

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

Over the last 12 months, Turkey has passed numerous legislative amendments introducing new financial concepts to Turkish financial markets to strengthen Turkish market practices in line with global trends. In this regard, the Law Amending the Banking Law and Other Codes (2020 Law) entered into force on 25 February 2020. Below is a brief summary of the most significant amendments introduced to the Banking Law:

- A new set of rules has been implemented that recognises market manipulation and misleading transactions conducted through banking activities.
- New risk groups for debtors and conditions for granting loans to these different risk groups have also been introduced under amendments to the Banking Law.
- Transactions that the Turkey Wealth Fund Management Corporation (Turkey Wealth Fund) are party to are now included in the list of transactions that are not subject to credit limitations.

- The Central Bank of the Republic of Turkey (CBRT) can now determine the fees and commissions charged by banks for any kind of transaction, while previously it could only determine the maximum rates related to loans and deposits.
- Significant changes concerning development and investment banks have also been made, and the Banking Regulation and Supervision Agency (BRSA) has been granted the authority to implement rules specific to such banks instead of the standard rules applicable to the banking system.
- Significant increases have been made to the monetary fines applicable to activities in violation of the law.

Following the publication of the 2020 Law, the Regulation on Manipulation and Misleading Transactions in Financial Markets issued by the BRSA entered into force on its publication in the *Official Gazette* on 7 May 2020. The BRSA was authorised by the 2020 Law to determine the transactions that would fall within the scope of manipulation or misleading activities. This Regulation aims to prevent the depreciation of the Turkish lira, to ensure stability in financial markets and to prevent the dissemination of information in a false and misleading way through different forms of communication, including electronic media. Deposit banks, participation banks and development and investment banks located in Turkey must consider these matters while conducting their transactions and activities.

Accordingly, the Regulation specifies the following transactions performed by deposit banks, participation (Islamic) banks and development and investment banks as manipulation and misleading transactions in financial markets:

- Being involved in, intermediating in or placing orders for transactions that provide or may provide a false or misleading impression of the supply, demand or price of a financial instrument, or that cause or may cause the price of a financial instrument, including exchange rates and interest, to remain unnaturally high, with the intention of achieving such transactions, or engaging in similar activities.
- Being involved in, intermediating in, or placing orders for transactions that will affect the price of a financial instrument or reference values such as interest, exchange rates, or CDS (Credit Default Swap) by benefitting from fluctuating or shallow financial markets when the supply-demand balance is not set under normal circumstances and when the financial markets experience an increase in irregularities, or when the stability of the financial markets has been negatively affected, or engaging in similar activities.
- Carrying out or intermediating transactions and practices in an effort to indirectly bypass the decisions and restrictions imposed by the BRSA, including:
 - redeeming transactions early;
 - postponing transactions; and/or
 - neglecting to fulfil obligations or disregarding the BRSA's decisions regarding currency swaps, forwards, options and other derivative transactions made by banks with residents abroad where one leg of the transaction is denominated in foreign currency and the other in Turkish lira, or banks providing liquidity of the Turkish lira abroad.
- Being involved in, intermediating in or placing orders for transactions that affect or may affect the price of a financial instrument including exchange rates or interest through a deceptive mechanism or setup, or engaging in similar activities.
- Disseminating false or misleading information or rumours that provide or may provide a false or misleading impression regarding the supply, demand, or price of a financial instrument, including interest and exchange

rates, or that cause or may cause such price to remain unnaturally high, through any means of mass media, including the internet.

- Making or attempting to make an impact on the price of a financial instrument, including interest and exchange rates, by providing an opinion through the internet or other mass media channels on a financial instrument for which a position had previously been taken and hiding the conflicting positions from the public.
- Conveying false or misleading information about a reference value, intentionally providing false or misleading input or intentionally engaging in any behaviour that manipulates the calculation of a reference value.
- Taking actions that fix the purchase and sale prices of financial instrument or that help others unfairly profit from a dominant position held on the supply or demand of a financial instrument.
- Misleading investors who take positions based on opening or closing prices by carrying out purchase or sale transactions that affect or may affect the opening or closing prices of a financial instrument, including interest and exchange rates, at the opening and closing of financial markets.
- Misleading account holders with false information.
- Disseminating information or rumours that may cause systemic risk and harm investors' trust in the financial system.

Moreover, during the global COVID-19 outbreak, certain protection measures were taken to protect Turkish financial markets from the potential volatility of the Turkish Lira. Accordingly, the BRSA has adopted and is expected to continue to adopt new measures regarding certain Turkish Lira transactions conducted by banks in response to the economic slowdowns that have started to occur due to COVID-19. With these measures, although there are certain exemptions stipulated by the BRSA, Turkish lira transactions performed by banks with financial institutions located abroad have been largely limited and new steps have been taken to encourage the use of the country's Turkish Lira resources during the pandemic.

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

The Law Amending the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions, and Other Codes (Amending Law) was published in the *Official Gazette* on 22 November 2019 and entered into force as of 1 January 2020.

One of the most significant developments introduced by this Amending Law is the CBRT replacing the BRSA, which the e-Money Law had previously set as the regulatory and supervisory institution in charge of payment and e-money services. Before the amendments, the CBRT was only tasked with authorising and supervising payment and security settlement system operators such as the CBRT itself, the Istanbul Clearing, Settlement, and Custody Bank and the Central Securities Depository of Turkey, among others.

The Amending Law transfers the BRSA's powers to the CBRT, which includes the authorisation and supervision of payment and e-money services providers. Accordingly, the CBRT will also be authorised to set the maximum amount of fees or commission rates in which payment service institutions may charge their customers.

Insurance institutions

The New Economic Plan, which is planned to be implemented from 2020 to 2022, was presented by the Ministry of Treasury and Finance on 30 September 2019. The plan includes a provision regarding the establishment of the Insurance and Private Pension Regulation and Supervision Agency (IPRSA).

The IPRSA was established with the publication of Presidential Decree No. 47 on the Organization and Duties of the Insurance and Private Pension Regulation and Supervision Agency in the *Official Gazette* on 18 October 2019.

The IPRSA is an affiliated institution under the Ministry of Treasury and Finance and is authorised to regulate the insurance and private pension sectors in Turkey. Pursuant to Provisional Article 1 of Presidential Decree No. 47, the first board meeting of the IPRSA will be held within 15 days from the date on which the chairman and members are appointed by the President. The IPRSA will be deemed legally established on the date on which the first board meeting is held, and its organisational structure will be completed within one year of the date of the first board meeting. The chairman and members of the IPRSA were appointed by the Presidential Decision published in the *Official Gazette* on 24 May 2020.

The main duties of the IPRSA can be defined as implementing and monitoring the insurance and private pension legislation, adopting measures for the improvement of national insurance and private pension activities and carrying out investigations and audits with regard to the parties operating in these sectors.

Besides these activities, the General Directorate of Insurance and the Directorate of the Insurance Supervisory Board has been legally terminated on the establishment of the IPRSA, and the IPRSA will act as a sole authority in the insurance sector.

Investment institutions

The Capital Markets Law was also amended by the 2020 Law. Below is a brief summary of the most significant amendments introduced to the Capital Markets Law:

- "Transfers of a significant portion or all assets," "changes in the scope of business," and "delisting" will no longer be classified as "material transactions".
- The amendment regarding the mandatory tender offer requirements allows shareholders to benefit from the tender offer only if they already owned shares at the time the public disclosure regarding the acquisition of control was made. Therefore, those who acquire shares after the public disclosure has been made will not have the right to sell their shares in the mandatory tender process.
- The concept of a "Debt Instrument Owners' Board", which is comprised of the holders of debt instruments, has been introduced. With the said institution, the possibility of restructuring the terms and conditions of debt instruments is now available. Further, if an issuer fails to meet its financial obligations, measures such as freezing all the execution proceedings, seizures, and obtaining interim injunctions during the restructuring process have become available to help facilitate the restructuring.
- The concept of a "Security Agent", a widely used instrument in global markets, has been adopted by the Turkish legal system. New regulations will be introduced that allow investors to more swiftly collect their receivables.
- The CMB now has the authority to regulate crowdfunding activities based on either the borrowing or partnership models. It has been clearly stated that debt-based crowdfunding is not subject to the banking legislation.

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 Banks Association of Turkey.
- The Participation Banks Association of Turkey.
- The BRSA.
- The Savings Deposit Insurance Fund.

The Banking Law is the main legislation that regulates the principles and procedures regarding financial markets, the credit system, the composition and functioning of banks, and the protection of 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 forth 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) (e-Money Law). 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 the Information Systems of Payment and Electronic Money Institutions.
- The Regulation on Manipulation and Misleading Transactions in Financial Markets, which entered into force on 7 May 2020, also specifies which transactions performed by banks are considered manipulation and misleading transactions in financial markets (see [Question 1](#)).

Insurance institutions

The Insurance Law (Law No. 5684) and the Regulation on the Principles for Incorporation and the 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, the Insurance Association of Turkey, 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 the 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, for example:

- Communiqué on the Principles Regarding Investment Services, Activities, and Ancillary Services (No. III-37.1).
- Communiqué on the Principles of Establishment and Activities of Investment Firms (No. III-39.1).

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 that were not paid on the due date, are mainly governed by the Banking Law (Law No. 5411), and the Regulation on the 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?

The Banking Regulation and Supervision Agency (BRSA)

The BRSA (<https://www.bddk.org.tr/>) fulfils the necessary regulation, supervision, and implementation duties 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 the 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 Central Bank of the Republic of Turkey (CBRT)

Under the Law on the Central Bank of the Republic of Turkey (Law No. 1211), the CBRT (<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 the 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 the necessary precautions to enhance stability in the financial markets.
- Monitoring financial markets.

In addition to these activities, the CBRT is also responsible for establishing payment and securities settlement systems to ensure a fast and secure transfer and settlement of funds and securities and supervising e-money institutions and their activities. The CBRT has the authority to grant operation licences to payment institutions and e-money institutions. The CBRT 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.

The Capital Markets Board (CMB)

The 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. The CMB determines the operational principles of the capital markets and protects the rights and interests of investors.

The 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 to assist in the preparation and application of economic and fiscal policies, conduct research on revenue regulation, and prepare any relevant legislation. It also coordinates 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 IPRSA 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 CBRT is subject to its own special law (Law No. 1211). The aim of this special law is to establish the CBRT, 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 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 the Banking Law.
- A transparent and open partnership structure and organisational chart that will not constitute an obstacle for the efficient supervision of the BRSA.
- Envisaged fields of activity that will be in harmony with a planned financial, managerial, and organisational structure.
- Articles of association that are not in conflict with the provisions of the Banking Law.

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 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 and it operates within the framework of the principles to be set by the BRSA. 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:

- Have a strong financial structure.
- Have equity not less than the minimum paid capital required for establishment of a bank in Turkey.
- No restrictions may be placed on its activities.
- Must be 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 relevant Trade Registry and an announcement of its establishment must be made in the *Turkish 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 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.

Where a bank has not become a member of the relevant association within one month of receiving its operating licence or has failed to pay the remaining portion of the system entrance fee to the fund account, and has failed to fulfil these obligations despite a warning issued by the BRSA, such bank's fields of activity other than accepting deposits and participation funds may be individually restricted by the Banking Board. 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 CBRT 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 CBRT within six months of submitting all of the documents. If the evaluation process is negatively concluded, the decision will be notified to the applicants with its justifications. As with a bank, a system operator's operating licence will be cancelled if its activities have been suspended for a period of more than six months within one year after it initiates operations.

Payment institutions and electronic money institutions performing their activities (for example, the issuance of electronic money) through banks must apply to the CBRT in order 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 CBRT 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.
- The detection of non-factual declarations or documents submitted by the institution to obtain 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 CBRT of any changes in the required information and documents.

- An evaluation by the CBRT finding that the activities of the payment institution endangers 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 services or that are solely used in a certain service networks are exempt from the above restrictions as those are stated to be completely excluded from the scope of the e-Money Law. However, if the transactions made with these kinds of payment instruments reach a certain level determined by the CBRT, the CBRT can decide to evaluate these instruments within 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 indicating 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 administrative courts and the Council of State within 60 days of the written notification of the administrative authority's decision or the last day of the 60-day-response period.

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 does not regulate the 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 specified in the Turkish Commercial Code and other relevant legislation.
- Have the necessary financial strength and respect.
- Have the honesty and competency required for the business.
- Have a transparent and open partnership structure together with the risk group (in case of a legal entity).

In addition to the above requirements, the 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, investment, and e-money 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, and the e-Money Law, among others. Unlicensed activity is a crime under the regulatory framework and can result in monetary fines and imprisonment.

For example, the real persons or representatives of legal entities who act as if they were banks or who collect deposits or participation funds without having the required permission under the Banking Law will be sentenced to a prison term of between three and five years and a judicial fine of up to 5,000 days. (This is an amount payable to the Turkish State Treasury by the offender. Unless otherwise stated in the law, this amount is calculated by multiplying the identified number of days by a daily amount, both of which are identified in the applicable legislation).

Besides these, in cases where this offence is committed within a business premises, the premises can be closed from one month to one year or permanently if such acts are repeated.

However, the mere provision of financial services to Turkish residents does not necessarily mean that such activities are subject to the licensing requirements, provided that no other regulated activities are being 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 that provide investment services for the purchase and sale of securities traded on foreign financial markets to Turkish residents, are not subject to these licensing requirements, provided that both:
 - no solicitation, advertisement, marketing, promotion, or any similar activity is conducted by such foreign institutions targeting 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 and that 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 have been met and that such contracts have been 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 a result of the insurance company's sales and marketing activities (whether in person or via an agent in Turkey) but rather 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 have been 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. The Banking Board's approval is required for the following transactions causing a change of control in the ownership of banks:

- 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 required for the founding owners.

Financial leasing, factoring and finance companies. The Banking Board's approval is required for the following transactions causing a 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.

Payment service institutions and e-money institutions. The CBRT's approval is required for the following transactions causing a change of control in the ownership of payment service institutions 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 board of directors or audit committee nomination privileges, regardless of the percentage acquired.

The CBRT'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.

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 that has been 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 markets 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 duties 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 amount of 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*) and certain insurance transactions made with insurance institutions by insurance brokers 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 lower the rate in some transactions to 1% or 0%. In this context, pursuant to the Presidential Decree No. 2568, published in the *Official Gazette* on 24 May 2020, the BITT rate, which is calculated on the sale value of foreign exchange transactions, has been increased from 0.2% to 1%. This rate will be applied as 0% for foreign exchange sales:

- Between banks and authorised institutions or sales to one another.
- Made to the Ministry of Treasury and Finance.
- Made by creditors or intermediary banks to debtors in connection with the repayment of foreign-currency loans.
- Made to institutions with industrial registry certificates.
- Made to exporters who are members of exporters' associations.

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 CBRT.

The amount payable is based on the average maturity of a loan, its currency, the 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 corporate income tax has been deducted.

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. However, during the global pandemic, a number of decisions were adopted by the BRSA and the CMB to sustain financial stability in the market and preserve the value of the Turkish lira. To that end, new amendments may be brought into force by these authorities.

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

- Regulation on Manipulation and Misleading Transactions in Financial Markets, published in the *Official Gazette* on 7 May 2020.
- Law Amending the Banking Law and Other Codes, published in the *Official Gazette* on 25 February 2020.
- 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 14 January 2020.
- Regulation Amending the Regulation on Banks' Credit Transactions, published in the *Official Gazette* on 14 January 2020.
- Law Amending the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions and Other Codes, published in the *Official Gazette* on 22 November 2019.
- Regulation Amending the Regulation on Operation of Banks Subject to Permission and Indirect Shareholding, published in the *Official Gazette* on 13 February 2019.
- Regulation on the Restructuring of Debts Owed to the Financial Sector, published in the *Official Gazette* on 15 August 2018.
- 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 several amending regulation drafts and draft communiqués on its website regarding financial leasing, factoring, and financing companies and their accounting processes, the credit transactions of banks, the information technologies systems of banks and the independent audit of banks.

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Areas of practice. Banking & finance; infrastructure and project finance.

Recent transactions/activities.

- 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.

Languages. Turkish, English

Professional associations/memberships. International Law Students' Association (ILSA); Boston University School of Law Alumni Association; Istanbul University School of Law Alumni Association.

Publications.

- *HBO Newsletter, Introduction to Hedging Under Islamic Finance, Winter/Spring 2020 (co-author).*
- *HBO Newsletter, Mobilizing Sukuk in Project Financing, Fall 2019 (co-author).*
- *HBO Newsletter, Practical Issues regarding Surety Transactions in Turkish Banking Practice, Fall 2019 (co-author).*
- *Thomson Reuters, Practical Law: Establishing a Financial Institution in Turkey, May 2019 (co-author).*

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Areas of practice. Banking and finance; Mergers & Acquisitions; Capital Markets.

Recent transactions/activities.

- Assisted ABB Group, a leading power and automation technologies firm, in a demerger transaction held within the body of its local subsidiaries.
- Assisted Busbud, Inc, a global leading transportation firm, in its share capital increase process realized within the body of its subsidiary, Clickbus Seyahat Hizmetleri A.Ş.
- Advised major publicly held joint stock company in its compliance with the capital markets legislation.

Languages. Turkish, English

Professional associations/memberships. Founding member of Kabataş Erkek Liseli Hukukçular Association; former competitor in the Bahçeşehir University Vis Moot Court Team.

Publications.

- *Thomson Reuters, Practical Law: Establishing a Financial Institution in Turkey, May 2019 (co-author).*

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