request must be made within 60 days of the party's notification of the decision. If an administrative authority does not respond to the request within 60 days, the request is deemed denied. The Banking Law (Law No. 5411) and the Insurance Law (Law No. 5684) specifically refer to this appeal process against the decisions of the BRSA and the Insurance Supervisory Board respectively.

Generally, a party can appeal a licence decision by filing an administrative legal action against the relevant administrative authority. The legal action must be filed before the Council of State and administrative courts within 60 days of the written notification of an administrative authority's decision.

7. What approvals or licences are required for persons performing key roles at authorised financial institutions in your jurisdiction?

The relevant legislation governing each of the banking, insurance, and investment sectors do not regulate approval or licence requirements for persons performing key roles, but the legislation does regulate the qualification of founders and board members. In general, founders and board members must:

- Not be declared bankrupt.
- Not hold shares or control over a bank transferred to the Savings Deposit Insurance Fund.
- Not hold qualified shares in or control over a bank (or the relevant institution under the aforementioned sectors) that has been subject to liquidation, or certain types of financial institutions whose operating permissions have been revoked.
- Not have been found guilty of certain crimes.

- Have the necessary financial strength and respect.
- Have the honesty and competence required for the business.
- Have a transparent and open partnership structure together with the risk group (in the case of a legal entity).

In addition to the above requirements, general managers and assistant general managers of financial, insurance and investment institutions must fulfil certain conditions regarding educational background and work experience. This education and experience criteria also applies to members of any investigation committee organised within a bank, the members of which must be qualified as managers under the legislation.

Finally, the relevant regulatory authorities (for example, the BRSA) must be notified of the appointment of a board member, general manager, or assistant general manager within certain time periods following their appointment.

8. Are there any alternatives to authorisation available for entities carrying on financial services in your jurisdiction?

Banking, insurance, and investment services are strictly subject to mandatory licence requirements under the applicable laws (*see Question 6*), which are the Banking Law, the Insurance Law, the Financial Leasing, Factoring, and Finance Companies Law, among others. Unlicensed activity is a crime under the regulatory framework and may result in monetary fines and imprisonment. Besides these, in cases where this offence is committed within the body of a business place, the business place may be closed from one month to one year, or permanently if such acts are repeated.

With that said, the mere provision of financial services to Turkish residents does not necessarily mean that such activities are subject to licensing requirements, provided that no other regulated activities are conducted. For example:

- Foreign institutions that do not have a business place in Turkey, do not run a Turkish website, and do not engage in any regulated activity in Turkey, but provide investment services for the purchase and sale of securities traded on foreign financial markets to Turkish residents, are not subject to these licencing requirements, provided that both:
 - no solicitation, advertisement, marketing, promotion, or any similar activity is conducted by such foreign institutions targeting the Turkish residents; and
 - the initial contact with the foreign financial institution is established by the Turkish resident on his or her own initiative.

Turkish residents are free to act through intermediary institutions authorised under the Capital Markets Law, and the relevant financial institutions are only allowed to interact with Turkish residents through an intermediary company or a bank on an unsolicited basis.

- Foreign financial institutions that are allowed to provide loans in accordance with their own local laws are also allowed to provide loans to Turkish residents without holding a licence issued by Turkish administrative authorities, provided that the requirements arising from the Turkish foreign exchange legislation and the anti-money laundering legislation are met.
- Foreign financial leasing companies may execute financial lease agreements with Turkish residents provided that certain conditions regarding the nature and the terms of the agreement are met, and such contracts are registered before the special registry of the Union of Financial Leasing, Factoring, and Financial Companies. Financial lease agreements for air transport vehicles, vessels, medical devices, and high technology products whose features are certified by the relevant authority, and whose annual average lease payment is more than USD100,000, are the agreements that can be registered.
- Foreign insurance companies that do not have a locally licensed presence in Turkey may execute life insurance contracts with Turkish residents outside of Turkey. However, the sale should not be as a result of the insurance company's sales and marketing activities (whether in person or via an agent in Turkey), but as a result of the Turkish residents' cross-border initiative. In other words, a Turkish citizen or a foreign resident in Turkey may obtain coverage from foreign insurance companies for a life insurance contract provided that the relevant insurance company acts in accordance with the principle of passive freedom of services.

Restrictions on ownership or control

9. Are there any restrictions on the ownership or control of financial institutions in your jurisdiction?

The founder of a financial institution must meet certain criteria similar to the criteria required for a member of the board of directors and a general manager (*see Question 7*). Furthermore, founders must have the necessary financial capabilities, reputation, honesty and competence required for the business. A transparent and open partnership structure is necessary for legal entity founding owners.

Foreign persons are subject to the same requirements, and must obtain equivalent documents from abroad as evidence that these requirements are fulfilled.

Change of control requirements are explained separately below for each institution. In all circumstances "control" is defined as any of the following:

- Direct or indirect holding of the majority of a company's share capital.
- Holding privileged shares, regardless of the percentage held.
- Having the right to appoint or dismiss board members in a number that forms a decision quorum (as per a shareholders' agreement or otherwise).

The condition of a minimum holding of 51% is not required for the term "control" to be applicable.

Banking institutions

Banks and e-money institutions. The Banking Board's approval is required for the following transactions causing a change of control in the ownership of banks and e-money institutions:

- Any share transfer leading to the direct or indirect acquisition of a shareholding of more than 10%.
- Any share transfer by which the direct or indirect shareholding of an existing shareholder exceeds or falls below 10%, 20%, 33% or 50%.
- A transfer of shares with the board of directors or audit committee nomination privileges, regardless of the percentage acquired.

The Banking Board's approval is also required if there is a change in the shareholding structure of any company holding 10% or more of the shares in a bank, provided that the transferee entity has the qualifications that are required for the founding owners.

Financial leasing, factoring and finance companies. The Banking Board's approval is required for the following transactions causing change of control in the ownership of a financial leasing, factoring, or finance company:

- Any acquisition of shares or transfer of shares resulting in a change of control of a shareholding of 10% or more.
- A transfer of shares with board nomination and the issuance of new preferential shares privileges, without taking into consideration the proportional limit set out above.

The Banking Board's approval is also required if there is a change in the shareholding structure of a legal entity holding 10% or more of the company's share capital.

Insurance institutions

The following transfers of shares are not effective without the approval of the Ministry of Treasury and Finance:

- A direct or indirect transfer of shares that leads to a shareholder's portion of the share capital in an insurance or reinsurance company exceeding or falling below 10%, 20%, 33% or 50%.
- A transfer of shares with board nomination privileges that has an effect on the supervision or management of a company, irrespective of ratio limitations.

Pension companies

At least 51% of the capital of a pension company must belong to a legal entity with sufficient knowledge and experience in financial markets.

Persons who have an effect on the supervision and management of a pension company should meet the requirements for banking institutions, except for the financial capability condition (see [Question 7](#)).

The following changes in the control and ownership of a pension company are subject to approval by the Ministry of Treasury and Finance:

- Any share transfer leading to the direct or indirect acquisition of a shareholding of more than 10%.
- Any share transfer by which the direct or indirect shareholding of an existing shareholder exceeds or falls below 10%, 20%, 33% or 50%.
- A transfer of shares with board of directors or audit committee nomination privileges, without taking into consideration the proportional limitations set out above.

The Ministry of Treasury and Finance's approval is also required if there are changes in the shareholding structure of any company holding 10% or more of the shares in a pension company.

Investment institutions

The following transactions that cause a change of control in the ownership of an investment company are subject to approval by the Capital Markets Board (CMB):

- Acquisition of a shareholding of 10% or more.
- Any share transfer by which the direct or indirect shareholding of an existing shareholder exceeds or falls below 10%, 20%, 33% or 50%.
- If the shareholder has management privileges, any share transfer leading to a change of 10%, 20%, 33%, or 50% in the capital structure of the shareholder.
- A transfer of shares with management privileges, regardless of the percentage acquired.

The CMB must also be notified of any change in the shareholding structure of a legal entity even if it does not reach the above shareholding percentages.

Taxation

10. What main taxes are financial institutions subject to in your jurisdiction?

Stamp tax

The stamp tax duty varies depending on the nature of the papers to be stamped. Under Article 1 of the Stamp Tax Code (Law No. 488), the term "paper" is defined as any paper which is written, signed, or marked in order to prove

any specific condition, or documents created through a magnetic medium by using an electronic signature under the Stamp Tax Code. The following papers and transactions are mentioned in the stamp tax exemption list in the Stamp Tax Code:

- Papers on loans provided by banks, foreign financial institutions, international institutions, and related security, repayment and transfers.
- Certain agreements regarding capital market transactions and insurance undertakings.

In addition to these papers, financial leasing agreements and papers in relation to the transfer and amendment of these agreements, and papers issued as their security, are exempt from stamp tax.

A stamp tax payer who has regular stamp tax liability (such as banks, joint stock companies, and certain public institutions) must declare and pay stamp tax duty for the papers signed within one month by the evening of the 26th day of the following month.

For other entities that do not have regular stamp tax liability, stamp tax should be declared and paid within 15 days following the execution of the relevant paper.

Corporate tax

There are two types of corporate taxpayers:

- Full taxpayers.
- Partial taxpayers.

Companies whose legal or business headquarters are in Turkey are defined as full taxpayers under Article 3 of the Corporate Tax Law (Law No. 5520). These entities must declare and pay their taxes based on their worldwide corporate income. Companies with no legal or business headquarters in Turkey (that is, branches established by foreign banks in Turkey) have partial liability for corporate tax. They are liable for taxes only on corporate income earned in Turkey.

The Corporate Tax Law (Law No. 5520) sets out certain exemptions and discounts for the payment of corporate tax. Corporate tax for a given period/year must be declared and paid by the end of the fourth month of the following period/calendar year.

Value Added Tax

As stipulated in the Value Added Tax Law (Law No. 3065) (VAT Law) the supply of goods and the performance of services of commercial, industrial, agricultural, and independent professional activities carried out in Turkey and the import of goods and services into Turkey are subject to VAT.

VAT is reported and paid monthly. Each month's VAT return must be declared and paid by the 26th day of the following month.

Subject to the VAT Law, for the purpose of calculating the VAT payable to the authorities, a taxpayer can offset (deduct) the VAT paid on goods and services provided to it against the VAT payable on goods and services supplied by it.

The general VAT rate in Turkey is 18%. However, reduced VAT rates (1% or 8%) are applied in some transactions, such as:

- Newspapers and magazines.
- Houses up to 150 metres square.
- Medical products and devices.

Banking and insurance transactions (excluding financial leasing activities) that are subject to Banking and Insurance Transaction Tax (see below) are exempt from VAT.

BITT

Banking and Insurance Transaction Tax (BITT) is a transaction revenue tax payable by banks and insurance companies on all transactions (that is, banking charges, insurance premiums, brokerage fees, capital gains, and interest income), except for transactions conducted under the Financial Leasing Law. All transactions and services performed by banks and insurance companies are subject to BITT regardless of the nature of the transaction.

The statutory BITT rate is 15%. However, the President has the right to re-price the rate in some transactions to 1% or 0%.

BITT is declared and paid monthly. A return must be made and the tax must be paid by the 15th day of the month following the month of the transaction.

Resource utilisation support fund levy (RUSF)

RUSF is a special type of levy applied to both domestic and foreign loans and the importation of goods. It is generally collected by Turkish intermediary financial institutions and is transferred to the Central Bank of the Republic of Turkey.

The amount payable is based on the average maturity of a loan, its currency, types of credit, and imported goods. For example, the RUSF percentage payable for a foreign bank loan with an average maturity of more than three years and made to a Turkish resident is 0%.

11. What is the tax position when profits are remitted abroad?

A dividend paid to an entity residing in Turkey or to a branch or a permanent establishment of a foreign company in Turkey is not subject to withholding tax. However, it is subject to corporate tax (*see Question 10, Corporate tax*).

If profits are remitted abroad, a 15% withholding tax is applied to the distributed dividend, unless the rate is reduced by a double taxation treaty. This 15% rate of withholding tax also applies to taxable profits that are repatriated by a branch or a permanent establishment to its headquarters, after the deduction of corporate income tax.

Proposals for reform

12. Are there any impending developments or proposals for significant reform?

No significant reform of the relevant sectors is envisaged in the near future.

In addition, the following legislation regarding financial institutions recently came into force:

- The Regulation on the Restructuring of Debts Owed to the Financial Sector, published in the *Official Gazette* on 15 August 2018.
- The Regulation Amending the Regulation on the Principles for the Establishment and Operations of Financial Leasing, Factoring, and Financing Companies, published in the *Official Gazette* on 26 February 2019.
- The Regulation Amending the Regulation on Banks' Credit Transactions, published in the *Official Gazette* on 26 February 2019.
- The Regulation on the Sale of Receivables of Publicly Funded Banks and Financial Institutions with Associated Partnership Qualifications to Asset Management Companies, published in the *Official Gazette* on 11 August 2017.

The BRSA also announced on its website several amending regulation drafts and draft communiqués regarding financial leasing, factoring, and financing companies and their accounting process, banks' credit transactions, information technologies systems of banks, and independent audit of banks.

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- Tümad Madencilik Sanayi and Ticaret A.Ş: advised the only 100% locally owned gold mine in Turkey as the borrower for the construction, development, and operation of Tümad's gold mines.
- China Development Bank: represented the client in its capacity as the lender in negotiations with Turkcell to amend a loan agreement in the amount of EUR750 million to include new borrowers and increase the loan amount.
- Akbank T.A.Ş: assisted major Turkish bank Akbank in its capacity as the lender in financing a 30.7 Mw unlicensed Solar Energy plant for 21 different project companies.

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Publications.

- *HBO Newsletter, New Foreign Exchange Restrictions in Turkey: Why and How?, Summer/Fall 2018 (co-author).*
- *HBO Newsletter, Turkey Passes New Law on Movable Pledges, Spring 2017 (co-author).*
- *Thomson Reuters, Environmental Risks Global Guide 2016/17: Environmental Risks in Major Projects in Turkey, November 2016 (co-author).*

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Recent transactions/activities.

- Akbank T.A.Ş: assisted major Turkish bank Akbank in its capacity as the lender in financing a 30.7 Mw unlicensed Solar Energy plant for 21 different project companies.
- SUNFARMING Eurasia Enerji Üretim A.Ş: assisted the client in the first financing from an IFI to an unlicensed solar plan project in Turkey for the establishment of solar energy panels.
- Export-Import Bank of China: assisted the client in connection with a working capital loan agreement worth USD200 million executed between EXIM Bank of China and DenizBank.

Languages. Turkish, English, French

Publications. *Real Estate Magazine, How does the Real Estate Industry, Particularly the Housing Market, Recover with the Involvement of the Finance Industry?*, March 2018 (co-author).

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