

Franchising 2020

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1. Is there a specific law governing franchise relationships in this jurisdiction?

Franchising agreements are not specifically regulated under Turkish laws. Legal provisions concerning similar types of agreements apply to franchising agreements by way of analogy.

2. Are there other laws which can be relevant to a franchising relationship in this jurisdiction?

It is generally accepted by Turkish scholars that franchising agreements are of a *sui generis* nature which is governed by the general principles applicable to agreements of a similar kind (like distributorship agreements, agency agreements, sale and purchase agreements, or ordinary partnership as applicable). Franchising agreements are considered a type of arrangement made based on the freedom of contract principle. As there is no specific legislation in Turkey regulating franchising agreements, the general provisions of the Turkish Code of Obligations numbered 6098 (the **TCO**) and the Turkish Commercial Code numbered 6102 (the **TCC**) covering similar kinds of agreements apply to franchising agreements by way of analogy. Regarding competition aspects, in addition to the TCC, the Law on the Protection of Competition numbered 4054 and the Turkish Competition Authority's Communiqué on Block Exemptions for Vertical Agreements and its Guidelines apply to franchising agreements. Industrial Property Code numbered 6769 is also relevant to the licensing aspects of a franchising relationship.

3. Is there a specific legal definition of what constitutes a franchise in this jurisdiction?

There is no specific definition of franchising agreements. Therefore there is no definition of a 'franchise' in Turkish legislation. Under the Turkish Court of Appeal's decisions and scholarly opinions, franchising agreements are defined as contracts under which the franchisor is obliged to grant certain privileges to the franchisee for a specified period (and within a number of restrictions) and to provide information and support relating to the management and organisation of the relevant work. The franchisee is also obliged to promote, market and sell the contractual products by integrating into the franchise system (to the greatest extent possible) created by the franchisor.

4. Are franchise agreements required to be registered - and if so which agency is responsible for their registration and regulation?

There is no requirement for franchise agreements to be registered.

5. Are franchise agreements required to be exclusive within the jurisdiction - and if so are there any particular considerations around product or area of exclusivity?

There is no requirement for franchise agreements to grant exclusive franchising rights. More than one franchisee may be appointed for the same product and/or territory. In practice, franchisees are usually appointed for a specific region and are granted exclusive rights.

In addition, franchise agreements are not required to be subject to the exclusive jurisdiction of Turkish courts. Parties may freely select a foreign law and jurisdiction applicable to the agreement provided there is a material foreign element in the agreement, like one of the parties being a foreign entity. In any case, Turkish law will exclusively apply to matters of consumer, employment, insurance, bankruptcy, immovable assets, competition and any issues concerning public order.

6. Are there any particular aspects around the regulation of franchise agreements in this jurisdiction which would surprise those new to the jurisdiction?

Under Turkish laws, one particular aspect about franchising agreements is that it is not regulated under specific legislation. Therefore, a case-by-case analysis must be made and the relevant provisions in the TCO and the TCC will be applied by analogy.

Non-compete provisions may be held unenforceable depending on the market share of the franchisor, which may further create other competition law complexities as well.

A franchisee may also be entitled to rights akin to agency, such as portfolio compensation if the agreement is terminated without just cause attributable to the franchisee.

7. Are there any restrictions on who can be a franchisee in this jurisdiction?

There are no restriction on who can be a franchisee under Turkish law. However, operations in some sectors may require a majority of Turkish shareholding and control of the business.

8. What steps are needed to register a franchise agreement?

There is no need to register a franchise agreement. However, it may be possible to register licence agreements before the Turkish Patent and Trademark Office depending on the licensing arrangement and exclusive rights granted in the franchise agreement.

9. What conditions are required for a franchisor to terminate a franchise agreement?

As there are no specific regulations for franchise agreements, general provisions of Turkish law will apply if a franchisor terminated an agreement. Accordingly, franchise agreements may be terminated for cause or for convenience.

In case of termination for convenience (or without cause), the franchisor may terminate the agreement by serving a termination notice in advance. The duration of the notice period may be decided in the agreement. In the absence of a pre-determined notice period in the agreement, a case-by-case analysis will be made to determine an appropriate notice period, which is generally considered a period of at least three-months. Various factors will also be taken into account while making this determination, like the contractual provisions, length of the relationship, market practice in the relevant sector, particularities of the relevant business etc.

Legal consequences will be attached to the franchisor's termination without just cause or for convenience like payment of portfolio compensation, loss of profits depending on the contract term or notice period and other damages incurred by the franchisee.

In case of just cause, franchise agreements may be terminated immediately without serving a notice period. A case-by-case analysis will be made to determine the just cause. Theoretically, a franchisee will not be entitled to compensation or damages if the franchisor terminates the agreement with a just cause attributable to the franchisee.

10. What conditions are required for a franchisee to terminate a franchise agreement?

General provisions of Turkish law will apply on termination by franchisee as well. Franchise agreements may be terminated for cause or for convenience.

In case of termination for convenience (or without a cause), the franchisee may terminate the agreement by serving a termination notice in advance. The duration of the termination notice may be decided in the agreement. If there is no pre-determined notice period in the agreement, a case-by-case analysis will be made to determine the appropriate notice period. An appropriate notice period is generally considered a period no less than three-months. However, other factors explained in the answer to the question above will also be analysed to make this determination.

On termination without just cause or for convenience by the franchisee, in principle, the franchisor will be entitled to claim its damages arising out of early termination of the agreement or an inappropriate notice period.

In case of just cause, franchise agreements may be terminated immediately without serving a notice period. A case-by-case analysis will be made to determine the just cause. Theoretically, a franchisor will not be entitled to any compensation if the franchisee terminated the agreement for just cause. The franchisee may also still claim portfolio compensation and other damages if the franchisee's termination is based on a just cause attributable to the franchisor.

11. Under what conditions (if any) can a sub-franchise be set up?

There are no specific provisions regarding sub-franchising under Turkish law. However, considering the nature of the franchise agreements and the types of rights granted to a franchisee, sub-franchising should be subject to the consent of the franchisor. As there is no clarity in the law, it is recommended for parties to explicitly agree on the sub-franchising rights or restrictions in the franchise agreement.

12. Are there specific duties for the franchisor?

The duties of the franchisor are not specified under Turkish laws. General provisions of Turkish laws provide every person must exercise their rights and fulfil their obligations according to the principles of good faith. The main duties of a franchisor are considered to be:

- (i) The obligation to grant the use of assets which are crucial for the operation of the franchise system, like certain intellectual property rights (trademarks, corporate name, logo, patent, etc),
- (ii) The duty to support the franchisee (provide any necessary equipment, know-how, etc), and
- (iii) The duty of care (including protecting the confidentiality of the franchisee).

13. Are there specific duties for the franchisee?

By way of an analogy to the other similar types of agreements, the main duties of a franchisee are considered to be:

- (i) Payment of franchising fees and/or royalties,
- (ii) Promoting, marketing, and selling goods and/or services, and
- (iii) The duty of care (including non-compete obligations, non-solicitation, protecting the confidentiality of the franchisor, etc).

14. Which form of business entity do franchisee's generally adopt in this jurisdiction?

Limited liability companies and joint-stock companies are the general company forms adopted by franchisees in Turkey. There is no requirement for franchisees to choose any form of business save for sector specific requirements, which are very limited.

15. Are there specific steps the franchisor would need to take to protect their trademark and other IP rights?

First of all, a franchisor has to ensure its trademarks and other IP rights are registered with the Turkish Patent and Trademark Office. A license agreement may also be concluded in the franchising agreement or separately, where the terms and conditions of the franchisee's usage of trademark and IP rights and prohibitions are clearly defined. License rights may also be registered

with the Turkish Patent and Trademark Office. However, this is not preferred by or recommended to the franchisors unless there is a legal requirement to do so.

16. Can franchises be sold on? And if so under what conditions?

Under Turkish law, this will likely be considered a transfer of an agreement in the context of the TCO, which requires a tripartite agreement among the franchisor, the existing franchisee and the new franchisee.

17. Are there any specific tax considerations impacting franchises?

Royalty payments arising out of franchise agreements are tax deductible for the franchisee and these payments are included in the corporate tax base of the franchisor. There is 20% withholding tax on royalty payments provided the franchisor is not a Turkish resident. Double Taxation Avoiding Treaties should be taken into consideration for each case.

Royalty payments are also subject to 18% VAT if the franchise agreement is effective and utilised in Turkey. The VAT is applied as a reverse charge if the franchisor is not a Turkish resident.

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