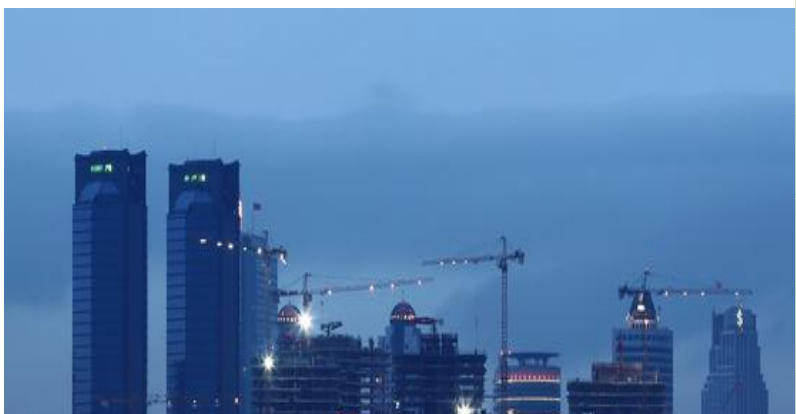


SENGULER & SENGULER
LAW OFFICE



DOING BUSINESS IN TURKEY



TURKEY

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INTRODUCTION

In the last 10 years Turkey has experienced a rate of economic growth close to the best in the world. This has been attributed to several factors:

- a shift from a focus on agriculture to a focus on industry and the services sector;
- rapid modernisation of the existing industries and class leading technology transfer;
- Political stability and good economic management;
- The EU accession process bringing massive legal infrastructure change;
- Successful Privatisation programmes;
- Istanbul becoming the go to place for Middle East/Asian business and tourists;
- Strategic positioning as an Energy corridor between East and West;
- Improved relations with neighbours.

In addition, private investments were the driving force in accelerating economic activities in recent years. The liberalisation of capital movements and the willingness of foreign creditors to lend to Turkish investors contributed to the high growth rate of private investment.

Turkey attaches a high priority to the encouragement of foreign investment and provides a variety of incentives.

Please note that many of the laws referred to below are complex and the following summaries are very general in nature. This document is not legal advice. Please do not act in reliance upon it but always seek specific legal and other appropriate professional advice before taking action.

BUSINESS STRUCTURES IN TURKEY

There have been recent reforms in respect of business structures following the New Turkish Commercial Code ("**New TCC**") coming into force on 1st July 2012.

The New TCC brings in some very important changes. It is designed to achieve the following:

- increase competitive power;
- establish public confidence in corporate entities; and
- bring about greater transparency and accountability.

Furthermore, the New TCC aims to meet Turkey's long and short-term needs by regulating commercial issues in line with the changing local and global business environment, improve investor confidence, and by creating more efficient legal institutions and mechanisms. These developments will in turn enable Turkey to function better as a more dynamic member of the international community of trading nations.

Among others the New TCC has brought in many novelties in the corporate governance of Turkish legal entities. As a result establishment is easier and restructuring procedures are simpler. Limited Liability Companies and Joint Stock Companies will enjoy many common benefits stipulated under New TCC.

In light of the New TCC, we set out below the principal options currently available for foreigners establishing businesses in Turkey.

Joint Stock Company

The main features of Joint Stock Company ("**AS**" or "**JSC**") structure is as follows:

- i) The initial capital amount for a JSC must be minimum 50,000.00 TL (Turkish Liras). It is also obligatory to deposit $\frac{1}{4}$ of the capital before registration into a bank account opened for the company in the incorporation process. The remaining amount must be paid within twenty four (24) months following the incorporation. Real estates and other assets including intellectual property rights and virtual platforms can be subscribed as capital-in-kind. Any cash payments must be made to an account of a bank established in Turkey.
- ii) With the new Turkish Commercial Code a JSC may be incorporated with a single shareholder. The minimum number of board of directors for JSCs is one.

Specific Characteristics of the JSCs

- These entities can operate in banking and insurance businesses if they meet the requirements stipulated by relevant laws related with such industries.
- This type of company is most suitable to run a Joint Venture between foreign investors and locals since there can be a management control established by special voting rights on classes of shares.
- A company must engage a locally qualified accountant, to be responsible for the accounting records of the company, tax returns and annual accounts.
- It is expected that it has a proper place of business (evidenced by a rent contract or title deed in Turkey).

Limited Company (“LLC”)

This commercial vehicle can be established with the following conditions:

- i) The initial capital amount for a LLC is 10,000.00 TL. Any cash payments must be made to an account of a bank established in Turkey.
- ii) LLCs may also be incorporated with a single shareholder. LLC’s are run by duly appointed managers and the minimum number of managers for LLCs is one.

Specific Characteristics of LLC’s

- It is expected that it has a proper place of business (evidenced by a rent contract or title deed in Turkey).
- LLC must engage a locally qualified accountant, to be responsible for the accounting records of the company, tax returns and annual accounts.
- LLC’s can be established for every kind of economic purposes which is not forbidden by law.

Branches

Incorporation of a branch in Turkey is also allowed for foreign investors. Unlike companies, there is no managing board in a branch, instead a company representative is appointed to execute the operations of the branch. The minimum number of representative to be appointed for a branch is also one. A Branch does not have a separate legal status and a branch of a foreign company can only acquire property in Turkey in very limited

circumstances.

Liaison Offices

Although Liaison offices are not actually an “investment entity”, they can be seen as a ‘first step’ to further investment, though some foreign companies choose to continue to operate through this vehicle:

The main features of a Liaison Office are as follows:

- Permission from the General Directorate of Foreign Investment (“GDFI”) is required to establish a Liaison Office. In applying for permission a report justifying the establishment of the office must be submitted. Permission is granted for no more than 3 years at a time, and the GDFI may decide to refuse permission in subsequent years if it decides that a company or branch should be formed to carry out the activities.
- The liaison office must represent a corporate body established outside Turkey.
- It is not entitled to trade in Turkey, and all its expenses must be met by foreign currency brought in from outside the country. As such, care must be taken to ensure that its activities are not deemed as commercial and that it is not receiving funds from anywhere other than the parent company.
- Salaries of Liaison office employees are not subject to Income Tax. Foreign Employees are also exempt from paying Social Security Contributions. However, Turkish employees do pay Social Security Contributions on their salaries and the office must pay Employer’s contributions.
- A liaison office must be registered at the tax office, and although it pays no tax on income it receives, the withholding tax applicable to rent payments and to charges from independent professionals must be paid.

Nationality of Board of Directors and Managers

All of the shareholders, board of directors (JSCs) or managers (LLCs) may be foreigners or if necessary Turkish nationals may also be appointed for these roles.

TAXATION

A brief outline of the principal taxes affecting foreign entities in Turkey is set out below. Other smaller taxes do exist and may apply from time to time.

Corporation Tax

- This is taxation applied on profits of corporate entities. Currently it is assessed at 20% and profits are computed according to Turkish accounting principles.
- Quarterly interim corporation tax returns must be submitted and quarterly profits are taxed at 20%. After the year end an annual return is submitted and any outstanding tax is payable in 3 instalments during the course of the subsequent year.
- Tax losses may be carried forward and set off against future profits in the assessment of future corporation tax.
- Withholding tax of 15% is applied to dividends which are remitted to shareholders (or the parent company in the case of a branch).

Income Tax

- Income tax is charged on salaries and the profits of non-incorporated bodies and self-employed people.
- Tax on salaries is applied progressively, from a starting rate of 15% up to a top rate of 35%.
- Tax on self-employed people is applied progressively, up to a top rate of 35%.
- Withholding tax must be paid on rent of property from individuals, at a rate of 20% of gross rent. It should be noted that generally rents are negotiated net, and so in effect the withholding tax payable is added on to the agreed amount, and this works out to be a tax of 25% of the net rent paid. Withholding tax is also applied to the charges of local independent professionals such as accountants, lawyers and architects.
- The income and withholding tax return is submitted quarterly for companies with fewer than 10 employees and monthly for those with more.

Value Added Tax (VAT)

- VAT is applied upon the sale of most goods and services, at varying rates, depending on the nature of goods and services being sold. 18% is the standard rate and reduced rates of 1% and 8% apply for certain basic food items, restaurants, education costs, books and paper. Companies registered for VAT may set off the VAT paid on their purchases against VAT charged on sales.
- VAT is also paid on the importation of goods to Turkey, at the applicable rates. Whilst this tax must be paid separately the amount of it may be set off against VAT on sales.
- Exports of goods are not subject to VAT also the export of services is not subject to VAT where they have been performed outside of Turkey or are clearly benefits a place outside of Turkey.
- Where input VAT (on purchases) exceeds output VAT (on sales) the balance is carried forward to be set off against future months' payable tax. Generally a refund is not available except in the case of exporters who can apply for a refund, and this can be made after certain inspections.
- VAT returns are submitted monthly.
- There is no minimum threshold for being subject to VAT.

ANTI-CORRUPTION

Corruption poses an increasingly serious threat against Turkey as well as the rest of the world in many respects. The fight against corruption is crucial, in particular, to achieve an economic and political stability, to attract foreign investors and to establish the rule of law. In addition those interests which are common for almost all countries, anti-corruption has a particular importance for Turkey in the achievement of its goal of becoming a European Union member, since anti-corruption is expected to feature prominently in Turkey's talks on European Union accession.

Under the Criminal Code, bribery is committed when a person and a public official agree to exchange a benefit for the performance or omission of an act contrary to the requisites of the duties of the official. The actual transfer of money or another benefit is not an element of the crime of bribery. Under the Criminal Code, a person who gives or whom receives a bribe, but then informs the investigation authorities about the bribe before initiation of an investigation, shall not be punished for the crime of bribery. Additionally, a public official whom receives a bribe, but then turns over the entire bribe to the competent investigation authorities, shall not be punished for the crime of bribery. A public official whom receive a bribe is subject to the same penalty as a person who gives a bribe. The Criminal Code sets forth that Turkish laws shall apply to the crimes of bribery committed abroad regardless of whether the crime is committed by a Turkish citizen or a foreigner. It is a general principle that Turkish laws shall be applied to crimes committed within Turkey, whether committed by a Turkish citizen or foreigner. Thus, Turkish laws shall apply to the crimes of bribery regardless of whether committed by a Turkish national or foreigner or whether committed in Turkey or abroad.

If a bribe creates an unlawful benefit to a legal entity, the entity shall be punished through three security measures: invalidation of the licence granted by a public authority; seizure of the goods which are used in the commitment of, or the result of, a crime by the representatives of a legal entity; and seizure of pecuniary benefits arising from or provided for the commitment of a crime. Criminal liability of legal entities was not regulated under the Old Criminal Code and is therefore a new concept under Turkish law.

Turkey's first attempt to criminalise bribing foreign public officials was the ratification in 2000 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("**OECD Convention**"), which was followed by the enactment in 2003 of Law No. 4782 Amending Certain Laws for the Prevention of Bribing Foreign Public Officials in International Commercial Transactions ("**Law No. 4782**") and the enactment of the new Criminal Code in 2005.

Turkey supports the anti-corruption initiatives through various international conventions including the United Nations Convention against Corruption ("**UN Convention**") and the Council of Europe's Civil Law and Criminal Law Conventions on Corruption ("**Council of Europe Conventions**").

The UN Convention

The UN Convention was adopted by the General Assembly of the United Nations and entered into force on 14 December 2005.¹⁸ Turkey ratified the UN Convention on 11 August 2006 and published in the Official Journal on 2 October 2006. Article 1 of the UN Convention sets forth its purposes as to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery; and to promote integrity, accountability and proper management of public affairs and public property.

The UN Convention covers the prevention, investigation and prosecution of corruption as well as the freezing, seizure, confiscation and return of proceeds from corruption. In order to implement the UN Convention, it is not necessary for the offences set forth in it to result in damage or harm to state property. Pursuant to the UN Convention, each State Party is required to adopt such legislative and other measures as may be necessary to establish the crime of bribery as a criminal offence when committed intentionally.

Pursuant to the UN Convention, the state parties are required to institute a comprehensive domestic regulatory and supervisory regime for banks, financial institutions and other natural or legal persons particularly susceptible to money-laundering in order to deter and detect all forms of money-laundering. The Turkish anti-money laundering legislation mainly consisting of the Anti-money Laundering Law No. 4208, which entered into force on 19 November 1996, and the Anti-Money Laundering Regulation, which entered into force on 2 July 1997, meets this requirement of the UN Convention. In particular, the Anti-Money Laundering Regulation states that if there is a suspicion that money or convertible assets are being used to launder or attempt to launder money, this shall immediately be reported to the Financial Crimes Investigation Agency. A person or entity who fails to report such suspicious transactions are subject to imprisonment from six months to one year as well as certain administrative fines.

The OECD Convention

The Organisation of Economic Co-operation and Development (“**OECD**”) adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“**OECD Convention**”) on 17 December 1997 in Paris. Signatories to the OECD Convention include all 29 member states of the OECD including the United States—as well as five non-members. The OECD Convention entered into effect on 15 February 1999. Turkey ratified the OECD Convention on 1 February 2000.

The goal of the OECD Convention, stated in the preamble, is to combat the “widespread phenomenon” of bribery in international business transactions. Article 1 of the OECD Convention requires the signatories to criminalise bribing foreign public officials by providing: Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

According to the “Commentaries on the Convention,” which were adopted by the signatories on 21 November 1997, the OECD Convention sets a “standard” to be met by signatory states rather than using “precise terms,” and thus leaves the method of implementation to the signatory states. However, the OECD Convention states that the sanctions must consist of “effective, proportionate and dissuasive criminal penalties” comparable to those for bribery of local officials. In so doing, the OECD Convention seeks to assure a consistency between the various local legislations with respect to the crime of bribing foreign officials. The OECD Convention makes it unlawful to offer or pay bribes, but leaves the matter of soliciting or receiving bribes to the domestic laws of the signatory states. It envisages the criminalization of the bribery of foreign public officials regardless of whether the home country of the relevant official is a party to the OECD Convention.

EMPLOYMENT RELATIONS

Under the Turkish Labour Law (the “Law”) there are provisions regarding job security to prevent unfair dismissals. These provisions apply to workplaces with 30 or more employees and to indefinite period contracts, and are of particular relevance in relation to the termination of employment contracts.

Fixed Term or Indefinite

One of the main principles of the Law is that employment is for an indefinite period unless otherwise stated in the Employment Contract or if the work is temporary in nature. In accordance with this principle courts are inclined to interpret the scope of the fixed-term contracts narrowly. Furthermore, if a fixed term contract is renewed, it would be considered as being for an indefinite period, unless there is a justifiable reason (e.g. if the employment term is tied to the completion of a project).

Under the Law employees on fixed-term employment contracts should be entitled to the same benefits in relation to remuneration as the employees who are working for indefinite period. In principle employees on fixed-term employment contracts are not entitled to severance payment however this is rather a grey area thus courts may decide to order severance payment with relation to fixed-term contracts in some circumstances.

Termination of Employment Contracts

Workplaces with 30 or more employees - Job Security Provisions

For workplaces with 30 or more employees, there is a job security right in which the employee who has worked for at least 6 months in the firm, may claim reinstatement if the employer decides to dismiss him or her without a valid reason such as, the incompetence of the employee, the behaviour of the employee, or the requirements of the workplace or the work. An employee will not be able to benefit from job security provisions if there is a “valid reason” set out under the Law, for a termination with immediate effect.

In case where the dismissed employee claimed for reinstatement and the judge accepts the claim and rules that the employee should be reinstated and the employer does not allow the employee to start work within 1 month of the date of the judgement, the employer will have to pay compensation in the amount of between 4 and 8 months’ salary. The employer will also have to pay compensation to the employee covering the time period during which the court case was pending and consequently the employee was not allowed to work, which may amount to four months’ salary and other entitlements.

Workplaces with fewer than 30 employees

Under Law, indefinite period employment contracts can be terminated simply by giving notice (notice terms are regulated under the Law). An employee to whom the job security provisions are not applicable but whose employment contract is terminated in bad faith (due compensation was not paid), can sue and ask for bad faith compensation in the amount of 3 times the statutory payment in lieu of notice.

Work Permits

In September 2003 the process for foreigners to obtain work permits underwent major changes when the “Law Concerning the Work Permits of Foreigners” came into force. In this new law the responsibility for administering and granting work permits was put into the charge of the Ministry of Labour and Social Security (“**Ministry**”). Previously in fact there had not been any one law specifically governing foreigners’ work permits so in practice much was new.

Foreigners may be exempt from obtaining a work permit under bilateral or multilateral agreements according to which Turkey is a party. In addition, under the relevant regulation, there is no requirement to obtain a work permit in some special circumstances such as visits for scientific, cultural or artistic activities which is for a period of less than one month, or visits for maintenance and inspection of any machinery and equipment imported to Turkey for a period of less than 3 months or visits for training related to the use of goods and services imported to Turkey for a period of less than 3 months.

Work Permits for Foreign Key Personnel

The issuance of work permits for key personnel is regulated under the Work Permit Regulation for Foreign Key Personnel. “Key Personnel” refers to the personnel of a company established in Turkey who fulfils at least one of the following conditions:

- i) Company shareholder, chairman of the board of directors, members of the board of directors, general manager, deputy general manager, company manager, or other similar titles or positions, who are authorised for one of the following responsibilities:
 - to work in the top management or executive positions of the company; or
 - to manage the whole or a division of the company; or
 - to supervise or control the internal auditors, or administrative or technical staff of the company; or
 - to recruit or dismiss personnel for the company, or to make proposals thereon.
- (ii) Individuals holding fundamental and key information about services, researches, equipment, techniques or management of the company; or

- (iii) For the liaison offices, a person to whom (not more than one individual) a certificate of authorisation (Power of Attorney) is issued and granted by the foreign parent company.

In addition, with regard to the employment in liaison offices, Article 6 of the Work Permit Regulation for Foreign Key Personnel states that a maximum of one person holding a certificate of authorisation (Power of Attorney) in a liaison office operating pursuant to the Direct Foreign Investment Law shall be granted a work permit by the Ministry, provided that a minimum of 200,000-USD or its equivalent in any other foreign currency has been transferred from abroad for funding the operations of the liaison office in the previous year.

Work permit applications under the Work Permit Regulation for Foreign Key Personnel can be filed either from abroad or in Turkey.

Applications to be filed in Turkey

Only foreigners from “A Group” countries as determined by the Ministry of Interior of the Republic of Turkey, with valid residence permits for at least 6 months, or their employers can make an application for a work permit directly to the Ministry in Turkey, together with the relevant documents. The countries categorized as A Group by the Ministry of Interior should be checked once again at the time of the work permit application.

Applications to be filed Abroad

In order to apply for a work permit from abroad, an application must be filed in writing or online to the Turkish diplomatic representatives of Turkey in the foreigner's country of origin or country of permanent residence, together with the foreign personnel application form and the other required documents. The Turkish diplomatic representatives shall then submit the application to the Ministry via internet. The documents required from the employer in Turkey must be submitted to the Ministry on the date the foreigner applies to the relevant Turkish diplomatic representatives or within 10 days from this date. In addition, work permit applications submitted by the employer in Turkey to the Ministry 10 days before the date of application to the Turkish diplomatic representatives shall also be evaluated.

It should also be noted that each application is subject to the evaluation of the Ministry officials and the decision to grant or not to grant a permit is at their sole discretion. In practice we know that it is the experience of many foreign personnel that the procedure for obtaining a work permit takes longer than the periods stated under the legislation.

ACQUISITION OF PROPERTY

Acquisition by Foreign Companies

In general the Turkish Land Law prohibits foreign companies incorporated and resident abroad, to directly acquire real property in Turkey. There are only three exceptions to this general prohibition. Accordingly, foreign companies carrying out their businesses within the scope of the (i) Petroleum Law; (ii) Tourism Law; and (iii) Industrial Zones Law may acquire real property in Turkey (“Exceptions”).

Due to the above-mentioned prohibition, the only way for foreign companies (i.e. those not benefiting from the said Exceptions) to acquire real property in Turkey is to establish a subsidiary (i.e. Turkish foreign capital company) in Turkey. Following the incorporation, the Turkish foreign capital company must obtain consent from the Governorship Provincial Planning and Coordination Directorate (“**Directorate**”) where the target real property is located. The Directorate communicates the information and documents about the target property with the Provincial Police Department and the Regional Directorate of Military Staff.

Upon positive assessment of each of these governmental authorities, the Directorate informs the applicant company and the relevant land registry office that the requested acquisition may be completed.

Please note that the target real property will only be investigated by the Provincial Police Department and the Regional Directorate of Military Staff and the Governorship shall grant the approval upon their positive assessment. Therefore, usually there is no reason other reason for refusal other than the target property being situated in a Military Zone or Security zones determined by the Provincial Police Department. It should also be noted that the company’s Articles of Association should also authorise the company to purchase property.

There are no different classes of rights under Turkish Law. Only one type of right exists under Turkish Law which is similar to the “common hold” concept. However there also exist a right called the “*intifa hakkı*” which is similar to “easements” and is subject limitations (limited title). Those holding such right will have right to use the property for a certain time determined either by an agreement, court order or by law. This right will only become enforceable once an entry is made in the Title Deed Registry records of the property concerned.

Acquisition by Individuals

Real persons of foreign nationality can buy property in Turkey. The principle of reciprocity has been abolished with the new amendments to the law on foreign individuals acquiring property in Turkey. Information on the names of the countries whose citizens can buy immovable property (real estate) in Turkey can be obtained either from the Turkish diplomatic and consular missions abroad or your country's diplomatic and consular missions in Turkey.

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