Doing business in: Turkey

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Introduction

Turkey has recently been in the news more for its political events than for its booming economy. On 15 July 2016, a council called the 'Peace at Home Council' under the Turkish Armed Forces attempted to launch a coup d'Ètat against state institutions and the government. They attempted to seize control of key locations such as the bridges crossing the Istanbul Strait, but they were defeated quickly. The government has claimed that the plotters were members of the G¸len movement, led by an Islamic cleric residing in the United States.

Following the attempted coup d'Ètat, the Council of Ministers convened on 20 July 2016 and declared a state of emergency (Resolution No. 2016/9064) throughout the country for a ninety-day period beginning at 1am on Thursday, July 21, 2016. The decision was then ratified by the Grand National Assembly on July 21, 2016. Since then, the duration of the state of emergency was extended seven times, lasting for 730 days, and was finally removed in July 2018.

However, the economy has gone through a recession period since the last quarter of 2018, characterised by high inflation rates, rising borrowing costs, and currency volatility. At the end of 2018, the Minister of Finance announced the New Economic Program, a three-year plan intending to ensure stabilisation for 2019 and 2020 in order to regain international credibility that was affected by the political events of the preceding years, ie the attempted coup d'Ètat and accompanying state of emergency. In April 2019, a new plan called 'Structural Transformation Steps' was revealed with the goal of strengthening the state-owned banks' capital structure against bad loan threats and to establish a more robust financial sector by way of different measures, together with other sector-specific actions to be taken. In light of these counter-actions, Turkey's economy reached acceptable levels with respect to account deficits and interest rates, which keeps the country an option for investment in the eyes of foreign capital companies.

The political stage is as sensitive as the economy; the sanctions imposed by Donald Trump over the detention of Pastor Andrew Brunson in 2018 and the purchase of S-400 air defense system missiles got the US' attention, especially with concern over NATO's new F-35 stealth fighter jet's security on the latter.

During the state of emergency period, on 16 April 2017, Turkey had a controversial referendum regarding 18 amendments to the Turkish Constitution, most notably about altering the form of its government from a parliamentary system to a presidential one. The verdict was 51.4% yes.

As a result of the referendum, among others:

- the Prime Minister post has been abolished, and in addition to being the head of the state, the President has become the head of the government, with the power to appoint and dismiss the ministers and one or more Vice Presidents

Updated in July 2019

- the President is now entitled to appoint and dismiss senior public executives as well, and to regulate the procedures and principles of their appointment by a presidential decree

- the President can also issue decrees regarding its executive power

- the number of seats in the parliament has been increased from 550 to 600, and the minimum age requirement for parliament members has been lowered to 18

- the President is no longer under the obligation to be neutral, and can be affiliated to a political party

All of the above-mentioned changes in the Turkish Constitution will become effective either at the time of the new presidential and general elections or when the new President starts duty, except for the one allowing the President to be affiliated to a political party. Although the presidential and general elections were set to be held on 3 November 2019, the elections took place on 24 June 2018 and Recep Tayyip Erdoğan was elected the president of the Republic of Turkey.

This guide aims to highlight some of the key areas that a new business will need to address before operating in Turkey. It should not be considered all-inclusive or taken as specific legal advice on Turkey, which should always be sought out from a Turkish attorney prior to setting up and running a business in the country.

The business environment

The Grand National Assembly is and will continue to be the supreme legislative authority and it can create or abolish any law. No person or organ in the Republic of Turkey can enjoy the power of the state if its source is not derived from the Constitution. Sovereignty belongs to the nation without any reservation or condition and is used through competent organs in compliance with the principles set in the Constitution.

The Grand National Assembly of Turkey adopts the laws in accordance with relevant procedures. The draft laws become laws upon the approval by the Grand National Assembly. However, the laws become binding and enforceable following their publication in the Official Gazette. Upon their approval by the Grand National Assembly, the draft laws should also be ratified by the President. The President reviews the draft laws in 15 days following their receipt. If the President does not deem it appropriate to publish the draft law in whole or in part, they may send it back to the assembly for reconsideration together with the justification of their decision. The only exception is that the President cannot send the draft laws regarding budgets back to the assembly for reconsideration. If the President does not approve the publication of the draft law in part, the debate in the parliament may concern only the articles that are not approved or the draft law as a whole. The Grand National Assembly may adopt the text with or without amendments following this debate. If the draft law is accepted without the amendments, the President is obliged to publish it in the Official Gazette.

The draft laws are, most of the time, in line with the relevant EU legislation, as Turkey is in the process of negotiations with the EU. The Helsinki European Council of December 1999 granted Turkey the status of being a candidate country. The European Council of December 2004 confirmed that Turkey fulfils the Copenhagen political criteria, which are a prerequisite for the opening of the accession negotiations with Turkey. As agreed at the European Council in December 2004, accession negotiations were launched on 3 October 2005 with the adoption of the negotiation framework by the Council of the European Union. The 'Negotiation Framework Document' includes the principles governing the negotiations, the substance of the negotiations, negotiating procedures and a list of negotiation chapter headings. It would be appropriate to state that the negotiation process progresses at a slow pace.

'Presidential decree', as a newly introduced concept to the Turkish Constitution after the referendum took place in 2017, gives the President the authority to use its executive powers by issuing presidential decrees. The Constitution explicitly regulates the limits of the President's power to issue decrees. In short, the President cannot issue decrees on:

- fundamental rights and liberties

- political rights and duties
- matters that can only be regulated by laws under the Constitution
- matters that are explicitly regulated under existing laws

The provisions of parliament draft laws prevail over presidential decrees if a contradiction exists between the two instruments. Also, if parliament regulates a matter with a law after issuance of a presidential decree, the law automatically invalidates the presidential decree. In other words, since the 2017 referendum, it is correct to say that the President has gained some regulatory powers; however, this authority never allows him to surpass the powers vested in parliament. One can say that the authorities the council of ministers held in the old system are now given to the president in terms of issuing presidential decrees.

Forming a company

Turkey's regulatory environment is business friendly. You can establish a business in Turkey irrespective of nationality or place of residence. An international business that wants to operate in Turkey as a foreign investor has three main options to establish an office as: (i) a liaison office; (ii) a branch office; or (iii) a Turkish subsidiary.

Liaison offices

Liaison offices are prohibited from engaging in commercial activities and will be permitted only to conduct market research, advertise and promote the foreign investor's business in Turkey. These offices are considered as an extension of their foreign parent company and do not have an independent legal entity identity. They are not allowed to acquire rights and incur liabilities by their own actions. Without any independent legal personality and representation power against third parties, liaison offices are not allowed to issue invoices, make sale and purchase agreements on behalf of the parent company, execute any contracts, provide price quotations or accept orders from customers. Liaison offices must submit an annual notification to the Ministry of Economy regarding their activities throughout the year, including, but not limited to, the changes in shareholding structure and authorised signatories.

Branch office

Branch offices do not have a legal personality and are not fully independent from their parent company, thus, the foreign parent company remains liable for the branch's debts. This means that the foreign investor will be directly liable for all the obligations of the branch, irrespective of the capital allocated to the branch. Nevertheless, branches are independent from the parent company with regard to their external affairs and they are therefore allowed to carry out any transactions in their fields of activity. The branches must maintain accounting records and management personnel separately from the parent company.

Turkish subsidiary

The last option may be incorporating a fully-fledged Turkish company. The most common forms of company are joint stock companies (JSC) (anonim şirket) and limited liability companies (LLC) (limited şirket).

The procedures for establishing a company with foreign capital are fundamentally the same for local companies. Accordingly, unless the new company is going to perform in regulated sectors, such as banking or insurance, etc, no prior authorisation is necessary before incorporation. Most subsidiaries are formed as closely held companies and can be converted into listed public companies at a later date if the need arises through a public offering.

The incorporation of a new company will generally consists of the following steps:

- preparation and finalisation of the incorporation documents—there will be certain certification, legalisation and apostille requirements. A registered address and relevant lease agreement of the company to be incorporated should be provided

- completion of the online application procedure in the 'MERSİS System', an electronic system providing an easy and time saving procedure. Registration in the MERSİS System does not remove the requirement for submitting all related documents to the relevant trade registry office as hard copies

- issuance of potential tax identification number by the tax authority

- opening of bank account for JSC or LLC. After the accounts are opened, at least one quarter of the share capital should be deposited and blocked by the bank before the registration for JSCs. Further to recent amendments to the legislation, the pre-registration deposit requirement has been cancelled for LLCs

- application to the relevant trade registry office—an application to the relevant trade registry office will be filed with the incorporation documents. The trade registry office can request additional documents upon its revision. The initial company books of the JSC or LLC will be certified at the date of incorporation by the trade registry. The Company's articles of association will be certified before the relevant Trade Registry on the same day

- activation of bank account and tax number of the company

- issuance of initial signature circulars—as soon as the application for incorporation is registered before the relevant trade registry office, the initial signature circulars of the authorised representatives of JSC or LLC will be issued before a notary public. An application will be filed before the relevant tax authority together with the application documents including the signature circular for tax inspection—officials of the relevant tax authority will visit the registered address of the JSC or LLC. This is by its nature an uninformed visit; however, the visit usually takes place about 2–3 days after incorporation. Officials expect to see that the JSC or LLC is duly established and that there is an authorised representative present who has the power to represent and bind the JSC or LLC during their visit. To issue a signature circular, there is a new system introduced by the trade registry office in accordance with the Turkish Commercial Code. In order to issue a signature circular, where signatories are vested with limited authorisation, companies should adopt board resolutions for the representation of the company through an internal directive if monetary limitations or other kinds of distinction will be provided. The details of individuals must be stated under the resolution as well. The signature circular of the company will refer to the resolution including the internal directive and the authorised representatives. In order to issue an internal directive, a relevant company must have the necessary wording in its articles of association. If the company does not have this wording, the relevant article must be amended in a way to authorise the company to issue an internal directive

The foreign investors may prefer incorporating a JSC or an LLC mainly because of the corporate veil principle. Under Turkish law, in principle, both in a JSC and in an LLC, the liability of the shareholders is limited to the capital they have contributed. A few exceptions in relation to public debts or unpaid tax may lead to unlimited liability of directors or shareholders. Partners of an LLC may be held personally liable, up to the percentage of their partnership, for the public debts that remain uncollected partially or in whole from the LLC. Also, legal representatives (including board members of JSCs and managers of LLCs) may be personally liable for the unpaid public debts (such as corporate tax, social security premiums of employees and income tax withheld from employees' salaries, taxes and fines owed to public authorities) that cannot be collected from the company. There are several differences between a JSC and an LLC in terms of share capital structure, corporate bodies and liability of the shareholders/partners.

The rules relating to the operation and regulation of companies are set out in the Turkish Commercial Code, which entered into force on 1 July 2012. The key features of Turkish companies include:

- Limited Liability—the liability of the shareholders is limited to the capital that they have contributed. There are a few exceptions in relation to public debts or unpaid taxes which may lead to unlimited liability of the directors or shareholders

- Articles of Association—the articles of association set out the rules governing the company, including the appointment and removal of directors/managers and the procedures for holding board and shareholder meetings

- Share Capital and Issuance of Shares—initial share capital of the JSCs and LLCs may be nominal. A JSC may be incorporated with a minimum share capital of TRY 50,000 and by at least one shareholder. A LLC, however, may be established with a minimum share capital of TRY 10,000 and with at least one partner. Both types of companies may be established by natural persons or legal entities. The capital of a JSC is divided into shares represented by share certificates or temporary share certificates, each being separate and usually conferring equal rights to its holders pro rata to their shareholding (except in the case of privileged shares). Partners of a LLC should contribute to the capital of the company in the amount of at least TRY 25 or its multiples. It is possible for an LLC to issue certificates representing the shares in registered form. The Turkish Commercial Code offers non-public companies the opportunity to adopt a registered capital system, so the joint stock companies closely held may benefit from the opportunity of flexible capital increases introduced by the registered capital system

- Management/Directors—LLCs are governed by their managers and JSCs are governed by their board of directors. The members of the board of directors may delegate management powers to a managing member or a non-member manager. JSCs must have at least one board of directors member and LLCs must have at least one manager. Neither board members nor managers are required to be resident in Turkey

- Statutory Filings—companies are required to make certain filings with the relevant trade registry office (where the company is established, eg, in İstanbul, Ankara, etc) and also with the relevant ministry. For example, each company, regardless of being a JSC or a LLC, must convene its general assembly meeting (general assembly of shareholders for the JSC and general assembly meeting of partners for the LLCs) annually. Furthermore, each year, companies incorporated in Turkey with foreign shareholders must submit a specific form regarding their activities and inform the relevant ministry of any changes with regard to share capital, share transfer, registered address, etc

Note that in the event of participation to public tender procurements, bidders are generally required to be incorporated as a JSC. In addition, you can reach banned companies and real persons from public tenders at http://www.ihale.gov.tr/.

Financing a company

There are several means to finance a company. Apart from the traditional methods, such as bank loan facilities, acquisition finance is also regulated in Turkey and offers highly demanded methods.

A Turkish company can be financed through the subscription of share capital by its shareholders/partners. At the time of the issuance of shares, no Turkish tax is generally payable by a Turkish company issuing or by a shareholder being allocated new shares.

During a share capital contribution at the incorporation stage, a quarter of the share capital amount must be paid prior to the establishment of the company and the remainder can be paid 24 months later for JSCs. The shareholders of LLCs are required to inject the cash subscription within 24 months following incorporation. The same procedure will apply when share capital increases. Other rules apply in certain regulated sectors, eg banks and companies dealing in securities.

There is also another procedure considered as a corporate financing tool for the companies, called the conditional capital increase. As per Article 463 of the Turkish Commercial Code, the share capital of the company may be increased by granting exchange right or purchase option to the qualified creditors or to the employees concerning the issued convertible bonds or other similar debt instruments. The articles of association of the company must reflect the terms and conditions applicable to the conditional capital increase.

The method is briefly as follows:

- the board of directors of the company drafts and resolves the amendment text of the articles of association
- the approval of the Ministry of Customs and Trade is obtained, if necessary
- the GAM is convened in order to approve the amendments to the articles of association
- since the conditional capital increase method may cause dilution of existing shareholders' contribution, Turkish Commercial Code provides that any convertible bond and similar debt instrument shall firstly be offered to the existing shareholders
- exchange right or purchase option is subject to an agreement executed by and between the company and the qualified creditors or the employees
- the conditional capital increase is registered before the relevant trade registry
- when the last exchange right or purchase option is used and the conditional capital increase comes to an end, the amended article of the articles of association is abolished

The Turkish Commercial Code enables JSCs to acquire their own shares provided that such acquisition does not exceed 10% of the JSC's share capital. In order to do so, the general assembly of shareholders should authorise the board of directors; the board will determine the amount to be paid for the acquisition of the shares having regard to the minimum and maximum amounts provided in the authorisation. The purchase price should be paid from the distributable reserves of the JSC. The acquisition consent granted to the board of directors by the shareholders cannot exceed five years and such decision should include nominal value of shares together with upper and lower limits to be paid for those to be acquired. Only shares that are fully paid-in can be acquired. The foregoing rules also apply to the acquisition of a parent company's shares by its subsidiary.

There are various restrictions on direct foreign investments in certain types of industries in Turkey, including defence, aviation, maritime industries, banking and mining rights. In most cases, Turkish Corporation with 100% or less foreign shareholding may operate depending on restrictions in each sector.

Opening a bank account

At the incorporation phase of a JSC, as stated above, the JSC must deposit a quarter of the share capital of the company into the bank account of the new company (that has not yet been established). This bank account will be opened in a bank prior to incorporation of the company. Most of the banks in Turkey provide assistance for the establishment of bank accounts to foreign investors. Most of the time, the documents requested from banks are part of the documents that are required for the incorporation of the company, but the most important document is the articles of association of the new company. However, due to recent amendments to the Regulation on Trade Registries, the articles of association texts must be certified before trade registries, making it impossible to submit the certified text to the banks for the account opening process. In practice, banks tend to request a copy of the articles of association that has been signed by the incorporators of the company, but has not yet been certified together with other incorporation documents such as the tax number obtained for the new company.

Each bank will have its own account opening procedure. This will generally include providing details of the purpose of the account, anticipated activity level and details of the authorised signatories.

Utilising Office Space

Property may either be owned outright (freehold property) or rented from a landlord (leasehold property). Global multinational companies often acquire freehold property and construct their own office space. Equally, small out-of-town family businesses may own the property from which business is conducted. However, particularly in cities such as Istanbul, most small or medium-sized businesses will rent office space from a landlord.

There is an increasing number of providers of 'cubicle' offices in Turkey. These cubicle offices help foreign investors to speed up the establishment of company process since the foreign investors may lose time trying to find a suitable location for the new company. The new company can be established by using the address of the cubicle office place, although the company will probably require more space to carry out its business. Once the establishment procedure has been completed and a suitable location found, an address change application must be made to transfer the company's address. These cubicle offices are usually located in business districts and are popular with foreign investors. The landlords of these cubicle offices provide lease agreements for a minimum term of six months.

Immigration Controls

Foreigners are required to obtain a work permit to work in Turkey, unless otherwise provided under bilateral or multilateral agreements to which Turkey is a party. In principle:

- foreigners who will be working in Turkey must enter the country with a valid visa and obtain a work permit from the Ministry of Labour and Social Security

- foreigners who have entered Turkey without a work visa must obtain a residence permit for six months in order to obtain a work permit

Unless a foreigner is not subject to the exemptions stated under the legislation, they will have to obtain a work permit. The legislation regulating foreigners' work permits does not stipulate a minimum length of time the foreigner must reside in Turkey during their 'employment in Turkey'. In other words, short-term employment does not create an exemption under the relevant legislation.

Among others, the following criteria (these criteria are subject to being amended annually) are taken into consideration during the evaluation of work permit applications:

- it is mandatory that at least five Turkish persons be employed per each foreign employee

- the paid-in share capital of the company (employer) shall be at least TRY 100,000, or its gross sales shall amount to at least TRY 800,000, or the export amount for the last year shall be at least $US 250,000, and

- the salary promised by the company to the employee shall be in accordance with the employee's duty and competence. The regulations mandate employers to pay foreign employees based on their position varying from 1.5 times to 6.5 times more than minimum wage. For example, foreign executives shall be paid at least 6.5 times more than the minimum wage where this rate is 1.5 for a sales assistant

If the applicant is a foreign shareholder of a Turkish company, its shareholding in the company should be more than 20% and this shareholding should represent at least TRY 40,000.

The applications for work permit can be submitted from within the country or abroad. There are three types of work permits for the foreigners: (i) definite term work permit, which is provided for maximum one year at the first application;

(ii) indefinite term work permit, which requires long-term residence permit or at least eight years of work permit, and; (iii) independent work permit, which is granted for a definite term and the employment must have positive effect on economic development.

Please note that the independent work permit may be granted to the foreign persons practicing a learned profession provided that the special conditions in other codes are met. An independent work permit is also granted for a definite term.

In addition to work permits, Article 11 of the International Workforce Law stipulates the conditions of the Turquoise Card, which is a document granting a specific status to foreign persons on the condition that their application is considered appropriate as per their education level, professional experience or input to science and technology. Among other conditions, the Turquoise Card holder benefits from the same rights granted by indefinite term work permit. The Turquoise Card is granted for a transition period of three years initially. However, if the Turquoise Card is not cancelled within this transition period for one of the reasons stipulated under the legislation, it becomes indefinite at the end of the three-year period. The application conditions and evaluation criteria are set forth under the Turquoise Card Regulation.

Key Employment Laws

In general, an employee's employment rights arise from relevant laws, regulations, employment contract or a collective bargaining agreement between a labour union and an employer.

Equal treatment

Turkey has a number of rules aimed at the fair treatment of all workers. The main legislations regarding equal treatment are: the Turkish Constitution, the Turkish Criminal Code, the Turkish Labour Code and relevant regulations for the application of the aforementioned laws and also under the international treaties to which Turkey is a party, ie the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Covenant on Civil and Political Rights that include specific provisions in this regard and aim to prevent discrimination based on gender, language, ethnicity, ideology or religion. Male and female employees working at the same workplace, at equal efficiency and quality, must be paid equally and under Turkish legislation, some categories of individuals are especially protected against discrimination, ie employees working part time, women employees and employees working on a definite-term contracts are protected under the Labour Code.

Under the Labour Code, employers are prohibited from treating part-time employees differently than full-time employees or employees on a definite-term period differently than employees with indefinite-term contracts, without material reasons. It is also prohibited for the employers to grant a lower salary for equal or similar works because of the employee's gender.

The main purpose of the equal treatment principle is to prevent employers from treating employees under equal/same conditions differently. In other words, an employer may treat its employees differently only based on objective reasons such as task, specialism, education and seniority or subjective reasons such as competence, performance and merit. Unless there are objective and clear reasons to justify different treatment, employers are obliged to treat employees working in an entity under the same conditions equally.

Status of Employment Contracts in the Event of Business Transfer

Under Turkish law, different aspects of business transfers are regulated by different legislation, such as the Commercial Code and Labour Code.

Turkish Commercial Code stipulates that a business may be wholly transferred without the need to separate transactions for the transfer of assets that compose the business itself. The substantial question is to what extent does an asset transfer constitute a business transfer? Any transaction pursuant to which the parties intend to transfer the essential part of the assets or business may be considered a business transfer. The determination of the essential part of a business depends on the nature of the business concerned. Generally, business transfers require the transfer of major elements or components of a business that are sufficient to enable the transferee to continue the transferred business. The major elements or components of a business include assets, employees and customers. In that sense, transfer of the components that are sufficient to enable the transferee to continue the transferred business (and disable the transferor to continue its business after the transfer) may be deemed a business transfer.

There is no correlation between the size of the asset transferred and notion of a 'business' for the purposes of a business transfer. The transfer of a group of assets that does not constitute a 'business' sufficient to carry out the commercial activity that has been conducted before would simply constitute an asset transfer and it would not include employment agreements as a part of the automatically transferred component of business.

Following this general explanation regarding the asset and business transfer, it would be appropriate to note that the status of employment agreements in an asset transfer depends on whether such asset transfer qualifies as a business transfer.

The Turkish Commercial Code does not regulate the status of employment agreements in business transfers. It can only be deduced by way of applying the Labour Code, which states that in the event of a business transfer, employment agreements that are in force on the transfer date are automatically transferred simultaneously with the business or related business unit/department to the transferee with all rights and obligations, and the business transfer does not entitle the transferee or the transferor to terminate employment contracts of the relevant employees without a valid or just cause, and solely on the basis of a business transfer.

Under Turkish law, certain employment rights such as severance payments, notice payments, and annual paid leave rights are determined according to the term of the employment. In a business transfer, the term of employment is deemed to have started from the date of the first employment by the transferor. Both the transferee and the transferor employers are jointly liable for the employee's rights for the term before the transfer date. However, the transferor's liability regarding such compensation is limited to two years starting from the date of the transfer. If the employment contract of an employee is terminated according to the Labour Code after the transfer date, and if the transferee is obliged to make any employment-related payment corresponding to the term prior to the transfer to such employee, then the transferee may have recourse to the transferor for compensation of such payments if this is contractually agreed.

The status of employment agreements during a demerger is regulated under the Turkish Commercial Code separately. In the event of a demerger, employment agreements are transferred to the transferee, unless the employee objects, together with all rights and debts accrued until the day of the demerger. If the employee raises an objection, then the employment agreement terminates at the end of the legal period of notice. The transferor and the transferee will be jointly liable of all receivables that are due before the demerger, and are set to become due before the termination of the agreement. The employee may request the employer to provide security over such receivables.

Termination of employment

As a general principle, employment agreements do not have to be in writing. Persons may simply be employed under verbal agreements. However, the Labour Code states that employment agreements that are executed for a term of more than one year must be in writing.

The main categorisation of employment agreements under the Labour Code is based on whether the agreement is for a definite or an indefinite term. However, there are also other types of employment agreements regulated by the Labour Code, such as part-time agreements, seasonal agreements, etc.

If no specific term is stipulated in an employment agreement, such agreement is deemed to be an indefinite-term agreement. According to the Labour Code, a definite-term agreement could be executed only based on objective conditions, such as the works that must be performed within a certain period. The Labour Code does not permit the renewal of definite-term agreements on a continuous basis unless there is a material cause. Agreements that are extended continuously without any material cause will be deemed to be indefinite-term agreements.

The Labour Code does not set forth any provision prohibiting the employer to terminate employment agreements. The employee or the employer may terminate unilaterally an indefinite-term employment agreement by giving notice of termination to the other party within the notice periods set forth in the Labour Code. Legal consequences of termination may vary based on the reason of the termination. However, workplaces where at least 30 or more people are employed are subject to job security provisions and the employer may terminate indefinite-term employment contracts of the employees who have been employed for at least six months on the basis of a valid cause or a just cause. If there is no valid cause or just cause in termination of an employment agreement, the employee may initiate a restitution of employment claim.

If the total number of employees in a workplace is less than 30, such workplace will not be subject to job security provisions and the employer may terminate an employment agreement based on a just cause. Terminated employee may not initiate a restitution of employment claim, but may always challenge the existence of just cause in termination before the courts and claim payment for employment benefits such severance and notice pay.

If the employer terminates the employment agreement based on a valid cause, the employer must respect the notice periods stipulated under the Turkish Labour Code. If such prior notice is not given to the employee, then the employee will be entitled to a notice payment corresponding to the amount of the salary that they would have earned had they worked during that notice period. The minimum notice periods are set forth by the Turkish Labour Code depending on the duration of employment of the employee with the employer as follows:

Duration of employment	**Notice period**
Less than six months	two weeks
6 - 18 months	four weeks
18 - 36 months	six weeks
More than 36 months (three years)	eight weeks

In indefinite-term agreements, employees or the employer must be notified prior to the termination of the employment agreement. This rule does not apply if there is immediate termination based on a just cause.

An employee who has been working for the same employer for more than one year will be entitled to a severance payment on termination by the employer based on a just cause. In principle, the amount of the severance payment is calculated by multiplying the employee's most recent monthly salary by the number of years they have been employed by the employer. The government periodically fixes a cap for severance payment, which is equal to TRY 6,379.86 for the last six months of the year 2019.

The Turkish government is currently working on a 'Severance Pay Fund'. The Eleventh Development Plan that was adopted very recently provides a reform in the severance pay regulations. Accordingly, a severance pay fund will be established and the fund will be integrated into the mandatory pension system (see below for details). Although the development plan does not specify the details of the contemplated structure, as per statements by the ministers, it is inferred that the employee's severance pay will accumulate in a special fund, which will also serve for funding purposes.

Minimum Wage

At the end of each year (December), the Committee for Determining the Minimum Wage convenes to issue a decision setting forth the amount of minimum wage. For the period between 1 January 2017 and 31 December 2019, the gross minimum wage (monthly amount) for employees aged 16 and over is TRY 2,558.4. All employers are obliged to pay at least the minimum wage to their employees.

Mandatory Pension System

In accordance with the amendments to the Law on Personal Pension Savings and Investment System ('Law No. 4632'), 'automatic enrollment in the individual pension system' was introduced in 2017.

Law No. 4632 provides that employees under the age of 45 who work in the public or private sector will be automatically enrolled in the system by their employers. According to the Regulation on the Procedures and Principles of the Automatic Enrollment of Employees by their Employers, a gradual system is being planned for employers to comply with this system and fulfill their requirements. This gradual system sets the deadlines for automatic enrollment based on the size of the workforce (number of employees), as follows:

- over 1,000 employees: 1 January 2017
- 250 to 1,000 employees: 1 April 2017
- 100 to 249 employees: 1 July 2017
- 50 to 99 employees: 1 January 2018
- 10 to 49 employees: 1 July 2018
- 5 to 9 employees: 1 January 2019

The legislation allows employees to opt out of the system within the first two months of enrollment. If the employees are enrolled in the system, the minimum amount of contribution from the employee is the amount corresponding to 3% of the insurable earning. The Council of Ministers is entitled to increase or decrease this ratio.

Besides the mandatory contributions to be made by the employers, the legislation introduces government contributions to support the system as well.

Contracting with Third Parties

There are a number of general contracting principles in Turkey. The key principles are as follows:

Principle	Guidance
Freedom of contract	Generally, parties have the freedom of contract as they see fit. The main consideration when drafting a contract is that the terms are clear and reflect the parties' true intent and agreements. Ambiguous or missing terms will not necessarily render a contract unenforceable and often become subject to the interpretation of the courts. Except the mandatory provisions of the relevant law, parties may expressly agree to disregard the relevant legislation provisions and agree on the terms of the contract to be applied to their contractual relation. In accordance with the freedom of contract principle, the parties may choose the type of contract and agree on the subject matter and the terms of a contract at their discretion subject to the mandatory provisions. The contract cannot: (i) breach the mandatory provisions of the relevant law; (ii) be against public order; (iii) be against personnel rights; (iv) be against morals; and (v) be impossible.
Intention of the parties	It is significant that by virtue of Article 19 of the Turkish Code of Obligations, the true and mutual intentions of both parties should be evaluated in accordance with the principles of good faith and that their actual wishes and objectives should be determined regardless of the words and terms used in the contract. The Turkish Code of Obligations states that a contract is formed when matching offer and acceptance are exchanged by the parties. If the parties agree on all the essential terms of a contract, the contract is presumed to be binding even though unessential terms have been omitted.
Authority	A contract may be unenforceable if it is made by a person who lacks authority. The authority of a contracting party should always be checked, particularly where they are contracting on behalf of another person or entity. Turkish companies will be represented and bound by their authorised representatives. These representatives can also be seen in the publicly available records of the relevant trade registry office. These authorised representatives and their sample signatures are provided under the signature circular of the company.
Capacity	A person or entity's capacity to enter into a contract may be limited by law, regulation or its own internal policies. It should always be confirmed that a person or entity has capacity to enter into a contract.
Formation	Contracts may be written, oral or a mixture of both. Certain contracts are required to be written or by deed to be legally enforceable. A party may struggle to prove the terms of an oral contract if they are disputed and it is therefore recommended for contracts to be in writing and signed by each relevant party.

Implied terms

A limited number of terms can be implied into a contract regardless of whether they have been expressly agreed by the parties and set out in the contract. The courts can imply terms into a contract if they feel that such a term is necessary to assist with the proper interpretation of the contract. However, it should be noted that the courts are generally reluctant to imply terms into a contract unless it is absolutely necessary. Instead, the courts often rule that the relevant provision of the contract is unenforceable for uncertainty.

Penalty clauses

A penalty clause is a provision in a contract that provides for a fixed or pre-determined amount to be payable by a party in place of damages to be assessed by a court in the event that a party breaches a contract term. Such clauses are generally enforceable only up to an amount that is reasonable in light of the anticipated or actual harm caused by a breach of contract.

Limitations of liability

Under Article 115 of the Turkish Code of Obligations, parties are entitled to agree to limit liability by stating that party/parties will not be liable for losses caused by slight fault such as negligence. But it is not possible to limit the liability for losses arising from gross negligence and fraud. Turkish law is silent regarding any other criteria for the limitation of liability; however, contracting parties usually have differing objectives when negotiating limitations of liability. Liability may be limited in several ways, the most common of which are:

- limitations on the time to bring a claim
- caps on the amount of liability
- restrictions on the types of loss recoverable for a breach of contract, ie indirect loss, consequential loss, loss of profit, loss of chance, etc
- exclusions of certain types of liability

General terms/unfair contract terms

Article 20 of the Turkish Code of Obligations regulates the general terms (genel işlem koşulları). These general terms were not regulated under the abrogated Turkish Code of Obligations. These terms are considered as the provisions of a standard form agreement prepared unilaterally without the involvement of the consumers and the consumers will not have a chance to negotiate any of its terms. Therefore, any provision in these general terms that may be considered as explicitly unfair and against the interests of the consumer or that is irrelevant with the nature of the agreement will be considered as null and void by the courts. Turkish courts tend to interpret cases in favour of the consumers.

Taxation Overview

Foreign investors are also treated as equals of Turkish investors and are subject to the same requirements as Turkish investors. There are no limitations with regard to the percentage of shares held by a foreign shareholder except for certain limitations for specific sectors such as telecommunications and port operations.

The same corporation tax system applies to the profits of a branch and a company: both are subject to a corporate tax rate of 20% (liaison offices are not subject to any taxation since they cannot operate commercially). There is also a 15% withholding tax liability over the profits distributed by the companies or repatriated by the branches to headquarters, which brings the effective tax rate up to 32%. Profits will be subject to a 15% withholding tax only if the profits are distributed or repatriated to headquarters. Otherwise, in the case of a lack of distribution or repatriation, there will be no withholding tax at issue. Foreign investor investing from a jurisdiction which has a double taxation treaty with Turkey may have a favourable withholding tax rate.

Corporate tax

Corporate tax is assessed on the basis of the Corporate Tax Law, which applies to profits earned by corporations, co-operatives, state-owned companies, economic enterprises owned by associations and foundations and mutual funds and investment trusts governed by the Capital Markets Law. Corporate tax is currently levied at the rate of 22% of a corporation's taxable income. The corporate tax base is determined by deducting expenses from an enterprise's revenue. A dividend withholding tax at a rate of 15% applies to dividend distributions to resident and non-resident individuals and non-resident companies.

Taxes on payroll

All payments in cash, indemnities, allowances, overtime, advances, subscriptions, premiums, bonuses, expense accruals or as a percentage of profit that is not related to a partnership (the essence does not change) shall be grossed up and taxed at progressive tax rates, which vary between 15% and 35% as salary and wage income.

In principle, there are two types are taxpayers under the law: full taxpayers and limited taxpayers. Turkish residents are considered 'full taxpayers' and pay tax over their global revenues, whereas non-residents are classified as 'limited taxpayers' and are only obliged to pay tax over the revenues they generate in Turkey.

Fulfilment of the following conditions indicates that the wage income is acquired in Turkey for individuals with limited liability:

- if the employment service is performed in Turkey, or
- if the services are evaluated in Turkey

Note that the salaries paid in foreign currency to the employees employed pursuant to the operation permit of offices of limited taxpayer employers having their headquarters abroad, incorporated pursuant to the permit granted by Ministry of Economy, are exempt from income tax.

Value added tax

VAT is assessed on the basis of the VAT Law. All deliveries of goods and services that take place in Turkey in the context of commercial, industrial, agricultural and professional activities are subject to VAT. Imported goods and services are also subject to VAT. The person liable for the payment of VAT is the one delivering the goods or services.

The VAT that a taxpayer pays for goods and services purchased can be offset against the VAT received on deliveries of goods and services made. When the amount of VAT on sales is greater than the amount on purchases, it is this positive difference that the taxpayer pays to the tax office. Where the reverse is true, the difference is not—as a rule—refunded to the taxpayer. Instead it is carried forward and can be offset against future VAT collections.

The general VAT rate in Turkey is 18%, however, reduced rates are applied for a number of deliveries of goods and services, such as house and medical products and devices, etc. VAT is reported and paid monthly.

However, some goods and services are exempt from VAT. Some exceptions listed under the VAT Law are (i) the delivery of newspapers and magazines, (ii) services performed for vessels and aircrafts in ports and airports, and (iii) goods and services provided in relation to construction of infrastructure in organized industrial zones, etc.

Taxes on property

Buildings and land in Turkey are subject to real estate tax. The taxpayer is the owner of the building or land, the owner of any usufruct over the building or land, or—if neither of these exists—any person who uses the building or land as their owner.

Stamp tax

Stamp tax is applied to a wide range of legal documents such as agreements or similar documents that have an amount on it. The tax base differs depending on the nature of the document. For agreements signed in Turkey, the taxable event occurs when the documents are signed. For agreements signed abroad, it may be claimed that no stamp tax arises until the agreement is brought into Turkey to be submitted to the official departments or until the terms of the document are benefited from in Turkey.

Stamp tax is payable by the parties who sign the document. Parties to a taxable document are jointly responsible for the payment of stamp tax. Depending on the nature of the paper, the tax levied upon the paper can be either fixed or proportionate. If the tax is applied proportionately, the stamp tax is only collected once, no matter how many copies of the document have been produced. However, if the paper is subject to fixed stamp tax, the stamp tax is applied multiple times for each copy produced.

Documents prepared for share transfers, mergers and demergers are held exempt from stamp tax.

Regulatory Compliance

Trade registry office filings

Companies are required to register certain changes to their governance structures, eg changes to directors, general assembly of shareholders meetings, changes to their representation structure, etc to the trade registry office of relevant city/province.

Such filings require certain documents stated in the Turkish Commercial Code, relevant secondary legislation and also on the website of the relevant trade registry office. Once the application has been filed, the trade registry office reviews it and either approves it or requests amendments/additional documents. On completion of the registration, the documents are published in the publicly available trade registry gazette.

Documents required from companies for the registration depend on: (i) the kind of the requested registration; and (ii) the type of the company (LLC, publicly held JSC, closely held JSC). More documents are requested from the publicly held companies since they are also subject to certain ministries and authorities. Publicly held companies are subject to certain periodic reporting requirements as well.

Ministry filings

Companies with foreign shareholders (having foreign capital) are required to make certain filings to the relevant ministry as well. Changes with regard to their share capital, share transfers, address changes, etc are informed to the relevant ministry until the end of May annually.

Bribery and corruption

Bribery and providing benefits are regulated under the Turkish Criminal Code, Ethics Regulation, Regulation on the Declaration of Property, Bribery and Fight against Corruption and the Law on Public Officials.

According to the amended Article 252 of the Turkish Criminal Code, 'bribe', or 'agree on bribery' will give rise to liability for bribery. If the purpose of the benefit is to persuade the public official to perform or not to perform an activity relating to their duty, such benefit will be deemed to be bribery.

Collection of benefit is not obligatory for the commitment of this crime: agreement on bribery is sufficient to impose the penalty. The only condition regarding the benefit is that it must be obtained in return of the performance or non-performance of an activity relating to their duty.

As there is not a distinction between the lawful or unlawful performance by the public official, facilitation payments made to a public official in order to secure or expedite the official process to which the person is entitled anyway are also considered an act of bribery, which was considered as official misconduct before the amendment.

It should also be noted that extortion differs from the bribery as it concerns obtaining a benefit by making somebody endure their unlawful behaviour and by worrying this person as the work is not going to be duly completed.

According to the Law on Public Officials, it is prohibited for public officials to receive any gifts and it is also regulated under the Ethics Regulation that: 'All sorts of goods and benefits that are accepted directly or indirectly whether having economic value or not and which affect or have the possibility to affect the fulfilment of their duties, impartiality, performance and decisions are within the context of gifts'.

The basic principle for public officials is to not receive or give gifts and to not derive interest as a result of their duties. Public officials cannot receive gifts or derive any benefit from natural or legal persons who have work, service or benefit relationships related to the duties they perform for themselves, their relatives or third persons or organisations directly or through an intermediary.

The below stated gifts are outside the scope of the prohibition of receiving gifts:

- donations that mean a contribution to the organisation for which the public officials work, which will not affect the execution of the organisation's services in accordance with the law and that are received, provided that they are allocated for the public service, recorded in the fixed assets list of the organisation and that they are declared to the public (except for the use of an official car and other gifts received that are allocated for the service of a specific public official) and donations that are granted to the institution and organisations

- books, magazines, articles, cassettes, calendars, compact disc or such goods

- gifts or rewards acquired in publicly held competitions, campaigns and activities

- gifts having the value of souvenir that are given in publicly held conferences, symposiums, forums, panels, meals, receptions or similar activities

- advertisements and handicraft products that are distributed to everyone and that have symbolic value

- credit taken from the financial organisations according to the market conditions

In accordance with the Ethics Regulation, political party members who fall within the scope of the Ethics Regulation will not be allowed to obtain any benefits affecting their performance with respect to their routine work and according to the Turkish Criminal Code. Similarly, all kinds of benefits provided to foreign government officials in order for them to perform an action or refrain from performing an action are considered to be bribes.

As per Regulation on the Declaration of Property, Bribery and Fight Against Corruption, public officials shall deliver the gift or donation to their institution following the receipt of such gift or donation with an economic value of at least ten times of net minimum wage granted by foreign states, international organisations, other international law legal entities, any foreign real person or legal entity or institution.

Note that Turkey has been party to several international agreements on anti-corruption regulations. Most recently, the general assembly has ratified the additional protocol to the Criminal Law Convention on Corruption which regulates the bribe actions of national and foreign arbitrators.

Merger control

A foreign company may establish itself in Turkey through the acquisition of a Turkish company. Mergers and acquisitions may require compliance with competition laws and certain other regulations. The Competition Law and relevant regulations require pre-merger applications when a proposed merger or acquisition exceeds certain regulatory thresholds. If the transaction exceeds the thresholds, certain forms must be filled and certain questions must be answered through submitting a pre-merger or acquisition filing.

Current regulatory thresholds that set the boundaries of notification requirements read as follows:

- the combined turnovers of transaction parties in Turkey exceed TRY 100m (approximately $US 17,550,000) and turnovers of at least two of the transaction parties in Turkey each exceed TRY 30m (approximately $US 5,265,000), or

- with respect to acquisition transactions, the assets or the operations that are subject to the acquisition, in merger transactions, at least one of the transaction parties has a turnover in Turkey exceeding TRY 30m (approximately $US 5,265,000) and the global turnover of at least one of the remaining transaction parties exceeds TRY 500m (approximately $US 87,750,000)

The relevant Turkish turnover to be taken into consideration is the combined turnover that was generated directly or indirectly in Turkey in the financial year preceding the notification. The worldwide turnover is the combined turnover of all entities that belong to the same group as the directly acquiring parent company.

The Authority defines the term 'combined turnover' to comprise of the turnovers of all persons either real or legal:

- that are parties to the transaction

- that are being controlled, directly or indirectly, by parties to the transaction

- that are controlling, directly or indirectly, solely or jointly, parties to the transaction; or

- that are being controlled, directly or indirectly, by one of the persons listed above

The Guidelines on Undertakings Concerned, Turnovers and Ancillary Restraints in Mergers and Acquisitions issued by The Turkish Competition Board (TCB) aim to clarify the interpretation and some applications of the Merger CommuniquÈ. In light of the guidelines and in recent practice, the following issues stand out:

- applied to international acquisition transactions, the TCB effectively raised the threshold for the domestic nexus of international acquisitions and also states where to find this amount. Previously, any party to an international acquisition transaction could have exceeded the turnover thresholds to trigger notification of the transaction. As of 1 February 2013, the economic size of the target (of an acquisition transaction) will be measured only against the lower threshold, which is now TRY 30m. The economic size of the acquirer must still exceed TRY 500m to make the relevant transaction subject to the TCB's approval

- the second change that has been introduced into the merger control system is the abolishment of the affected market exception. Previously, the parties were relieved of the requirement to notify (except in the case of joint ventures)—even if the thresholds were exceeded—if there were no affected markets in the transaction. However, with the latest amendment, overlapping among the commercial activities of the transaction parties will no longer be taken into consideration when assessing the notification requirement. Despite the fact that this seems to widen the scope of the notification requirement, since it abolishes a notification exemption, in fact, the recent amendment only streamlines the assessment of the notification requirement. In practice, this is true largely owing to the inapplicability of the affected market exception. The concept of an 'affected market' has been defined using such a wide scope that there is almost no reasonable transaction that would satisfy the conditions of that exception. Nevertheless, the abolition of the affected market exemption made it clear that the multinationals with operations in Turkey must be more careful in their assessments with regard to their merger and acquisition transactions, even outside of Turkey. With these recent

changes, it became clear that an acquisition, whereby an investment fund acquires a line of business, or a company belonging to a multinational group that has operations in Turkey, will be subject to the approval of the TCB, so long as the acquiring investment fund and the multinational meet the thresholds laid down above, no matter in which jurisdiction the transaction occurs and also without regard to the size of the target company or business

Data Protection

Turkey ratified the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data on 18 February 2016, which had been signed but unratified since 28 January 1981. Accordingly, the legislation that governs the collection, recording, processing or transfer of personal data (the 'Data Protection Law') was passed on 7 April 2016 and upon its publication in the Official Gazette, notwithstanding a six-month grace period covering certain provisions, it entered into force as of 7 October 2016. In addition to the main principles governing data protection in Turkey, the Data Protection Law sets forth the specific framework on the protection of personal data as briefly explained below:

- the DP Law provides for joint liability of the data controller and any data processors that process personal data on behalf of the data controller. Hence, data subjects can bring claims of infringement of their legal rights towards both the data controller and the data processor

- resulting from their joint liability explained above, both the data controller and the data processor are obliged to practice all manner of technical and administrative safety precautions to prevent illegal processing, unlawful access, and preservation of personal data

- the Data Protection Law requires the establishment of a registry of data processors (VERBIS). The latest date on which the data controller may register for VERBİS depends on the numbers of employees working for the data controller and its balance sheet. Accordingly, if:

    > data controllers with more than 50 employees or with an annual balance sheet of more than TRY†25 million and with individual or legal entity data controllers residing abroad should register for VERBİS by 30 September 2019 at the latest

    > individual or legal entity data controllers with fewer than 50 employees and with an annual balance sheet of less than TRY†25 million, but whose main field of activity is the processing of sensitive data, must register for VERBİS by 31 March 2020 at the latest, and

    > data controller public institutions and organisations must register for VERBİS by 30 June 2020 at the latest

- the Data Protection Authority, who became active in January 2017, sets out certain exemptions from the registration requirement for certain types of processing activities, such as data controllers whose annual number of employees is less than 50 and annual financial balance sheet total is less than TRY 25 million (provided that the main area of activity is not processing special categories of personal data), notary publics, attorneys, political parties, independent public accountants, certified public accountants, mediators, customs brokers, data processors that only process personal data with non-automatic means and Associations, Foundations, and Labour Unions (provided that the personal data is only processed in accordance with their respective areas of activities and only relates to their employees, members, associated persons, and donors)

- the DP Law sets forth the following principles for processing personal data, with which the company as the data processor must comply. Processing personal data must be:

    > done fairly and lawfully

    > accurate and kept up to date where necessary

    > for specific, explicit, and legitimate purposes

    > adequate, relevant, and not excessive in relation to the purposes for which the data is processed

    > only retained until necessary for the purposes for which they are processed or envisaged under the relevant law, and

    > only transferred abroad upon the explicit consent of the data subject

Protecting Key Assets and Employees

Intellectual property

A number of intellectual property rights may apply under Turkish law. These rights generally seek to protect the creator or owner of the underlying intellectual property. Some of these rights require prior registration in order to be effective, but others will apply automatically. A summary of the key rights is provided in the following table.

Right	Registration required?	Brief description
Patent and utility model	Yes	Patent grants moral and financial rights to its inventor. Whereas moral rights, ie indicating the inventor's name on the patent document and right of bringing lawsuit regarding protection of personality in case of reviling against the patent, are not transferable, financial rights may be transferred to another person. The term of a patent that is given with a prior investigation is 20 non-renewable years and the patent given without a prior investigation is seven years from the date on which the application for the patent was filed. Utility models are protected for a term of ten years.
Trademark	Yes	Trademark protection under the Trademark Decree is obtained by registration at the Turkish Patent Institute. The rights provided by the trademark shall be effective against third parties as of the publication date of the trademark registration. The term of the protection of a registered trademark is ten years from the date of filing of its application, but this term is subject to ten-year renewal periods.
Copyright	No	A work subject to copyright for protection is any intellectual or artistic product bearing the characteristic of its author that is deemed a scientific and literary or musical work or work of fine arts or cinematographic work. Within this context, the Copyright Law also provides protection for software programs as well as databases. Ideas and principles, on which any element of a computer program is based, including those on which its interfaces are based, however, are not deemed as works under the Copyright Law. If the author of a work is protected by law, the author's economic and moral interests are subject to protection. Principally original or creative works are subject to copyright protection. The originality or creativity of a work, however, is a case-by-case evaluated issue. The creator of a work is the person who has created it. Additionally, the Copyright Law also allows multiple copyright-owners of a work if it is created by more than one person. The copyright protection runs for the lifetime of the author/creator and for 70 years after their death.

Industrial design right	Yes	Industrial design rights will be protected through registration. The owner of the registered industrial design will have exclusive rights. Accordingly, third parties cannot produce, sell, import, make an offer to execute agreements or use the design with commercial purposes without the consent of the right owner.

Useful Links

- Trade Registry Gazette
- Istanbul Trade Registry Office
- Turkish Patent Institute
- Turkish Parliament
- Ministry of Economy
- Istanbul Stock Exchange Office
- Ministry of Foreign Affairs
- Turkish Competition Board
- Turkish Capital Markets Board
- Ministry of Labour and Social Security
- Energy Market Regulatory Authority
- Banking Regulation and Supervision Agency
- Doing Business: Economy Rankings

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