



PRESIDENCY OF THE REPUBLIC OF TURKEY
INVESTMENT OFFICE

LEGAL GUIDE TO INVESTING IN TURKEY

COMPILED BY

C/M/S

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All information in this guide is up to date as of
01.07.2019

PREFACE

This “Legal Guide to Investment in Turkey”, written in collaboration with CMS, aims to assist individuals and organizations wishing to invest in Turkey by providing information on the legal environment in the country. The guide consists of information on a variety of legal topics that investors take into consideration during the investment process.

Turkey is a dynamic and growing G20 economy that links east and west in a unique way. In addition to being one of the world’s largest economies, Turkey also supports international investors’ growth via a business-friendly agenda and through access to a large domestic market and neighboring international markets.

Strong market fundamentals, such as a young and dynamic population with an average age of 32, a well-educated work force, increasing rates of employment over the years, a growing middle-class, and a unique geographical location, have all helped transform Turkey into one of the fastest growing and outstanding economies in the world. As of end-2018, Turkey is the 13th largest economy (GDP at PPP) in the world, with an average annual growth rate of 5.5 percent in the 2003-2018 period.

Turkey’s location, at the crossroads of Europe, Central Asia, and the Middle East, provides easy access to the European, Middle Eastern, North African, Central Asian, and Gulf markets. These markets comprise more than 1.5 billion people and account for a total GDP of USD 24 trillion. More than half of the world’s trade takes place within a four-hour flight radius of Turkey – a key reason why multinational companies have chosen Turkey as a strategic regional hub for their operations.

Furthermore, the legal environment in Turkey has progressed in an investor-friendly fashion in recent years thanks to the reforms implemented, particularly in the tax system and judiciary. In addition to that, the Istanbul Arbitration Centre (ISTAC) has started serving companies that prefer to utilize the arbitration process. The ISTAC combines a world-class set of standards and rules with its unique geo-political location, thus providing an excellent, more affordable, and quicker-to-respond alternative to the often-backlogged courts.

Finally, I would like to extend a special thanks to the team from CMS for sharing their expertise and market insight with us in contributing to this guide. CMS' deep understanding of Turkey's legal and business landscape, as well as their practical experience working with their clients on projects and transactions in Turkey for over 20 years, was very valuable throughout the course of this project.

We hope this guide will benefit all those corporations, individuals, and business executives who are interested in investing, working, or doing business in Turkey.

Arda ERMUT
Investment Office President

ABOUT CMS

CMS is a full-service top 10 global law firm, based on the number of lawyers (Am Law 2016 Global 100), with 74 offices in 42 countries across the world. CMS provides clients with specialist, business focused advice in law and tax matters. With 4,500 legal professionals across the world, working in sector-based teams and expert in project management, CMS' focus is on their clients and fulfilling their objectives. CMS acts for the majority of the DAX 30, a large number of the FT European 500 and a number of Fortune 500 companies.

CMS provides a wide range of expertise across 19 expert practice and sector areas including Banking and Finance, Commercial, Competition, Corporate, Dispute Resolution, Employment, Energy, Funds, Intellectual Property, Life Sciences/ Pharmaceuticals, Real Estate & Construction, Tax and TMT.

CMS has been active in Turkey on behalf of its clients for more than two decades and opened an office in Istanbul in 2013. The Istanbul team offers the full range of legal services, from large-scale cross border and international transactions, to complex regulatory issues and day-to-day operational support.

For more information, please visit www.cmslaw.com

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1

INTRODUCTION

1.1 GEOGRAPHIC OVERVIEW

At the crossroads of Europe and Asia, Turkey's geography has much to offer to investors. Turkey is an essential transport corridor, offering excellent access to global trade routes by air, land and sea. Bordered by the Marmara, Black, Aegean and Mediterranean Seas, in addition to various land borders, Turkey offers convenient access to Europe, Asia and North Africa. Air travel is also easy with Istanbul offering two well connected international airports meaning you are no more than 4 hours away from most European and Middle Eastern destinations.

As of 31 December 2018, Turkey had a population of 82 million people with a median age of 32. Therefore, in contrast to Europe, Turkey's population is young and continuing to grow. The labour market is also considered to be highly skilled, and with 68 percent of the population currently of working age, Turkey's population is a dynamic and highly lucrative resource.

With such an advantageous geographical position and the availability of a young and highly skilled workforce, many investors choose to have their regional head offices or manufacturing facilities located in Turkey.

1.2 ECONOMIC OVERVIEW

Turkey's economy has performed remarkably well with its steady growth over the past 16 years. A sound macroeconomic strategy, prudent fiscal policies, and major structural reforms have all contributed to the integration of Turkey's economy into the globalized world while also transforming the country into one of the major recipients of FDI in its region.

These reforms have increased the role of the private sector in Turkey's economy, enhanced the efficiency and resiliency of the financial sector, and placed public finance on a more solid

foundation. The reforms also strengthened the macroeconomic fundamentals of the country, allowing the economy to grow at an average annual real GDP growth rate of 5.5 percent from 2002 to 2018.

Turkey's impressive economic performance over the past 16 years has encouraged experts and international institutions to make confident projections about Turkey's economic future. For example, according to the OECD, Turkey is expected to be one of the fastest growing economies among OECD members during 2019-2029, with an annual average growth rate of 4.5 percent.

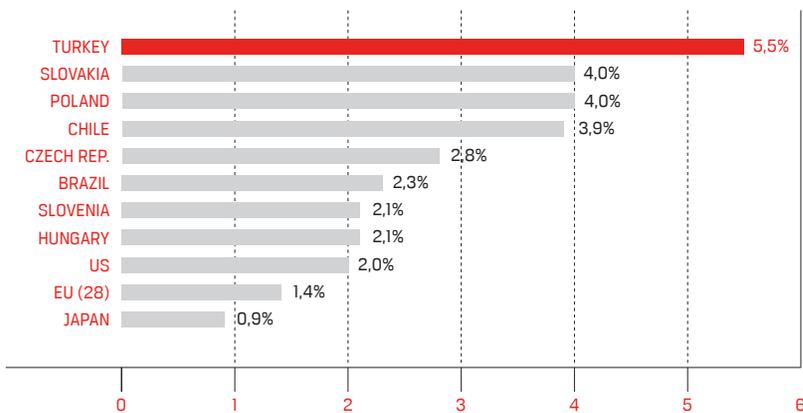


Figure 1: Average Annual Real GDP Growth (%) 2002-2018
Source: OECD Quarterly National Accounts, 2019

Together with stable economic growth, Turkey has also reined in its public finances; the EU-defined general government nominal debt stock fell to 30.4 percent from 72.1 percent between 2002 and 2018. Turkey has been meeting the “EU’s 60 percent Maastricht criteria” for public debt stock since 2004. Similarly, during 2003-2018, the budget deficit decreased from more than 10 percent to less than 2 percent as a ratio to GDP, which is one of the EU Maastricht criteria for the budget balance.

As the GDP levels increased to USD 784 billion in 2018, up from USD 236 billion in 2002, GDP per capita soared to USD 9,632, up from USD 3,581 in the given period.

The visible improvements in Turkey's economy have also boosted foreign trade. Exports reached USD 168 billion by the end of 2018, up from USD 36 billion in 2002, while tourism revenues, which were around USD 14 billion in 2003, exceeded USD 29.5 billion in 2018.

Significant improvements in such a short period of time have registered Turkey on the world economic scale as an exceptional emerging economy. It is the 13th largest economy (GDP at PPP) in the world and the 7th largest economy when compared with the EU countries, according to GDP figures in 2018.

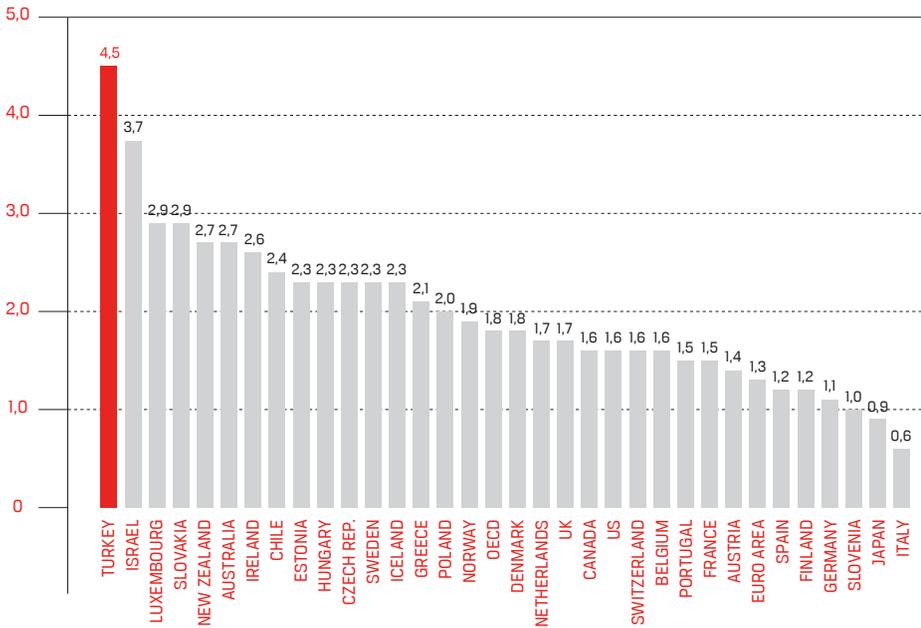


Figure 2: Annual Average Real GDP Growth (%) Forecast in OECD Countries 2019-2029 (USD at 2010 PPP)

Source: OECD

Summary fact about Turkish economy:

- Institutionalized economy fueled by USD 209 billion of FDI in the past 15 years.
- 13th largest economy (GDP at PPP) in the world and 7th largest economy compared with EU countries in 2018 (GDP, Eurostat).
- Robust economic growth with an average annual real GDP growth of 5.5 percent during 2002-2018.

- GDP reached USD 784 billion in 2018, up from USD 236 billion in 2002.
- Sound economic policies with prudent fiscal discipline.
- Strong financial structure that is resilient to global financial crises.

1.3 LEGAL SYSTEM

The Turkish legal system is based on a codified civil law system. Under Turkish law, courts are either categorised as judicial courts or administrative courts. Within these two categories, sub-categories exist. For instance, the judicial courts, which constitute the broadest part of the Turkish judicial system, are sub-divided into 2 branches consisting of the civil courts and the criminal courts, whereas the administrative courts are sub-divided into administrative courts and tax courts.

Turkey's judicial system has a multipartite structure. Consequently, within each of the sub-divisions described above, different levels exist. Turkey has recently abandoned its two-tier system by introducing a three-tier-system. As a result, all courts consist of 3 levels as follows: first instance courts, district courts and supreme courts. The supreme courts of Turkey consist of the Constitutional Court, the Court of Appeals, the Council of State and the Court of Jurisdictional Disputes.

Since Turkey is a civil law country, legislation is the primary source of law. There is a certain order of priority for the implementation of the applicable legislation in which the Constitution prevails over international treaties followed by the codes and regulations, statutory decrees, and by-laws.

As a candidate country for accession to the European Union, Turkey is harmonizing its legislation with the European Union legislation under the supervision of the Ministry of Foreign Affairs. To that end, Turkey has, among others, introduced the Competition Law and the Consumer Protection Law, and repealed its civil code, code of

obligations and commercial code and replaced them with the new Turkish Civil Code, the new Code of Obligations and the new Turkish Commercial Code. These laws are based on the Swiss Civil Code and Swiss Code of Obligations and follow the principles of European Union laws and regulations and the principles set out in Turkish and Swiss courts' decisions.

The Repealed Turkish Civil Code was introduced in 1926 right after the proclamation of the Republic and remained in force until its replacement by the Turkish Civil Code in 2002. As in other civil law countries, the Turkish Civil Code governs the law of persons (e.g. birth, capacity and similar matters), family law, property law and the law of inheritance. The law of contracts and torts are the subject of the Code of Obligations. Finally, the Turkish Commercial Code regulates matters relating to merchants, trade, business entities (especially companies), commercial contracts and other matters such as negotiable instruments and insurance. In addition, customary law is also considered as a complementary source of law and guidance, especially if written sources are silent on a particular matter.

The Turkish administrative system and law is highly influenced by the French administrative system and law. Public administration in Turkey consists of the central administration and local administrations. Within the central administration, there are (i) the executive branch and its regional divisions, (ii) autonomous bodies (i.e. regulatory authorities); (iii) 81 provinces (*il*) and (iv) 1,000 districts (*ilçe*), being sub-divisions of provinces. In each province and district, there is a governor (*vali*) and a district governor (*kaymakam*), respectively, appointed by the central administration. The governor and the district governor act as the representatives of the central administration within the province and district, respectively.

2

**PROTECTION
OF FOREIGN INVESTMENT**

2.1 DOMESTIC LEGISLATION ON FOREIGN INVESTMENTS

International treaties, the FDI Law and the Regulation on the Implementation of the FDI Law are the main legal sources governing foreign direct investment in Turkey. The FDI Law, which entered into force on 17 July 2003, has brought extensive changes in favour of foreign investors and liberated the foreign investment climate by, in particular, abolishing the approval system and introducing a more liberal system based on the principles of equal treatment and the free expatriation of proceeds. Prior to the FDI Law, investors were required to obtain prior written consent of the Undersecretariat of Treasury to establish a company, acquire shares in an existing company and/or open a branch or liaison office. Increase of share capital and change in the scope of activity or shareholding structures were also subject to prior written consent of the Undersecretariat of Treasury.

Under the FDI Law, investors are only required to notify the Ministry of Treasury and Finance of their investment (e.g. greenfield investment, share transfer or otherwise) and the amount of foreign capital brought to Turkey, except for opening a liaison office which is subject to the prior written consent of the Ministry of Industry and Technology. On June 1, 2018, new requirements have been introduced regarding the notification to the Ministry. Accordingly, companies with foreign shareholders are now required to register certain information (such as shareholding structure, share transfers and/or increase or decrease of the share capital) on an online platform, namely the Electronic Incentive Application and Foreign Investment Information System (E-TUYS).

The FDI Law also introduced some other principles which are vital for fostering a successful foreign investment environment such as the freedom to invest, valuation of non-cash capital and the employment of foreign personnel. Foreign investors can freely establish an entity, open a branch and/or acquire shares of an existing company¹ and conclude know-how/technical assistance agreements with domestic companies.

¹ Except for regulated sectors where share transfers exceeding certain thresholds are subject to the prior written consent of the relevant regulatory authority.

Under the FDI Law, companies with foreign shareholding which are established in line with the Turkish Commercial Code are treated equally to companies with local shareholding. In line with this principle, foreign investors may establish a company with 100% foreign shareholding or acquire all of the shares of an existing Turkish company. However, exceptions to this equal treatment principle exist, including for acquisitions by companies with foreign shareholding of real property in Turkey. There are also restrictions on investment in certain strategic sectors such as TV broadcasting, maritime and civil aviation by companies with foreign shareholding.

2.2 INTERNATIONAL TREATIES REGARDING FOREIGN INVESTMENTS

Turkey attributes great importance to foreign investment and aims to improve its foreign investment climate while defining “foreign investment”, “investor” and related terms in line with international standards. To that end, Turkey has become a party to several bilateral and multilateral investment treaties. Importantly, Turkey has also concluded double-taxation treaties with over 80 countries.

2.2.1 Bilateral Investment Treaties

Bilateral treaties are considered highly important as they aim to promote and enrich the investment environment, leading to stronger economic cooperation between the contracting states. Turkey has been active in concluding bilateral treaties for the promotion and protection of investments since its first bilateral investment treaty was signed with Germany in 1962. As of August 2016, Turkey has signed bilateral treaties with 98 countries. 81 out of those 98 bilateral investment treaties have been ratified and entered into force so far.

2.2.2 Multilateral Investment Treaties

In addition to domestic legislation and bilateral investment treaties, Turkey is also interested in several multilateral investment treaties for the purpose of reinforcing economic collaboration with other countries. In this regard, Turkey is a party to the World Trade Organization's Agreement on Trade Related Investment Measures, the United Nations Convention on Contracts for the International Sale of Goods and the Energy Charter Treaty.

2.3 INTERNATIONAL DISPUTE RESOLUTION

Foreign investors may benefit from domestic arbitration or international arbitration, to the extent there is an arbitration clause in their investment agreement. Domestic arbitration is governed by the Code of Civil Procedure, whereas for international arbitration, the parties may freely choose any institutional rules of arbitration, including without limitation the rules under the Turkish International Arbitration Law or the rules of the Istanbul Arbitration Centre. If the seat of arbitration is in Turkey but the parties have not agreed on the applicability of any institutional rules of arbitration, the rules and principles set out in the Turkish International Arbitration Law shall apply, to the extent that there is a foreign element² involved in the dispute. In addition, Turkey continues to integrate mediation as an alternative dispute resolution method. As per the law published on the Official Gazette dated 19 December 2018, a mandatory mediation process has been introduced for commercial cases to be heard as from 1 January 2019. Therefore, parties to a commercial dispute for monetary claims are now obliged to apply to a mediator before applying to the commercial courts.

Istanbul Arbitration Centre was established in 1 January 2015, as a part of the wider project to transform Istanbul into a global

² The Turkish International Arbitration Law recognizes that there is a foreign element, if, among others, either party to the dispute has a foreign shareholder.

financial hub. Its rules and tariffs were published on its website³ on February 2016, and the centre has become fully operational with its specialized arbitrators, to serve its clients in Turkish, English, French and German languages.

It is important to note that the arbitration rules of the Istanbul Arbitration Centre have introduced new concepts to Turkish law, such as fast-track arbitration, procedural timetable and emergency arbitrator. Accordingly, where the economic value of the claims and the counterclaims does not exceed TRY 300,000, the dispute shall, unless otherwise agreed by the parties, be subject to the fast-track procedure. In this case, the dispute shall be settled by a sole arbitrator within three (3) months. However, parties can also explicitly agree to the fast-track arbitration even in cases where the amount in dispute is above the threshold.

Further, in parallel with the rules of leading international arbitration institutions, the arbitration rules of the Istanbul Arbitration Centre provide a right to request the appointment of an emergency arbitrator. In this respect, unless the parties have agreed otherwise, they may, in cases of emergency, request to obtain an interim measure from the emergency arbitrator, before the transmission of the case to the sole arbitrator or arbitral tribunal.

Since Istanbul Arbitration Centre's arbitral awards are final, binding and enforceable just like court decisions, and Turkey is a party to the New York Convention, Istanbul Arbitration Centre's arbitral awards are enforceable not only in Turkey, but also in other countries that are party to the New York Convention.

Recognition and enforcement of foreign arbitral awards are subject to the provisions of Turkish International Arbitration Law and the New York Convention. Turkey has ratified the New York Convention with two reservations: (i) any award which is granted must be given in a state which is a member of the New York Convention; and (ii) the dispute must be commercial in nature as per Turkish

3 “Istanbul Arbitration Centre Arbitration and Mediation Rules” <<http://istac.org.tr/wp-content/uploads/2016/02/ISTAC-Arbitration-and-Mediation-Rules-f.pdf>>.

law. As arbitration is becoming more popular in Turkey, national courts are becoming increasingly familiar with the recognition and enforcement of arbitral awards in Turkey, however an award can only be recognised and enforced in Turkey if certain conditions which are allowed and typical under the New York Convention are met. In short, for the recognition and enforcement of a foreign arbitral award, there must be (i) reciprocity between Turkey and the country where the award was granted, (ii) no jurisdictional exclusivity under Turkish law due to the nature of the matter, and (iii) no violation of “*public order*”.

In addition, Turkey is also a contracting state to the ICSID Convention. Consequently, for disputes arising out of or relating to an investment, between the Turkish State and a national of another contracting state, the parties may also opt in for arbitration under ICSID. In such case, issues of recognition, enforcement and annulment of the ICSID award will be subject to the provisions of the ICSID Convention instead of the New York Convention.

3

BUSINESS STRUCTURES UNDER TURKISH LAW

3.1 CORPORATE STRUCTURES

3.1.1 Joint Stock Company

a. Overview

The main piece of legislation governing commercial companies in Turkey is the Turkish Commercial Code, which entered into force in 1 July 2012. The joint stock company is only one of the corporate structures foreseen by the Turkish Commercial Code, although it remains the most preferred by both local and foreign investors, mainly due to the ability to go public and the fluidity with which share transfers can be realised.

A joint stock company is governed by its articles of association. Among other provisions, the articles of association fundamentally provide corporate information (such as title, registered office, share capital etc.) and corporate governance rules (such as number of directors, manner of representation, and reserved matters, if any).

As a general rule, the establishment of a joint stock company is not subject to any regulatory or governmental consent, except for certain specific sectors (i.e. banking, energy, holding companies etc.) where the investors are obliged to obtain the consents of the Ministry of Trade and/or the relevant regulatory authority. A joint stock company is formed upon registration with the relevant trade registry.

b. Shareholding

The Turkish Commercial Code allows the incorporation of single shareholder joint stock companies with no upper limit on the number of shareholders a company may have. It should be noted, however, that pursuant to the Capital Markets Law, a company is deemed to have become public if it has more than 500 shareholders. The shareholders of joint stock companies may be individuals or legal entities and there is no restriction on their nationality.

- (i). *Share Capital*: As a general rule, joint stock companies must be incorporated with a minimum share capital of TRY 50,000 or TRY 100,000 if a registered share capital system is implemented. In certain regulated sectors (such as financial services and energy), the minimum share capital is considerably higher and varies depending on the activity to be performed.

Share capital may be contributed in cash or in kind. Assets, including intellectual property rights and virtual media, which are not encumbered, are cash valuable and transferrable, may be contributed as share capital in kind. If cash is contributed as share capital, 25% of such amount must be deposited with a Turkish bank prior to the incorporation or registration of the share capital increase, with the remaining amount being paid within the 24-month period following the registration thereof with the relevant trade registry.

- (ii). *Shares and Share Certificates*: The share capital of joint stock companies must be divided into shares with a nominal value of at least TRY 0.01 or its multiples. Consequently, the share capital may be divided into as many shares as desired, subject to the nominal value of any share not being less than TRY 0.01.

Although not mandatory, registered or bearer certificates may be issued to represent the shares of joint stock companies. The difference in issuing or not issuing certificates for the shares lies in the procedure of share transfers and does not affect shareholding rights. Please refer to 3.1.1(e) (*Joint Stock Company, Share Transfers*) for the procedures relating to the transfer of shares in joint stock companies.

- (iii). *Dividends*: The right to receive dividends is an essential shareholding right with their distribution being decided upon by the general assembly. Unless otherwise set forth under the articles of association, each shareholder is entitled to receive dividends pro rata to its shareholding rate in the company. However, in order to distribute dividends, legal reserves must first be set aside in order to provide for unforeseeable future losses.

In this respect, joint stock companies are required to set aside 5% of their net period profit every year as a first legal reserve

until 20% of the paid-in share capital is reached. Until such legal reserves exceed 50% of the share capital of the joint stock company, these may only be used to cover losses, for the continuation of business during times of decline or the prevention of unemployment and minimisation of its effects. Upon these reserves exceeding 50% of the share capital, the excess amount shall become distributable.

It is possible to distribute “*interim dividends*” during the course of a financial year upon the approval of the general assembly if the company has generated profits. Such “*interim dividends*” shall be set-off against the profits to be distributed at the end of the financial year, if any.

- (iv). *Minority Rights*: While most resolutions, whether of the board of directors or general assembly, are required to be taken with a simple majority vote, the Turkish Commercial Code grants certain privileges to minority shareholders in order to ensure that their rights are not infringed upon by the other shareholders. In this respect, shareholders holding at least 10% of the share capital of a joint stock company, or at least 5% if the company’s shares are publicly traded, constitute the minority.

Rights granted to minority shareholders under the Turkish Commercial Code are the rights to (i) request the board of directors to invite the general assembly to hold a meeting, (ii) request additional discussion items to be added to the agenda of a general assembly meeting, (iii) request the issuance of registered share certificates, (iv) block the release of the company’s founders, directors or auditors from liability, (v) request that discussion of the financial tables at the general assembly be delayed to another date, and (vi) file a lawsuit with a commercial court to change the company’s auditor or to dissolve the company on the basis of justifiable reasons.

c. Mandatory Corporate Bodies

- (i). *Board of Directors*

A joint stock company shall be managed and represented by a board of directors, appointed by the shareholders. The board of directors shall consist of at least one director, who may be

an individual or a legal entity, although should a legal entity be appointed as a director, an individual must be appointed as the representative of that director. There is no restriction on the nationality of the directors, who also need not be shareholders of the company. However, if any director is a foreign national, a tax identification number must be obtained for them in Turkey, which is a simple procedure. For further information, please see 3.6.1 (*Establishment Procedures, Joint Stock Company, Required Documents*).

Directors are appointed through the articles of association at incorporation and by the general assembly at later stages for a maximum term of three years, although it is possible for them to be re-elected for consecutive terms. It is also possible for a director to be temporarily elected through a board resolution, due to vacation of the position for any reason, on condition that such election is approved by the shareholders at the following general assembly meeting. The elected directors must then appoint one of the directors as the chairman. Although joint stock companies are managed and represented by the board of directors, it is possible for management and representation to be delegated to third parties pursuant to an internal regulation to be issued by the board of directors, except for certain reserved matters (such as high-level management of the company) as stipulated under the Turkish Commercial Code.

Unless otherwise set forth under the articles of association or legislation, the board of directors must convene with a majority and take resolutions with the majority of directors present in the meeting. The Turkish Commercial Code also allows board meetings to be held by (i) “*way of circulation*” (i.e. without a physical meeting), and (ii) electronic means, subject to installation of a specific IT system for this purpose. The former case would be possible only if all members of the board of directors consent to adopt a resolution by “*way of circulation*” and simple majority of the members approve such resolution.

(ii). General Assembly

The general assembly is the means by which the shareholders to supervise the business and management of a company. There are certain reserved matters that only the general assembly can

decide. Such matters include without limitation amendments to the articles of association, appointment of the members of the board of directors, distribution of profits or sale of a significant portion of the company's assets.

The annual general assembly meeting must be convened within three months following the end of each financial year. The general assembly may also convene extraordinarily as required. As with board meetings, general assembly meetings may also be held by electronic means, subject to the installation of a specific system for this purpose. However, it is obligatory for companies whose shares are listed on the stock exchange to hold electronic general assembly meetings.

A notice must be posted at least two weeks (or three weeks for public companies) prior to the date of the general assembly meeting, but such requirement may be waived, except for public companies, if all shareholders or their proxies shall be present in the meeting. A general assembly shall be validly convened if shareholders representing at least $\frac{1}{4}$ of the company's share capital are present, and may take resolutions with the agreement of the majority of those present, although a higher quorum may be required for certain matters in accordance with the Turkish Commercial Code and/or the company's articles of association. The presence of a representative of the Ministry of Trade may be necessary in specific circumstances (such as share capital increases and decreases).

d. Liability

The Turkish Commercial Code does not distinguish among individual and corporate directors in terms of their duties and liabilities. They are subject to same principles and expected to comply with their fiduciary duties in the same manner.

Directors have a general obligation to act in compliance with their duty of care, duty of loyalty and the duty of supervision (in case of a delegation of power). The Turkish Commercial Code requires directors to act as "*cautious executive*" and comply with their duty of

care and duty of loyalty, while performing their duties. The level of care or diligence expected from a director is a combination of objective and subjective criteria.

The objective test requires the director to perform his/her duties in a manner that would be expected from a “*cautious executive*”. The “*cautious executive*” must act diligently, prudently and in line with bona fide principles to protect the interest of the company.

The subjective test obliges the director to manage the company with professional skills, abilities and qualifications that are possessed (or should have been possessed) by that particular director.

Joint stock companies are primarily liable for public debts such as taxes and social security premiums. In the event of such debts not being paid by the company, these may be collected from the directors with such directors having the right of recourse to the company. However, the shareholders of joint stock companies will not be liable for the public debts of the company so long as they are not also directors.

Criminal liability of directors may arise from a number of pieces of legislation, including the Turkish Commercial Code and the Capital Markets Law, however, in each case, only to the extent that a director was given special power and responsibility for conducting or monitoring the particular transactions which resulted in any of the above laws being breached.

e. Share Transfers

As noted under 3.1.1(b) (*Joint Stock Company, Shareholding, Shares and Share Certificates*), there is no requirement to issue certificates for the shares of the joint stock companies.

The share transfer procedure will differ depending on whether or not share certificates exist. Execution of a delivery protocol will suffice if no share certificates have been issued. If certificates have been issued, mere delivery of bearer share certificates will result in

the transfer of those shares, while both endorsement and delivery are required for the transfer of registered share certificates. Still, most investors tend to negotiate and sign share purchase agreements to govern and regulate the commercial relationship between the parties.

Save for a board resolution in order for share transfers to be registered in the share ledger of the company, approval by any corporate body of the company is not required for share transfers in joint stock companies unless the articles of association stipulate otherwise. Likewise, registration before and/or approval from any governmental authority is not required for the transfer of the shares of joint stock companies. However, there are exceptions for regulated sectors if certain thresholds of shareholding have been exceeded or where the share transfer results in the purchaser being the sole shareholder of the company.

f. Mergers

The Turkish Commercial Code permits two types of merger: one being the merger of a company into another and the other being the establishment of a new company by the merger of two or more companies. A merger shall only take place if it is approved by the general assembly meetings of the concerned companies. Upon the finalisation of the merger, the acquired company shall be automatically dissolved.

The Turkish Commercial Code sets forth compelling measures to protect the interests of the shareholders of the acquired company. One such measure is the requirement of the acquiring company, in the event of a merger through acquisition, to increase its share capital to an amount that will ensure the protection of the rights of the acquired company's shareholders proportional to their shares and rights in the acquired company. An equalisation payment may also be made to such shareholders if the asset valuation of an acquired company has a fractional value and this results in the shareholders of the acquired company not getting completely proportional shares or rights in the acquired company, provided that

such amount does not exceed 10% of the actual value of the shares allocated to them in the acquiring company.

A simplified merger procedure is available in the event of (i) a wholly owned subsidiary being acquired by its parent company, (ii) the merger of affiliated companies where the acquiring company owns all of the shares granting voting rights of the acquired company, or (iii) the acquiring company owning at least 90% of the shares granting voting rights of the acquired company. But the latter case shall only be possible if the minority shareholders are offered equivalent shares in the acquiring company as well as compensation, and if the merger will not result in additional payments or personal obligations for the minority shareholders.

The Turkish Commercial Code also ensures that the creditors of the merging companies are protected from the effects of the merger by requiring that they are notified both through three announcements to be made seven days apart in the Turkish Trade Registry Gazette and on their websites. Once the merger is registered with the trade registry, the acquiring company must secure the creditors' receivables if they make a request in this regard within three months of registration.

9. Spin Offs

Joint stock companies may spin-off the entirety or a portion of their assets and/or liabilities to an existing or a newly established company, in consideration of which the transferor company or its shareholders acquire the shares of the spun-off company.

A full spin-off (i.e. transfer of the entire assets of a company to at least two companies) results in the dissolution of the transferor company and the shareholders of such dissolved company acquiring shares in the spun-off company.

A partial spin-off (i.e. transfer of a portion of the assets of a company to at least one company) may lead to the rights and shares of the transferee company being acquired by the shareholders of the spun-

off company or the establishment of a new company with the assets and shares of the transferee company, which are acquired in return for the transferred assets of the spun-off company.

The Turkish Commercial Code allows both symmetrical spin-offs, whereby shareholders retain the same share ratios in the spun-off company and are granted shares in the transferee company pro rata to their shareholding in the spun-off company, and asymmetrical spin-offs, where the shareholders of the spun-off company are granted shares in the newly established or transferee company in accordance with their pre-spin-off share ratios. Asymmetrical spin-offs are convenient for corporate reorganisations as the share ratios of the shareholders of the transferee company are increased in the spun-off company if the share ratios of those shareholders in the transferee company are less than their share ratios in the spun-off company, helping to prevent any damages.

As is the case with mergers, in order to protect the creditors of companies party to the spin-off from the effects of the spin-off, a notification must be made to them to confirm their receivables and to request securitisation through three announcements to be made seven days apart in the Turkish Trade Registry Gazette and on their websites. The companies party to the spin-off must secure the receivables of the creditors which make such requests within three months from the date of the last announcement, although it is also possible to instead pay the debt if no damages will be incurred by the other creditors.

Following the securitisation of the creditors' receivables, spin-off needs to be approved by the general assemblies of the concerned companies and registered with the relevant trade registry.

3.1.2 Limited Liability Company

a. Overview

Other common form of company in Turkey is limited liability companies which are also regulated mainly by the Turkish

Commercial Code. Although limited liability companies are structurally very similar to joint stock companies, certain procedures require more formalities than the latter, such as share transfers. They are, nevertheless, favoured in certain circumstances.

The rules governing the establishment of a limited liability company are almost identical to a joint stock company, except that in specific regulated sectors (such as certain financial services sectors), it is not possible to operate as a limited liability company.

b. Shareholding

The Turkish Commercial Code allows limited liability companies to be incorporated with a single shareholder, although the maximum number of shareholders permitted for such companies is 50. Individuals and legal entities of any nationality may be shareholders in a limited liability company.

- (i). *Share Capital*: The Turkish Commercial Code requires limited liability companies to be incorporated with a minimum share capital of TRY 10,000 (subject to minimum share capital requirements in certain specific sectors where operating as a limited liability company is allowed). The registered share capital system is not an option for limited liability companies, and they may only adopt the principal share capital system. Rules governing the contribution of share capital in cash or in kind and deposit and payment requirements are identical to the rules and requirements for joint stock companies.
- (ii). *Shares and Share Certificates*: The share capital of a limited liability company shall be divided into shares with a nominal value of at least TRY 25 or its multiples (i.e. TRY 50, TRY 100 etc.). Limited liability companies may only issue registered, not bearer, share certificates. As opposed to the share certificates of joint stock companies, the share certificates of limited liability companies are not considered securities, the practical implications of which are detailed under 3.1.2(e) (*Limited Liability Company, Share Transfers*) below.

- (iii). *Dividends*: Please see 3.1.1(b) (*Joint Stock Company, Shareholding, Dividends*) above.
- (iv). *Minority Rights*: Please see 3.1.1(b) (*Joint Stock Company, Shareholding, Minority Rights*) above.

c. Mandatory Corporate Bodies _____

(i). **Managers**

A limited liability company shall be managed and represented by one or more managers appointed by the shareholders.

If there is more than one manager, then there is a board of managers as per the Turkish Commercial Code. Unlike joint stock companies, at least one of the managers must also be a shareholder. There is no restriction on the nationality of managers, however, should any manager be a foreign national, a tax identification number must be obtained for them in Turkey. For further information, please refer to 3.6.1 (*Establishment Procedures, Limited Liability Company, Required Documents*).

Except that managers can be appointed for an unlimited term, the rules governing, among others, the appointment of managers, their liabilities, delegation of duties and electronic meetings are identical to those of a joint stock company. The meeting quorum (in case of a board of managers) is also the same, however, unlike joint stock companies, the chairman of the board of managers has a casting vote in case of a deadlock.

(ii). **General Assembly**

Similarly with a joint stock company, certain decisions are reserved to be exclusively adopted by the shareholders of a limited liability company; however such list is more extensive for limited liability companies as it also includes, among others, approval of any share transfer and squeeze-out of existing shareholder through a court order.

There is no meeting quorum for the general assembly meeting of a limited liability company, and, unless a higher quorum is required as per the Turkish Commercial Code and/or the company's articles of association, an affirmative vote by the

majority of the shareholders attending the general assembly meeting shall suffice to adopt a resolution.

Please also see 3.1.1(c) (*Joint Stock Company, Mandatory Corporate Bodies, General Assembly*) for other matters concerning general assembly meetings of limited liability companies.

d. Liability

The managers of a limited liability company are subject to the same liability regime as the directors of a joint stock company. However, this is not the case for the shareholders of a limited liability company. Accordingly, the shareholders of a limited liability company may be personally liable for the unpaid public debts (such as tax or social security premiums) of the company if the company cannot fulfil its obligation to pay such public debts. Other than this liability, shareholders shall be limited to the unpaid portion of their share capital contribution.

e. Share Transfers

The share transfers of limited liability companies are subject to more formalities than those of joint stock companies. However, these are not prohibitive.

In order to affect the transfer of shares of limited liability companies, a share transfer agreement must be executed in writing before a notary public in Turkey. Upon the execution of such agreement, the general assembly of the limited liability company must convene to approve the relevant share transfer, unless otherwise set forth under the articles of association. However, approval will be deemed to have been granted if the general assembly does not reject the share transfer within three months of the execution of the share transfer agreement. The share transfer must then be registered before the trade registry. It should also be noted that the articles of association of a limited liability company may include a provision prohibiting or restricting the transfer of shares.

f. Mergers

Please see 3.1.1(f) (*Joint Stock Company, Mergers*) above.

g. Spin Offs

Please see 3.1.1(g) (*Joint Stock Company, Spin-Offs*) above.

3.1.3 Other Forms

In addition to the more prevalent joint stock company and limited liability company, the Turkish Commercial Code also allows for the establishment of general partnerships (kollektif şirket), limited partnerships (komandit şirket) and partnerships limited by shares (sermayesi paylara bölünmüş komandit şirket).

a. General partnerships

General partnerships are companies established, and maintained, by at least two individuals for the purpose of operating a commercial undertaking and where the shareholders are liable without limitation towards company creditors.

Each shareholder of a general partnership has management rights, however, the articles of association may bestow management upon one shareholder or multiple or all shareholders. In the event of a shareholder being granted management rights through the articles of association, he/she may only be removed from such position through a court judgment based on justifiable reasons. However, shareholders who have been granted management rights through a decision of the shareholders may be removed from their positions upon a majority vote of the shareholders.

Although a manager may perform all acts and transactions required for the company to achieve its purpose of establishment, all actions and transactions which are outside the ordinary scope of business require the unanimous vote of the shareholders.

b. Limited partnerships _____

Limited partnerships are companies established for the purpose of operating a commercial undertaking and where certain shareholders have limited liability and certain shareholders have unlimited liability towards creditors. As such, limited partnerships must have at least two shareholders. It is worth noting that if a limited liability or joint stock company were to become a shareholder in a limited partnership, such company may only assume limited liability towards creditors. The shareholders with unlimited liability may stipulate all types of assets and rights as share capital, including cash, real estate and commercial good-standing, whereas the shareholders with limited liability may only stipulate assets and rights which are cash-convertible.

Limited partnerships may only be managed and represented by the shareholders with unlimited liability. Furthermore, shareholders with limited liability may not hinder the acts or actions of the shareholders who have unlimited liability and management rights. In this regard, shareholders with limited liability only have voting rights with respect to actions and transactions which are not in the ordinary course of business and affect relations between the shareholders, such as mergers and changes to the articles of association.

c. Partnerships limited by shares _____

In contrast to general partnerships and limited partnerships, whose share capital are not divided into shares, the share capital of partnerships limited by shares, as the name suggests, is divided into shares, which are transferrable. Partnerships limited by shares must be established and maintained by at least five shareholders, at least one of whom must have unlimited liability towards creditors.

Only shareholders with unlimited liability may have management rights in partnerships limited by shares and, although such companies have no board of directors, the shareholder(s) with management rights have the duties and responsibilities of the board of directors of a joint stock company.

3.2 JOINT VENTURES

Joint ventures between Turkish and non-Turkish companies have become very popular in Turkey in recent years, mainly owing to the emphasis placed by the government on urban transformation projects and developing infrastructure. There are no restrictions on the nationality of shareholders and those holding management rights except for specific sectors such as TV broadcasting, maritime and civil aviation.

A joint venture is generally considered an ordinary partnership (*adi ortaklık*), which is not a legal entity under Turkish law, but shareholders usually choose to establish a commercial company. The preferred option is joint stock companies due to the ability to establish groups of shares and the limited aspect of shareholder liability in comparison to those of limited liability companies (for further information please see 3.1.2(d) (*Limited Liability Company, Liability*)).

There is no specific legislation governing joint ventures in Turkey which are governed by the laws applicable to the type of company established. It is a common practice to enter into a shareholders' agreement to govern the relationship between the joint venture parties and the maintenance of the joint venture. The provisions of such joint venture agreements may be incorporated into the articles of association of the established company, subject to such provisions not conflicting with any applicable legislation. For example, the inclusion of put option and call option rights are also available to remedy deadlock events should the need arise, as with most jurisdictions.

3.3 BRANCHES

All companies may establish branches in Turkey; however, it is not possible to conduct activities in certain sectors (such as energy) through branches. Except for regulated markets, the establishment

does not require consent from a governmental authority, hence a simple resolution by the management body of the company (i.e. the board of directors for joint stock companies) is sufficient. Such resolution shall then be registered with the relevant trade registry. At least one branch manager must also be appointed for each branch, which is generally done via a power of attorney from the parent company. There is no restriction on the nationality of such representative, although a tax identification number would have to be obtained for any foreign national representative.

3.4 LIAISON OFFICES

Companies established abroad may establish liaison offices in Turkey for the purpose of conducting market research and feasibility studies. As such, liaison offices are not allowed to conduct any commercial activities. A liaison office may also be an effective vessel for following investment opportunities in Turkey.

In order to establish a liaison office in Turkey, an application must be made to the Ministry of Industry and Technology. If approved, permits are granted for a period of three years and may then be extended for another three years. Liaison offices must complete a form regarding their activities within the past year and submit it to the Ministry of Industry and Technology by the end of May each year.

3.5 ACCOUNTING AND AUDIT REQUIREMENTS

The board of directors of joint stock companies and the board of managers of limited liability companies are tasked with preparing the annual activity report and financial tables of the relevant company.

As a general principle, companies, alone or together with their subsidiaries and affiliates, meeting any two out of the following criteria shall be subject to independent auditing: (i) total assets valued at TRY 35 million or more, (ii) annual net sales revenue of

TRY 70 million or more, and/or (iii) 175 employees or more. Also, certain companies including: (a) publicly-listed companies and other companies licensed by the Capital Markets Board, (b) financial services companies subject to the audit of the Banking Regulation and Supervision Board, (c) insurance, reinsurance and pension companies, and (d) media service providers, among others, shall be independently audited regardless of whether they fulfil any two of the above criteria. Finally, the Council of Ministers have listed certain companies in specific sectors (such as telecommunication and energy) to be subject to independent auditing if they meet criteria lower or higher than above, as the case may be.

Where a company is subject to independent auditing, independent auditors are appointed by the general assembly on an annual basis.

3.6 ESTABLISHMENT PROCEDURES FOR JOINT STOCK AND LIMITED LIABILITY COMPANIES

3.6.1 Required Documents

While the documents required to establish a joint stock or limited liability company in Turkey are quite few in number, their bulk and the time required to obtain them is ultimately determined by the number and location of the shareholders and directors. As the establishment of a company must be registered with the relevant trade registry in the location of the company's registered office and the documents requested by each trade registry may slightly vary.

The most important aspect in establishing a company in Turkey by a foreign shareholder is that all documents which are not executed in Turkey must be notarised in their country of origin and either apostilled or alternatively ratified by the relevant Turkish consulate, depending on whether the country of origin is a party to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. These documents must then be translated into Turkish by a notary sworn translator and notarised in Turkey.

One of the material documents required for establishing a company in Turkey if the legal entity shareholder is not a Turkish company, is an extract from the relevant authority where that legal entity is resident, detailing its incorporation date, share capital and areas of activity, among other things.

Other documents generally required by all trade registries are a bank letter evidencing deposit of at least 25% of the subscribed share capital by each shareholder according to their shareholding ratio, a receipt evidencing payment of 0.04% of the share capital to the Competition Authority and notarised copies of the articles of association of the new company.

3.6.2 Steps of Establishment

The process of establishing a joint stock or limited liability company is fairly simple and straightforward, especially once the notarisation and apostille certification or ratification formalities are completed in respect of the documents to be submitted with the application. In order to begin the process of establishing a company in Turkey, certain information must be entered on MERSIS⁴. This step requires, among others, a tax identification number to be obtained for non-Turkish individuals and/or legal entities who will be shareholders and/or directors of the company.

Once the tax identification numbers have been obtained from the relevant tax authority and provided to MERSIS, a MERSIS number will be generated for such foreign nationals. Following this, the requisite information on the new company, which includes without limitation the type of company to be incorporated, its trade name and the number of shareholders and directors must be entered into the system. The fundamental item to be submitted into MERSIS is the articles of association, which must be written on and saved into the system. Once all of the required information is provided, this is

4 MERSIS is a central information system for carrying out commercial registry processes and storing commercial registry data electronically on a regular basis. A unique number is given to legal entities that are actively involved in business. Online establishment of new companies is possible on MERSIS, and already-established companies may operate through the system after the transfer of their records.

saved on the system, following which a MERSIS number is generated for the company to be incorporated.

Upon submission of the articles of association through MERSIS, such articles of association shall be certified by a public notary or the relevant trade registry in Turkey. Upon the certification of the articles of association, the certified articles of association and all other supporting establishment documents (e.g. declarations of signatures by the members of the board of directors and other signatories, letter of blockage from a bank in Turkey certifying that at least 25% of the share capital of the entity has been deposited and blocked in a bank account, etc.), as requested by the relevant trade registry, must be physically submitted for registration. Once the relevant trade registry certifies all documentation as complete and suitable, a registration certificate is provided which evidences the incorporation of the new company. Trade registry will also provide the mandatory legal and financial books of the newly incorporated company together with the registration certificate.



Figure 3: Summary of establishment process

3.7 DISSOLUTION

3.7.1 Joint Stock Companies and Limited Liability Companies

A joint stock or limited liability company may be dissolved based on the grounds for dissolution set forth under its articles of association, by a general assembly resolution, or upon the declaration of bankruptcy by competent court. They may also be dissolved by a competent court's verdict upon the application of either of the shareholders, creditors or the Ministry of Trade if a board of directors cannot be formed or due to the inability of the general assembly to convene.

Minority shareholders are entitled to request the dissolution of the company from a competent court on the basis of valid grounds. Although there is no legislation governing what would be considered valid grounds within the context of the termination of a company, court precedents indicate that the continuous breach of the shareholding rights of minority shareholders by the majority shareholders, or the majority shareholders placing a higher emphasis on their personal interests rather than the interests of the company, would be considered examples of valid grounds.

Joint stock companies may also be dissolved upon the fulfilment of their term where a term has been set forth under the articles of association, or upon the realisation of their area of activity or the same becoming impossible.

Dissolution results in the commencement of the liquidation process. During the liquidation phase, all debts of the company shall be paid through the collection of its receivables and the sale of its assets. If there are assets remaining, those assets shall be distributed to the shareholders pro rata to their shareholding and the completion of the liquidation process shall be registered with the relevant trade registry.

3.7.2 Branches

The parent company may close a branch at any time through the adoption of a resolution by its management body (i.e. the board of directors for joint stock companies). Such resolution shall be registered with the relevant trade registry and announced in the Turkish Trade Registry Gazette.

3.7.3 Liaison Offices

The Ministry of Industry and Technology may revoke activity permits of liaison offices due to conducting commercial activities or not submitting the annual form on their activities within the prescribed time period (please see 3.4 (*Liaison Offices*) for further information). The parent company may also close a liaison office upon notification to the Ministry of Industry and Technology.

4

LABOUR LAW

4.1 GENERAL INFORMATION

Under Turkish law, labour legislation is applicable to almost all employees, regardless of the size of the employer for which they work. The most significant piece of labour legislation in Turkey is the Labour Law. Other significant pieces of legislation relating to employment matters are as follows:

- (i) the provisions of Article 14 of the Law No. 1475 which govern severance payments,
- (ii) the Labour Health and Safety Law, and
- (iii) Trade Union and Collective Bargaining Agreements.

Moreover, the Turkish Code of Obligation includes a chapter on employment agreements, which will be applicable in cases where the above-mentioned legislation does not address the matter in question.

4.2 EMPLOYMENT AGREEMENT

Employment agreements are treated differently than other private agreements under Turkish law. The main objective of employment agreements is to protect the employee and maintain a social balance between the employee and the employer. In order to ensure that these objectives are met, the legal rights and benefits granted to employees under the Labour Law are mandatory and cannot be excluded or altered contractually to the detriment of the employee. However, contractual arrangements which enhance the legal rights and benefits granted to employees under the Labour Law are permitted.

It is mandatory to execute a written agreement should the term of the employment relationship be for one or more years. Except where a contract has not been executed, the employer shall, no later than two months after employment begins, provide a written document containing general and special terms relating to working conditions, daily or weekly working hours, remuneration and supplementary

salaries, payment terms, and provisions that both the employer and the employee are required to fulfil upon termination of the agreement. Otherwise, a monetary fine may be imposed on the employer for each employee working without a written agreement.

If employment agreements are not in writing, they are still valid; however, the employee may demand from the employer a document bearing his signature and stating the general and, if any, special terms of employment at any time.

4.2.1 Definite – Indefinite Term Employment Agreements

Under Turkish law, employment agreements can be made for a fixed or indefinite term.

An employment agreement between an employer and employee will be deemed to be for a fixed term if it is concluded in writing and any one of the following conditions exists:

- (i) if it is concluded for a definite term work,
- (ii) if its term depends on an objective condition such as completion of a certain task, or
- (iii) if its term is subject to the completion of a certain aim.

A fixed-term employment agreement cannot be renewed more than once, save where there is a material reason which justifies renewal.

If an employment agreement does not meet the above conditions, it will be considered an indefinite term employment agreement.

4.2.2 Part-time – Full-time Employment Agreements

Employment agreements can stipulate whether an employee works on a part-time or full-time basis.

If the weekly working hours of the employee are considerably lower than those of a full-time employee, the employment agreement is deemed to be a part-time employment agreement. Part-time

employment can be for an indefinite term or fixed-term if the fixed-term employment conditions referred to in section 4.2.1 above are met.

4.2.3 Outsourcing

Under Turkish law, sub-contractor employees can only be employed for auxiliary works (e.g. security, cleaning and catering and other works that need technologic expertise) which are not part of the core business of the employer. Otherwise, sub-contractor employees that are employed to perform services which are part of the employer's core business activities may be regarded as employees of the employer. In this case, the sub-contractor employees would be entitled to the same employment benefits as the other employees of the employer and could apply to the labour courts to claim this right.

4.3 OBLIGATION OF EMPLOYING DISABLED PERSONNEL

With a view to support the participation of disabled people in the labour market, Turkish law requires that employers employing fifty or more people in one workplace must hire a certain number of disabled personnel. Accordingly, the number of disabled employees to be hired under this framework should be equal to 3 % of the total employees hired by the employer in a given city. The law also requires that an administrative fine shall be imposed on the employer or the representative of the employer, who is in breach of these rules. Such fine is calculated for each disabled employee that the employer has failed to employ per month.

4.4 GENERAL TERMS OF EMPLOYMENT

4.4.1 Remuneration

Payment of salary is the main obligation of the employer under Turkish law. The employee's main salary has to be monetary and cannot be paid in kind. The net salary does not include premiums, bonuses, social benefits and other side benefits to be provided to the employee. The salary amount can be freely determined under the employment agreement. However, the salary amount cannot be less than the minimum salary determined by the Minimum Wage Determination Commission in every two years at the latest.

4.4.2 Working Time

a. Probation Period _____

Agreeing on a probation period is permissible under Turkish law. The probation period cannot exceed 2 months but can be extended to up to 4 months by a collective labour agreement. Within the probation period both parties may terminate the employment agreement without serving a termination notice and without any compensation.

b. Standard Working Hours _____

The working hours of the employee are the times when the employee dedicates his/her work to the employer within or outside the workplace; whether working physically or not. Working hours cannot be more than 45 hours per week.

c. Overtime Work _____

Legal overtime is calculated as the number of hours worked beyond the employee's normal working day. Overtime hours may not exceed a maximum of 270 hours/90 days per year (and working over 11 hours per day is not permitted). If an employee works overtime, the employer is required to pay the employee an additional 50% of

his/her daily salary for weekdays or 100% on Sundays and holidays. Alternatively, the employee may benefit from additional vacation time in lieu of overtime payment. In such case, every hour worked is equal to 1 ½ hours of vacation time.

Overtime work is conditional upon the consent of the employee. If the employer fails to obtain such consent, the Labour Law provides for a monetary fine.

d. Balancing Schemes _____

With a view to providing flexible working hours for employees, standard weekly working hours can be distributed unequally to the days of the week provided that the working hours do not exceed 11 hours per day. Implementation of a balancing scheme is conditional upon the consent of the employee.

e. Working on Weekends and Public Holidays _____

Work is generally prohibited on public holidays unless it is agreed otherwise under the employment agreement. Those required to work during a public holiday are entitled to extra salary equivalent to the portion of their monthly salaries corresponding to the duration of the public holiday.

4.4.3 Annual Paid Leave

Under Turkish law, the minimum paid vacations to be provided to employees vary in accordance with the duration of the employee's employment as follows:

DURATION OF EMPLOYMENT	PAID VACATION
1 to 5 years (inclusive)	14 days
5 to 14 years (inclusive)	20 days
15 years and more	26 days

In addition to paid vacations and public holidays, employees are granted paid leave in certain cases. For example, employees are granted 3 days' paid leave upon the event of (i) their marriage, or (ii) the death of one of their close relatives (mother, father, spouse, sibling or child).

4.4.4 Restrictive Covenants

a. Non-disclosure

Under Turkish law, the employee has a non-disclosure obligation which is considered part of the employees' loyalty obligation towards his/her employer. Accordingly, the employee may not disclose, or use for his/her own benefit, any secret that he/she learns during his/her employment. A breach of such obligation would permit the employer to rightfully terminate the employee's employment agreement. The scope of the non-disclosure obligation of the employee is defined by law in a limited way as keeping the secrets of the employer and not benefitting from such secrets. Such obligation can also be detailed in the employment agreement or in a separate non-disclosure agreement.

b. Non-competition

The employee and employer are free to negotiate a prohibition on working for the employer's competitors after termination of employment, and to provide a penalty in case of breach. However, under Turkish law, non-compete obligations are subject to certain limitations in order not to unduly restrict the economic status and the earning power of the employee. Therefore, a non-compete clause is valid only if the employee has had access to some customer-related or industry-related information that he/she could not have independently acquired. Moreover, the non-compete provision must have a reasonable duration, which should not exceed 2 years. The applicable territory must also be well defined.

4.4.5 Changes in the Working Conditions

Under Turkish law, substantial changes to the working conditions stipulated in the employment agreement or personnel guidelines attached to the employment agreement may only be made upon notification to the employee in writing. The employee may accept such changes within 6 days as of the notification date. Otherwise, such changes in the working conditions shall not bind the employee. In case the employee does not accept the change within 6 days, the employer has the right to terminate the employment agreement by complying with the applicable notice periods and by explaining in writing that the change in the working conditions is based on a valid reason.

4.5 EMPLOYMENT OF FOREIGN NATIONALS

4.5.1 Criteria for Employers to Employ Foreigners

In order to employ a foreigner, the employer must meet certain criteria with respect to its company's minimum paid capital, its gross sale amounts, its exportation amounts and the number of Turkish employees it employs in its company.

For all criteria to be met by the employers and the foreigner employees please see:

<http://www.calismaizni.gov.tr/calisma-izni/izin-degerlendirme-kriterleri/>

4.5.2 Work Permit

As per the International Work Force Law, foreigners who would like to work in Turkey are required to obtain a work permit. Such requirement is applicable for (i) foreign employees to be employed in Turkey, (ii) foreigners who would like to engage in their own business.

a. Types of Work Permits

There are 3 types of work permits: (i) a temporary work permit, (ii) a permanent work permit, and (iii) an independent work permit. Temporary work permits can only be obtained by the employer on behalf of the employee; therefore, a foreign employee cannot apply for a temporary work permit by himself/herself. Upon the necessary conditions (holding a long-term residence permit or having a work permit for at least 8 years) are met, the foreigner can apply for a permanent work permit and if the foreigner would like to be self-employed, he/she can apply for the independent work permit, by himself/herself.

b. Work Permit Application Procedure

Work permit applications can be made from Turkey or from abroad through the representative agencies of Turkey (i.e. the consulates or embassies). Work permit holders who applied from outside of Turkey must enter Turkey within six months from the date the permit begins - otherwise, the work permit will be cancelled. Applications for permanent and independent work permits must be made through National Electronic Notification System operated by Post and Telegraph Organization with an electronic signature.

For a first-time application, a temporary work permit will be issued for up to 1 year permitting the holder to work in the (i) same workplace or in (ii) another workplace of the same employer within the same branch of activity. The first applications to be made from abroad must be made to the representative agency of Turkey in the country of nationality or in a country where the applicant resides lawfully. The employee must submit his employment agreement, and other required documents to the agency and must send 16-digit reference number obtained to the employer. Subsequently, the employer will submit the application to the Ministry of Family, Labour and Social Services through the Work Permit for Foreigners Automation System, sign with an electronic signature, and pursuant to approval the Work Permit Card issued for the foreigner will be

sent to the registered workplace address. The entire application process takes place online.

Foreigners having a residential permit for a period of at least 6-months in Turkey can apply for the work permit within Turkey. In case the first application shall be made within Turkey under such conditions, the employer must submit an online application to the Ministry of Family, Labour and Social Services through Work Permit for Foreigners Automation System signed with electronic signature and containing required documents for the application. For the full list of required documents for the first work permit application please see:

<https://www.ailevecalisma.gov.tr/uigm/belgeler>

Such work permits can be extended for a maximum of 3 years (up to 2 years in the first extension application and up to 3 years in the following extension applications) and extension applications must be made within 60 days before the expiration date.

Foreigners holding permanent work permit shall benefit from the same rights long-term residence permit provides. Holders of permanent work permits, without prejudice to acquired rights with respect to social security, and provided that they are subject to applicable legislation in the enjoyment of these rights, shall benefit from the same rights as accorded to the Turkish citizens with the exception of the provisions in laws regulating specific areas. Such foreigners have no right to elect and be elected or to enter into public service, and they have no obligation of compulsory military service.

4.5.3 Exceptions and Exemptions to Work Permits

Under the International Labour Force Law, certain exceptions/ exemptions may be granted (i.e. being exempted from (i) certain requirements and/or procedure for work permit applications or (ii) obtaining a work permit), among others, to the persons listed below:

- (i). Persons assessed as qualified workforce because of their level of education, salary, professional experience, contribution to science and technology or any other similar qualifications,
- (ii). Persons assessed as qualified investors because of their contribution to science and technology, investment and export volume, level of employment to be generated by them,
- (iii). Persons employed in Turkey for a certain period of time for a project in Turkey,
- (iv). Persons declared of Turkish origin by the Ministry of Interior or Ministry of Foreign Affairs,
- (v). Nationals of the Turkish Republic of Northern Cyprus,
- (vi). EU Member State nationals,
- (vii). Applicants of international protection, conditional refugees, persons under temporary protection and stateless persons, victims of human trafficking benefiting from the victim support program,
- (viii). Persons married with a Turkish citizen and living together in Turkey with their spouse in matrimony,
- (ix). Persons working in the agencies of foreign states and international organizations in Turkey without diplomatic immunity,
- (x). Foreigners who come to Turkey for scientific, cultural, artistic or sportive purposes and who are recognised internationally in these fields,
- (xi). cross-border service providers (foreigners who came to Turkey to provide services on a temporary basis and paid in Turkey or from abroad),

Moreover, (i) board members of joint stock companies who do not reside in Turkey, (ii) shareholders of other types of companies who do not reside in Turkey, and (iii) cross-border service providers whose activity in Turkey does not exceed 90 days within 180 days may be eligible to work in Turkey without the need for work permit the context of the exemptions.

4.5.4 Residence Permit

A residence permit is required if the foreigner will be staying in Turkey for more than 90 days in a 180 days period. Though the work permit gives the right to work and reside in Turkey, foreigners who apply for a work permit from Turkey must have a valid residence permit, and residence permit itself does not substitute for work permit.

Types of residence permits are (i) short-term residence permit, (ii) long-term residence permit, (iii) family residence permit, (iv) student residence permit, (v) humanity residence permit and (vi) residence permit issued to persons suffered from human trafficking. All residence permits are provided for foreigners complying with certain criteria such as owning an immovable property in Turkey, studying in Turkey, having business relations in Turkey or being a family member of one of these persons etc.

Applications for residence permits are made either to the consulates of the country of nationality or residence of the foreigner or to the governorates in Turkey. For detailed information regarding residence permit applications please see:

http://www.goc.gov.tr/icerik/annotation-for-foreigners_1178_1181/.

4.5.5 Citizenship by Investment

As per the recent amendment in the Regulation on Implementation of the Turkish Citizenship Law, foreigners can become a Turkish citizen together with their spouses and young or dependent children by the offer of Ministry of Interior and the decision of President, in case one of the below conditions is met:

- (i). The Ministry of Treasury and Finance determines that the foreigner has made a fixed capital investment in the amount at least USD 500,000,
- (ii). The Ministry of Environment and Urbanisation determines that the foreigner has purchased a property in the amount at

least USD 250,000 by registering such property to the title deed together with an annotation stating that the property shall not be sold for 3 years,

- (iii). The Ministry of Family, Labour and Social Services determines that the foreigner provides employment for at least 50 employees,
- (iv). The BRSA determines that the foreigner has deposited at least USD 500,000 to the banks operating in Turkey on the condition that such deposit shall be retained for 3 years in such banks, or
- (v). The Ministry of Treasury and Finance determines that the foreigner has purchased sovereign debt instruments in the amount of at least USD 500,000 on the condition of retaining them for 3 years.
- (vi). The Capital Markets Board determines that the foreigner has purchased shares in private equity or real estate investment funds for at least USD 500,000 and retained such shares for 3 years.

4.6 TERMINATION OF EMPLOYMENT

4.6.1 Overview

Turkish law distinguishes among (i) termination without cause, (ii) termination for valid cause, (iii) termination for just cause, and (iv) collective dismissal. An employment agreement can be terminated (i) by the employer without any cause or for valid cause, or (ii) by either the employer or the employee for just cause, or (iii) by mutual agreement between the employer and the employee.

4.6.2 Notice Periods

Notice periods shall be calculated in accordance with the duration of the employee's service as set forth below (unless a longer notice period is provided for in the individual or collective employment agreement):

DURATION OF EMPLOYMENT	NOTICE PERIOD
Up to 6 months	2 weeks
From 6 months to 18 months	4 weeks
From 18 months to 36 months	6 weeks
36 months or more	8 weeks

4.6.3 Employment Protection

The provisions under the Labour Law relating to the termination of employment contracts are mandatory provisions and it is not possible to include any provisions in the employment agreements which are more detrimental to the employees' rights in this respect. Turkish law provides employees with extensive protection against unilateral termination of the employment agreement by the employer. Therefore, any termination in contradiction of these provisions shall be deemed invalid and employers shall be obliged to pay compensation to the employees.

In this respect, the employer must have a valid cause to terminate the employment agreement if:

- (i) the employer is employing thirty or more employees,
- (ii) the employee has been employed for at least 6 months, and
- (iii) the employment agreement has an indefinite term.

If the foregoing conditions exist, the employer may not terminate an employment agreement without a valid cause which must relate to the competence or behaviour of the employee or the special conditions of the enterprise, workplace or work. The Labour Law does not specifically list what constitutes a valid cause for termination.

If a valid cause exists, the employer shall serve a written termination notice on the employee by observing the notice periods above. The reason for termination must be included in the notice. Upon termination, the employer shall pay all monetary rights and entitlements that the employee has earned during the term of his/

her employment (e.g. salary, vacation payments, notice payment, severance indemnification).

4.6.4 Immediate Termination without Notice

In the event the employer wishes to immediately terminate an employee's employment, it can do so by paying the relevant notice payment in lieu of waiting until the end of the notice period. Notice payment is equivalent to the monthly salary (unless a higher notice payment is provided for in the individual or collective employment agreement) of the employee corresponding to the relevant notice period.

Moreover, pursuant to Articles 24 and 25 of Labour Law, both the employer and the employee are entitled to terminate an employment agreement for a just cause.

In case of a termination of the employment agreement for just cause, neither the employer nor the employee is required to observe notice periods and can terminate immediately by serving a written notification to the other party. However, the employer is required to pay the severance indemnification, save where termination is based on the non-ethical conduct of the employee.

4.6.5 Collective Dismissal/Collective Redundancies

Collective dismissal will be deemed to have occurred if the following numbers of employees' employment has been terminated:

TERMINATED EMPLOYEES	TOTAL EMPLOYEES
10	20 to 100
11 to 30	101 to 300
30	301 or more

In case of collective dismissal, compelling reasons such as technological or organisational reasons relating to the enterprise, workplace or work must exist. In the event the employer wishes

to recruit new personnel within six months following the date of collective dismissal, it must preferably recruit the former personnel whose qualifications match those the employer then seeks to employ. In case of a collective dismissal, the employer is also required to give notice to the relevant regional directorate of Social Security Institution 30 days prior to the collective dismissal.

4.6.6 Severance Payment

Severance payment is a type of tax-free compensation payable upon termination of the employment to employees who have at least 1 year of service, save where termination has occurred due to an unethical conduct or resignation of the employee.

Severance indemnification shall be calculated by multiplying the total sum of the employee's last monthly salary by the number of years he/she has worked in the same workplace. There is a ceiling in the determination of the employee's last 30 days salary, which is determined each year by the Ministry of Family, Labour and Social Services (currently TRY 6017,60 to be applied for the first half of 2019).

4.7 TRANSFERS OF UNDERTAKINGS

In case of a transfer of the whole or a part of the business from an employer to another, on the date of transfer, all employment agreements with all of their rights and obligations in that workplace or in the part thereof shall be transferred from the transferor employer to the transferee employer. Transfer of undertakings only covers the transfer of the whole or part of the business enterprise of the company and does not indicate the transfers of shares or stakes within a company.

Transfer of undertakings does not require the consent of the employee, nor can the employee terminate his /her employment agreement on the grounds of such transfer. On the other hand, upon

the transfer, the transferor and transferee employers shall jointly be liable for the employees' accrued rights and entitlements for a period of 2 years from the date of transfer.

4.8 UNIONS AND COLLECTIVE BARGAINING AGREEMENTS

The Turkish Constitution allows employees and employers to establish and join a trade union. Trade unions may be established to operate in one of the 20 industries (i.e. hunting, fishing, agriculture and forestry, food industry, mines and quarry, petrol-chemicals-rubber-plastic and pharmaceuticals, weaving-ready wear-and leather, paper and forestry, communication, press-publication and journalism, banking-finance and insurance, commerce-office-education and fine arts, cement-soil and glass, metal, construction, energy, logistics, ship building and maritime logistics, storage and warehousing, health and social security and general works (municipality services)).

Any person considered as an employee who is over the age of 15 may become a member of a trade union or more than a trade union operating in the same industry. The trade unions may enter into collective bargaining agreements in order to arrange employees' and employers' economic and social relationships at work.

4.9 EMPLOYMENT DISPUTES

Under Turkish law, labour courts have specific jurisdiction over employment related matters. The most common subject matter of employment related disputes is the determination of the invalidity of termination, i.e. re-employment, or collection of employee receivables. The burden of proof for the validity of the termination or payment of all employee receivables in full is on the employer.

4.9.1 Mandatory Mediation

Newly enacted Code of Labour Courts No: 7036 introduced a mandatory mediation system in employment disputes. As per the Code, before initiating the procedures before the court, the parties must apply for mediation for the below-listed types of employment disputes:

- (i). employee or employer claims for compensation relating to contracts of employment or collective bargaining agreements; or
- (ii). claims for re-employment.

If the mediator's involvement resolves the dispute, then the same dispute cannot be litigated before the courts. Where agreement cannot be reached via mediation, parties' rights to sue are reserved. This new system to labour disputes had a very satisfactory outcome with a high success rate, which has also relieved the courts up to an extent and supported a swift resolution of such disputes.

4.10 SOCIAL SECURITY SYSTEM

The Social Security Law regulates the social security rights of the workers, government officials and self-employed persons and covers the social risks such as (i) work accidents and occupational illnesses, (ii) healthcare, (iii) child birth and child care, (iv) disability, (v) seniority, (vi) death, and (vii) unemployment. The Social Security Institution is the relevant authority.

4.10.1 Contributions for Social Insurance and Taxes

The main financing tool of the Turkish social insurance system is the contributions paid by employers and employees along with the state contribution.

Contribution of the employees is deducted from the salaries of the employees in specified rates. Such premiums are paid both

by employees and employers on behalf of employees to the Social Security Institution. Premium rates are determined in accordance with the type of risks the social security insurance covers.

Social security premium rates are as follows:

TYPE OF RISK	EMPLOYEE'S SHARE	EMPLOYER'S SHARE	TOTAL
Short- term risk	-	2%	2%
Disability, penalty and death risks	9%	11% ⁵	20%
General Health Insurance	5%	7,5%	12,5%
Unemployment Insurance	1%	2%	3%
Total	15%	22,5%	37,5%

4.10.2 National Health Insurance

Under the Social Security Law, employees working with an employment agreement who reside in Turkey and foreigners with a residence permit (or work permit) if they do not have national health insurance in another country, and their dependents shall be subject to the general health insurance in Turkey. General health insurance is mandatory.

General health insurance provides the insured employees with (i) protective healthcare; (ii) healthcare in case of illness including medical examinations, blood and other tests and emergency healthcare; and (iii) childbirth related healthcare. These healthcare services shall be provided by the public and private hospitals and medical institutions in agreement with the SSI within Turkey and abroad to the general health insurance holders.

4.10.3 State Pensions

Under Turkish law, there is a compulsory premium contribution for state pension in the amount of 20% along with the disability and

⁵ If the employers make the required social security payments timely and duly, this rate shall be decreased by 5 points.

death insurance. 9% of this is paid by the employee and 11% is paid by the employer.

The main benefit of the state pension is the retirement salary which employees are entitled to under certain conditions. In order to be entitled to retirement salary, the employee must reach a certain age and have to complete a certain number of working days which may vary depending on the date when they registered with the Social Security Institution for the first time.

Moreover, automatic participation to the Turkish private pension scheme was introduced by a new law amendment entered into force on 1 January 2017. Accordingly, employers must pay 3% of their employees' income on behalf of their employees in order to cover the private pension of them under the age of 45 and the Turkish State shall provide a one-time only additional subsidy per employee for participating in the private pension scheme.

4.10.4 Unemployment Benefits

Employees, (including foreign employees) whose compulsory unemployment insurance premiums have been paid, can benefit from unemployment insurance benefits. 1% of the unemployment insurance premiums are paid by the Turkish State itself, whereas the employer pays 2% and the employee pays 1%.

The main benefit of the unemployment insurance is the unemployment allowance. Unemployment allowance shall be payable conditional upon the criteria set forth under the Social Security Law being met. Accordingly, in order to be entitled to unemployment allowance, the employee's employment agreement must be terminated/end in one of the following ways:

- (i) the employer terminates the employment agreement by complying with the notice terms;
- (ii) the employee or the employer terminates the employment agreement for a just cause without complying the notification obligation;

- (iii) if the employee works under a fixed term employment agreement, term of the agreement ends;
- (iv) the employment agreement is terminated due to the transfer, closure or change in the characteristics of the workplace; or
- (v) the employee becomes unemployed due to privatisation of his/her workplace.

The unemployment allowance is calculated by taking into account the salary which is the basis of the premiums and the allowance amount shall be 40% of the average gross daily salary calculated based on the last 4-month salary of the employee. Unemployment allowance is paid for (i) 180 days to employees who worked for 600 days, (ii) 240 days to employees who worked for 900 days, and (iii) 300 days to employees who worked for 1080 days at the end of the month following the date of entitlement to the allowance.

5

PROPERTY RIGHTS

5.1 ACQUISITION OF TITLE AND OWNERSHIP RIGHTS

Turkish law recognises lands, independent and permanent rights (such as usufruct rights) perfected into the land registry records and independent units registered under the Condominium Law as real property. An individual or a legal entity may own property in the form of full ownership, co-ownership or joint ownership. The ownership may be in the nature of a freehold or easement right.

Simple ownership is the most common type of ownership, followed by co-ownership and joint ownership. Co-ownership and joint ownership differ on the disposal of the share owned; a co-owner may not dispose of its share without the consent of the other co-owners unless otherwise agreed, whereas each joint owner can freely dispose of its share without the consent of the other joint owners.

Freehold vests in the owner full legal and beneficial ownership of the property. It is the most extensive right over real estate under Turkish law granting the right to freely use (*usus*), enjoy the benefits (*fructus*) and dispose of the property (*abusus*). On the contrary, easement rights are limited in *rem*. Usufruct rights grant the beneficiary the right to freely use and enjoy the benefits of the property, but the beneficiary cannot dispose of the property.

5.1.1 Title to Immovable Property

a. Registration system

The land registry records are kept in an electronic centralised system known as the Turkish Land Registry and Cadastre Information System (*TAKBIS*) and in physical title books maintained by the relevant land registry directorate. Each land registry directorate is under the supervision of regional land registry group directorates which in return are under the control of the national General Directorate of Land Registry and Cadastre.

Parties to an asset transaction shall finalise the sale and transfer of ownership by executing and registering an agreed form of official deed before the relevant land registry directorate. Registration is mandatory in order to be recognised as the titleholder and enforce ownership rights. The execution of an official deed and registration thereof may not be necessary where a real property is inherited or acquired by a court order, or through adverse possession, or via execution proceedings.

Due to the public nature of TAKBIS, any holder of a particular right registered therewith will have protection against third party claims, including against *bona fide* purchasers. Therefore, a third party may rely on the content of the land register as any establishment or transfer of a right made by a person registered in the land register as the right holder will be upheld.

b. Acquisition by individuals (i.e. real persons)_____

- (i). *Acquisition by Turkish individuals*: There is no restriction on Turkish individuals acquiring real property in Turkey.
- (ii). *Acquisition by non-Turkish individuals*: Until 2012, non-Turkish individuals were allowed to acquire real property in Turkey only if their country of citizenship were allowing, either under an international treaty or *de facto*, Turkish citizens to acquire real property (i.e. on the basis of the reciprocity principle). However, following a change in the legislation, the reciprocity principle was abolished and now citizens of those countries listed by the President may acquire real property and rights *in rem* in Turkey, subject to certain restrictions as explained below. Such list is quite extensive, covering almost every developed country in the world.

In terms of restrictions, the President has the discretion to restrict their acquisition of real property for reasons including, among others, citizenship and location and/or because the total area that is being acquired exceeds certain limits. As a general practice, acquisition of real property by non-Turkish nationals in or nearby military zones and other security zones is not allowed. Furthermore, where a non-Turkish national has acquired an

undeveloped real property, it must submit a development project within 2 years from the acquisition to the Ministry of Environment and Urbanisation and complete such development within the timeframe to be determined by such Ministry.

There are also some restrictions specific to the total area which individual non-Turkish nationals may acquire as follows: (a) the total area that may be acquired by foreign individuals and the total area of the rights *in rem* owned by the foreign individuals in a single district cannot exceed 10% of the total area of such district subject to private property (i.e. lands owned by individuals and/or legal entities and not the State)⁶; and (b) country-wide, a foreign individual cannot own more than 30 hectares of land. Prior to 2012, this limit was 2.5 hectares. The President is entitled to double such 30-hectare limit.

Acquisition of real property by a non-Turkish individual may also entitle such individual to claim Turkish citizenship provided that conditions listed in section 4.5.5 (b) above are met.

c. Acquisition by legal entities

Acquisitions by legal entities of real property in Turkey can be classified into three sub-categories: (i) acquisition by Turkish legal entities with full local shareholding, and (ii) acquisition by Turkish legal entities with foreign shareholding, and (iii) acquisition by non-Turkish legal entities

- (i).** *Acquisition by Turkish legal entities with full local shareholding:* There is no restriction preventing Turkish legal entities with full local shareholding from acquiring the ownership of real property in Turkey.

As noted under 2.1 (*Domestic Legislation on Foreign Investment*), an investor is required to notify the Ministry of Treasury and Finance. If, as a result of a share transfer or otherwise, a foreign shareholder acquires 50% or more of the shares, or the privilege to appoint or dismiss the majority of the members of the board of directors of a Turkish company with full local shareholding, the Ministry of Treasury and Finance will inform

⁶ The limit of 10% does not apply to mortgages established in favour of a non-Turkish individual.

the General Directorate of Land Registry and Cadastre of such change, and subsequently such directorate will advise the relevant governorship to evaluate whether the Turkish entity (now with foreign shareholding) can own real property in Turkey. If real property is located in or nearby military zones and other security zones, the relevant governorship may notify the company to provide additional documentation and may eventually require the company to sell such real property.

- (ii). *Acquisition by Turkish legal entities with foreign shareholding:* The acquisition by Turkish legal entities with foreign shareholding of real property in Turkey shall require prior written consent of the relevant governorship where the real property is located, if the foreign shareholders own 50% or more of the shares, or have the privilege to appoint or dismiss the majority of the members of the board of directors of such company. If the foreign shareholder owns less than 50% of the shares or have no such privilege, no prior written consent of the relevant governorship shall be sought. Also, Turkish legal entities with foreign shareholding are not required to obtain the relevant governorship's prior written consent to (i) perfect mortgages in their favour, (ii) acquire real property through foreclosure, (iii) acquire real property in industrial zones, technological development zones and free trade zones, and (iv) acquire/transfer the title or easement right on an immovable property, as a result of a merger or demerger.
- (iii). *Acquisition by non-Turkish legal entities:* The acquisition of real property by non-Turkish legal entities is allowed only if the purpose of such acquisition relates to petroleum exploration and extraction, touristic developments, or in industrial zones. Identical with non-Turkish individuals, a foreign company must submit development project within 2 years from the acquisition to the Ministry of Environment and Urbanisation and complete such development within the timeframe to be determined by such Ministry.

There is a specific restriction on foundations, associations and similar entities to acquire real property in Turkey. However, foreign legal entities may freely establish a mortgage over real property located in Turkey.

5.1.2 Title to Movable Property

There are two ways of acquiring the title to a movable property: (i) acquisition by way of taking the possession of an unclaimed movable property, or (ii) acquisition by way of transfer of title.

The general rule under Turkish law is that the title to a movable property shall be transferred by transfer of possession of the property. Under this general rule, in order for the title of the movable property to be transferred, parties must be in mutual agreement regarding transfer of possession, the transferor must be entitled to transfer the property, and the transferee must take the possession with the intention of being the owner of the movable property. One exception to this rule is where the parties specifically agree that the title of a movable property passes to the transferee, but the movable property remains in the possession of the transferor.

Furthermore, according to the *bona fide* rule set forth under the Turkish Civil Code, in case the transferor is not entitled to transfer the title of the property and it is impossible for the transferee to have access to such information, title of the movable property is deemed to have passed to the transferee. However, if the transferee could obtain such information by acting with due care, the *bona fide* rule does not apply.

5.2 NON-POSSESSORY RIGHTS

5.2.1 Lease

Lease relationships are governed under the provisions of the Turkish Code of Obligations. The Turkish Code of Obligations entered into force on 1 July 2012, replacing the Repealed Code and Lease Law. Almost all major principles under the Repealed Code and the Lease Law have been maintained under the Turkish Code of Obligations, with certain differences to meet the requirements of the present day.

Nonetheless, entry into force of certain significant provisions of the Turkish Code of Obligations with respect to lease agreements for commercial spaces was postponed until 1 July 2020. In basic terms, those provisions relate to the transfer of the leases, return of the leased property before the expiry of the term, termination due to material reasons, contract bundling, limitation on the security deposit provided by the tenants, restriction on amending the lease agreement to the detriment of the tenants, determination of rent, indexation and restriction on rent increases, restriction to impose further obligations to tenants other than payments of rent and operational charges, and limitation on the grounds for termination. For such matters, the parties may freely agree the terms under the lease agreement. Where no such agreement exists, the provisions of the Repealed Code and Lease Law shall apply.

Parties are entitled to conclude lease agreements with a fixed term or indefinite term at their own discretion. If a lease agreement is concluded for a fixed term, it shall automatically terminate following the expiry of the term. However, a fixed term agreement may turn into an indefinite term agreement if the tenant continues to use the leased property following the expiry of the term without having an explicit agreement by and between the tenant and the landlord. Where a residence or workplace is leased, the lease agreement shall be automatically extended for consecutive 1-year periods unless the tenant notifies the landlord of its intention to terminate the lease agreement at the end of the term with at least 15 calendar days' prior notice. The only exception to this general rule is the landlords' right to terminate any fixed term lease agreement after 10 years of renewals by serving the tenant with a 3-month prior written notice before the expiry of each subsequent lease term after the tenth year.

There is no statutory form for lease agreements; however, it is a general practice to have written lease agreements.

The rent can be denominated in any foreign currency, if the tenant and/or landlord is a non-resident in Turkey or if the tenant is subject to the exemption stated under the Executive Order of the President amending the Decree No. 32 and its secondary legislation. However

rent denominated in foreign currency cannot be increased for an initial term of 5 years⁷. Where the rent is denominated in TRY, rent may be increased at a rate which must not exceed the producer price index for the preceding year as announced by the Turkish Statistical Institute. For any lease agreement having a term of more than 5 years, the parties may request that the rent corresponding to the sixth year of the lease is re-determined by the court, regardless of any agreement that may be concluded by and between the landlord and the tenant in this respect⁸. In such a case, the court should take into consideration the producer price index, the condition of the leased property, the rent of similar properties and decide on such grounds.

The security deposit to be provided by tenants may not exceed the equivalent of 3 times the monthly rent for the leased property. Furthermore, if the parties agree that the security deposit will be paid in cash, then the money must be deposited into a special savings account with a bank. The parties may also agree that the security deposit will be provided in the form of securities. In such a case, the securities must be reserved in a bank. Banks may release the security only with the consent of both parties or based on a legally effective payment order obtained in execution proceedings, or a legally effective court judgment⁹.

A lease agreement can be annotated with the records of relevant land registry directorate. Such annotation would grant the lessee a right to enforce the terms of the lease agreement against a future owner of the leased property.

5.2.2 Rights in rem

There are different types of rights *in rem* granting its holder certain benefits except for ownership rights, including but limited to:

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- 7 The implementation of this restriction has been postponed until 1 July 2020, hence rents currently denominated in a foreign currency can be increased if the lease agreement contains an indexation clause.
 - 8 The implementation of the possibility to request court determination has been postponed until 1 July 2020 for commercial leases.
 - 9 The implementation of limit on security deposit and requirement to use an intermediary bank has been postponed until 1 July 2020 for commercial leases.

- (i) “*usufruct rights*” granting the right to use and benefit from the property,
- (ii) “*occupancy rights*” granting the right to reside in the property,
- (iii) “*right of constructions*” granting the right to construct a building without owning such property,
- (iv) “*transit rights*” granting the right to pass from one location to another, and
- (v) “*resource rights*” granting the right to use, for example, water supply in an adjacent property.

A usufruct right is the most extensive right *in rem* as it grants the beneficiary of such right the full benefit from the property (except for ownership), whereas other rights *in rem* are more restricted. The creation of a right *in rem* is subject to registration in the records of the relevant land registry directorate. It is possible to register a usufruct right as if it is a separate property, provided that (i) it is transferable to a third party without the consent of the owner of the underlying property (i.e. “independent”), and (ii) it is established for at least 30 years (i.e. “continuous”). Where there is an independent and continuous usufruct right, the beneficiary may grant security interest over such right in favour of third parties.

5.3 INTELLECTUAL PROPERTY RIGHTS

5.3.1 Overview

Intellectual property refers to creations of the mind, and intellectual property rights in general allow their creator/author or owner to benefit from their own work or investment in a creation. Under Turkish law intellectual property rights are protected through two main laws: (i) the Law on Intellectual and Artistic Works, and (ii) the IP Law. Accordingly, the intellectual properties recognised and protected under Turkish law are as follows:

- (i) *Copyrights*: Copyrights consist of (i) literary works, (ii) works of fine arts, (iii) musical works, and (iv) cinematographic works.

- (ii) *Trademarks*: Trademarks are defined as signs distinguishing the goods and services of one enterprise from the goods and services of another. All kinds of signs that may be represented graphically such as words (including personal names), forms, colours, letters, numbers, voices, and shape or packaging of the goods may be registered as trademarks on the condition that such signs distinguish the goods and services of one enterprise from the goods and services of another.
- (iii) *Patents & Utility Models*: Patent is a protection for inventions that are novel, technically complex and industrially applicable. Utility models are known as petty patents and are similar to patents in terms of being new and industrially applicable; however, inventive step criteria are not required for utility models.
- (iv) *Designs*: Design rights provide protection to the characteristics of a design in terms of its line, shape, form, colour, material or texture.
- (v) *Geographical Indications*: Geographical indications are defined as signs which indicate a product which is specific to a place, area, region or country in terms of its quality, reputation or other characteristics. Registration protects the geographical indication against any direct or indirect commercial use of a registered name with respect to products that are similar or comparable to registered products; any use of the name which conveys a false impression as to its origin; any misleading indication as to the origin, nature or essential qualities of the product on the packaging or advertisement of the product; and any packaging that may convey false impression as to its origin.

5.3.2 Protection of Intellectual Property

Under Turkish law, certain intellectual properties such as copyrights are automatically protected upon production of work, whereas other intellectual properties such as trademarks, patents, utility models, designs and geographical indications, are required to be registered with the Turkish Patent and Trademark Institution in order to be afforded protection. Upon registration, the protection period may

vary between the categories of intellectual property in question. Accordingly, trademarks and utility models are protected for 10 years, patents are protected for 20 years, and designs are protected for 5 years. Registrations may be renewed before their expiration dates upon the satisfaction of certain requirements.

5.3.3 Breach of Intellectual Property

When an intellectual property is infringed, the owner of such intellectual property right shall have the right to file a lawsuit for (i) the detection and the cessation of infringement against those who copy and/or distribute the copyright without the owner's permission; (ii) the prevention of the potential infringement in case of risk relating to future infringements; or (iii) the compensation of the direct and indirect damages suffered by the owner as a result of the infringement.

Infringement of an intellectual property right may also constitute a crime under Turkish law, which could result in criminal prosecution and high monetary penalties.

5.3.4 Recent Changes to Intellectual Property Regime in Turkey

The IP Law has introduced significant changes to the protection of intellectual and industrial property in Turkey. It unifies separate pieces of statutory decrees (*kanun hükmünde kararname*) and reconciles the provisions for prosecution and enforcement of intellectual properties rights (i.e. trademarks, patents, utility models, designs and geographical indications).

Among others, the IP Law embraces the following changes:

- (i) Co-existence agreements and consent letters become enforceable in order to overcome the refusal decisions based on the existence of an earlier trademark.
- (ii) The opposition periods relating to an application has been shortened from three months to two months other than applications for designs and geographical indications.

- (iii) The exhaustion principle¹⁰ has been expanded to also cover international exhaustion.
- (iv) The right to make a counterclaim against the opposing party based on non-use of the relevant trademark has been introduced. In such case, the opposing party shall be under the obligation to prove serious usage of the trademark within five years prior to the date of application of the applicant.
- (v) Loss of right of the owner of the trademark has been introduced due to remaining silent and not taking action for five years despite being aware of use of the trademark.
- (vi) Criminal liability has been introduced for trademark infringements. Accordingly, those who manufacture, provide services, sell, import, export or transfer products by way of causing trademark infringement may be sentenced to imprisonment up to three years.
- (vii) New grounds have been introduced for granting compulsory license.
- (viii) The scope of non-patentable inventions is expanded.
- (ix) Unregistered designs are protected for three years provided that they have been made public for the first time in Turkey.
- (x) Use of equivalent parts to be listed by the Ministry of Industry and Technology cannot be deemed as design infringement.
- (xi) Novelty and distinctive character requirements must be met in order for visible parts of a complex design to be protected.
- (xii) Protection regarding geographical indications has been extended to traditional product names which do not fall under the scope of geographical indications.

10 This principle provides that a copyright owner shall no longer have the right to control copies of his/her work upon first sale by the copyright owner or if he/she has consented for such exhaustion.

6

ACCESS TO FINANCE AND INSURANCE

6.1 BANKS AND FINANCIAL INSTITUTIONS

6.1.1 Banks

The establishment of banks and the commencement and undertaking of banking activities in Turkey are regulated by the Banking Law which entered into force on 1 November 2005, and the secondary legislation which entered into force thereunder. The Banking Law is (among others) applicable to (i) banks established in Turkey, (ii) branches of foreign banks in Turkey, (iii) representative offices of foreign banks in Turkey, and (iv) financial holding companies.

The regulating authority for the banking sector in Turkey is the Banking Regulation and Supervision Agency (*BRSA*), a public legal entity with administrative and financial autonomy which was established in June 1999 and started its operations in 2000.

In accordance with the Banking Law, only certain types of banks can be established in Turkey. These are deposit banks, participation banks, and development and investment banks. Both the establishment and the commencement of operations of a bank require permits from the *BRSA*.

In order to establish a bank, firstly an opening permit approving the establishment needs to be obtained from the *BRSA*. The Banking Law and its secondary legislation provide the terms and conditions for the establishment of a bank. For instance, a bank can only be established as a joint stock company, must meet capital adequacy requirements, and must satisfy specific eligibility criteria in relation to its shareholders and board members.

Once the opening permit is issued by the *BRSA*, a second application needs to be submitted to the *BRSA* within 9 months for obtaining an operation permit in order to commence operations in Turkey.

Foreign banks may open a branch in Turkey. The establishment of a branch by a foreign bank is very similar to the establishment of a

bank in Turkey. A branch of a foreign bank is entitled to conduct all banking activities stated under the Banking Law and it is treated as if it is a Turkish bank licensed by the BRSA.

A foreign bank can also open a representative office in Turkey instead of a branch; however, this requires a specific license from the BRSA. A representative office is not allowed to enter into commercial transactions or engage in revenue generating activities in the Turkish market. Currently, there are fifty-one banks in Turkey, a list of which can be found on BRSA's official website at the following link:

<http://www.bddk.org.tr/Institutions-Category/Banks/22>

6.1.2 Financial Institutions

Other than banks, financial institutions subject to the Banking Law are as follows:

- (i).** Leasing Companies (234)
- (ii).** Factoring Companies (57)
- (iii).** Financing Companies (14)
- (iv).** Financial Holding Companies (0)
- (v).** Asset Management Companies (20)
- (vi).** Electronic Money Companies (14)
- (vii).** Payment Companies (34)
- (viii).** Auditing Firms (38)
- (ix).** Corresponding Offices of Foreign Banks (44)
- (x).** Credit Rating Institutions (135)
- (xi).** Authorized Rating Institutions (1)

The rules and principles governing the establishment and operation of those institutions are very similar to the rules and principles applicable to the banks. For instance, similar to the requirements for banks, a financial leasing, factoring or financing company can only be established as a joint stock company, capital adequacy

requirements must be met, and there are eligibility criteria which must be satisfied in relation to the shareholders and board members.

Currently, there are over 400 financial institutions established in Turkey, lists of which can be found on BRSA's official website at the following link:

<http://www.bddk.org.tr/Institutions>

One particular institution is the financial holding company which is an investment vehicle to invest in financial institutions. The BRSA is entitled to specify the scope of financial holding companies, to oblige the establishment of a financial holding company, and to set the principles and procedures in relation to capital adequacy, internal systems, consolidated supervision and the coordination of supervision of the financial holding companies. For instance, if a parent company which is established in Turkey as a joint stock company has at least one subsidiary operating as a credit institution and meets all of the conditions provided for in the Regulation on Financial Holding Companies, such parent company will be deemed to be a financial holding company and must therefore comply with the Regulation on Financial Holding Companies and the banking legislation referred to therein. However, subsequent to the amendment introduced on 6 June 2017 on the Regulation on Financial Holding Companies setting out a condition regarding total assets of credit institution subsidiaries, all financial holding institutions in Turkey have lost their activity permits, and there is currently none operating.

6.2 AVAILABLE FINANCING STRUCTURES

Different types of loans and financial structures can be offered by Turkish banks to their customers as short, medium- or long-term financings solutions for a variety of purposes.

In cases where the borrowing customer is a consumer, any financing to be provided to such customer would additionally be subject to the Consumer Protection Law and its secondary legislation.

In cases where the borrowing customer is a legal entity, loans can be utilised under general standard form loan agreements or under project specific loan agreements. Project finance and acquisition finance methods can also be adopted and, depending on the necessities of the project in question, the financing can be provided on a non-recourse, limited recourse or full recourse basis. Depending on the type of loan and other aspects of the financing, the financing can be provided as secured or unsecured, revolving or non-revolving, with a fixed or floating interest rate, in local currency and/or foreign currency, by a single lender or a lenders' syndicate, or as a club loan and so forth.

The collateral structure can vary depending on the characteristics of the project in question, and among other aspects, the type of the borrowing customer, its shareholding structure and the sector in which it is operating. It is worth noting that in an acquisition financing it is not legally possible to take security over the assets of the target company due to the financial assistance restriction. Therefore, when creating the security structure for an acquisition, such restriction should be taken into consideration.

Some of the major banks have special departments only dealing with the services to be provided to the Turkish subsidiaries of foreign capital companies and may have a more flexible and investor-friendly approach in terms of collateral, making it easier for the foreign companies to meet their financing needs in Turkey.

Other services typically provided by banks to commercial clients in the Turkish market include cash loans, non-cash loans, letters of guarantee and letters of credit, export finance, foreign trade financing, project finance, derivatives, forward transactions, Eurobonds, government bonds, repo transactions, stock trading, cash management, commercial credit cards, overdraft accounts, spot loans, direct debiting, payment and collection systems.

6.3 COST OF FINANCING

The costs of financing can mainly be divided into two groups; the payments to be made to the bank providing the financing, and applicable taxes. The payments to be made to the bank which provides the financing are mainly the interest to be accrued on the loan amount, commissions, fees and expenses. In terms of taxes, stamp duty, the banking and insurance transaction tax (*BITT*), and the resource utilisation support fund (*RUSF*) are the most important taxes.

The payments to be made to the bank providing the financing usually consist of interest, commissions, fees (such as arrangement fee, commitment fee, prepayment commission, cancellation commission), costs and expenses associated with the loan. Interest would accrue on the cash loan while non-cash loan commission would accrue on the non-cash loans. These may be diversified and vary depending on the type of financing obtained and can also bear different names. Certain costs may also be associated with the side products, including but not limited to card fees, account management fees, portfolio fees, fees for enquiry, reports, release etc.

It should be noted that the above are matters that can be freely agreed by the parties based on their discretion and commercial agreement, as long as both parties are commercial parties (*tacir*) within the meaning of the Turkish Commercial Code¹¹. However, if one of the parties is a consumer, then all of the payments to be made to the bank must comply with the legal requirements and restrictions in relation to the protection of the consumers.

As to the taxes arising in relation to the financing, special attention should be given to stamp duty, *BITT* and *RUSF*. There are several exemptions provided for in the relevant legislation.

Stamp duty is a tax imposed by the Stamp Duty Law and according to the said law stamp duty is imposed at the rate of 0.948 % of the aggregate principal amount expressed in an agreement, however

11 Any legal entity shall be considered as a commercial party under the Turkish Commercial Code.

Article IV. 23 of Table No. 2 of the Stamp Duty Law provides for an exemption for the loan agreement and the security documents in relation to loans utilised from banks and international credit institutions.

The amount of RUSF that needs to be paid (a) over the interest amount, for TRY-denominated loans; and (b) over the principal amount, for foreign currency loans, is determined under the Central Bank Communiqué No. 6 relating to Decree No. 88/12944. There are several exemptions provided in the relevant legislation.

The BITT accrues on the interest, fees, commissions and charges to be paid to a Turkish bank and any income realised by such Turkish bank at the rate of 5%. BITT may also be imposed on a bank who is incorporated, organised or has its principal office in Turkey, even if such bank makes the facility available from or carries all or part of its portion of the facility on the books of or receives any amount payable thereunder at any of its foreign branches.

6.4 SECURITY AND COLLATERAL

6.4.1 Types of Collateral

Under Turkish law, security interests on a variety of assets can be granted as collateral for a financing. It is possible to establish mortgages on immovable assets, pledges on (public listed and privately held) shares, on bank accounts, on receivables, on intellectual property and on movable assets, and to assign rights and receivables under contracts and insurances. Certain establishment and perfection requirements, notarisation and notification requirements apply depending on the type of the collateral.

The Law regarding Pledges on Movable Property for Commercial Transactions, abolishing the Commercial Enterprise Pledge Law has entered into force on 1 January 2017. The said law has introduced certain novelties for establishing pledges on movable property,

especially in relation to the parties, scope and registry of the pledge, the competent authority to register the pledge records and the rights of the pledgor and the pledgee, bringing a whole new system to pledges on movable property.

6.4.2 Enforcement

The enforcement of security shall be subject to procedures of the Enforcement and Bankruptcy Law. The general principle under Turkish law (i.e. *lex commissoria* principle) prohibits a secured party to take over the ownership of the secured assets. It also restricts the security provider to contractually provide an undertaking to transfer the ownership of the secured assets to the secured party in an event of default. However, such restrictions shall not apply after the occurrence of an event of default. Accordingly, upon agreement between the security provider and secured party, the security provider may transfer the ownership of the secured assets for the purposes settling the outstanding debt.

However, private sale of a secured asset without applying the procedures set out in the Enforcement and Bankruptcy Law is not possible. As a general rule, the creditors are obliged to primarily foreclose the secured asset. Following the foreclosure of asset, creditors may apply for the execution procedures for the unsatisfied amount of the claims, the foreclosure of property may be followed by other execution procedures (based on court judgment or ordinary). There are certain exceptions to this rule where private sale would be possible (e.g. pledge on publicly listed shares). There are also other exceptions in the relevant legislation to the *lex commissoria* principle (e.g. the Law regarding Pledges on Movable Property for Commercial Transactions).

6.5 HEDGING AND DERIVATIVES

Derivative transactions include hedging transactions and over the counter (*OTC*) transactions and are regulated under the Turkish

capital markets legislation and by the Capital Markets Board. There are also certain terms and conditions under the Decree No. 32.

Derivative transactions can be entered into with a Turkish bank or a Turkish intermediary institution, provided that the bank or intermediary institution has a specific license from the Capital Markets Board for that purpose. Recent legislative changes also brought OTC products under the supervision of the Capital Markets Board. Therefore, a specific license to be able to directly enter into bilateral OTC products with clients as counterparty is required to be obtained.

It is also possible for a company to enter into derivatives transactions with another company, provided that entering into such derivatives transaction does not fall within the scope of either company's activities or constitute a commercial activity for any of the parties. Such transactions are not under the supervision of the Capital Markets Board and the capital markets legislation does not apply.

6.6 FOREIGN EXCHANGE CONTROL

Loans to be borrowed in foreign currency and indexed to foreign currency from Turkish or foreign banks are regulated under the Decree No. 32 and its secondary legislation. Pursuant to such decree, persons residing in Turkey cannot borrow foreign currency loans in Turkey or from foreign countries.

Additionally, there are certain restrictions for Turkish legal entities borrowing loans (i) in foreign currency and (ii) indexed to foreign currency from local or foreign banks. Accordingly, no foreign currency loans can be extended to a Turkish legal entity unless such entity has foreign currency income or meet the below exceptions:

- (i). The borrower is public authority and institution, bank and financial leasing company, factoring company or financing company;

- (ii). The cumulative loan balance of the borrowing legal entity denominated in foreign currency, whether utilized from abroad or in Turkey, is USD 15 million or more at the time of the utilisation.
- (iii). Where the foreign currency loans are extended to finance an internationally announced domestic tender or a public private partnership project, to undertake a defence industry project approved by the Undersecretariat for Defence Industries, to acquire certain machines and devices (the details are in the decree) or for a transaction within the scope of an investment incentive certificate; or
- (iv). Where the foreign currency loan does not exceed the expected foreign currency income of the entity, as certified by such entity;
- (v). Where the foreign currency loans are extended for the financing of investments regarding renewable energy sources in accordance with the Law No. 5346 on Use of Renewable Energy Resources for Generating Electricity. The amount of such foreign currency loans cannot exceed 80% of the total amount calculated by way of multiplying the annual generation amount with the subject price (local content rate included) for the remaining period with State guarantee;
- (vi). Where foreign currency loans to be borrowed by Turkish legal entities who won the tenders announced in the scope of Privatization Implementations Law No. 40463 regardless of their currency, and for other public tenders in which the price is determined in a foreign currency. The amount of such loans cannot exceed the tender price;
- (vii). Where foreign currency loans to be borrowed by special purpose companies who are established for acquiring a new company share. The amount of such loans cannot exceed the total amount regarding the company shares that are projected to be acquired;
- (viii). Where the foreign currency loan will be used to acquire certain machines and devices through a foreign currency denominated

financial leasing transaction undertaken by a Turkish financial institution;

- (ix). Where the amount of the foreign currency loan to be extended by a Turkish bank or financial institution does not exceed the foreign currency deposits and/or the value of government or central bank securities issued by or under the surety of the members of the Organization for Economic Cooperation and Development (OECD), held as collateral by the branches of a Turkish bank.

Finally, new restrictions on foreign currency denominated or indexed payments was introduced last year by the Executive Order of the President amending the Decree No. 32, as a result of which, denomination in foreign currency had become prohibited for many agreements. Nevertheless, this blanket prohibition was later softened up to an extent through certain exemptions under the Communiqués issued by the Ministry of Treasury and Finance. The exemptions include agreements including agreement for sale/lease of movable property, employment contracts, service contracts, works contracts, technology contracts, and public contracts. However, in order to fall under the exemptions, there are conditions regarding the parties and the scope of such agreements.

6.7 CAPITAL MARKETS

The Capital Markets Law is the main piece of legislation which governs the structure of all organised markets, capital markets institutions and their activities, capital markets instruments and their issuance and offerings, main requirements for public companies as well as the structure, powers and duties of the Capital Markets Board which is the regulatory and supervisory authority in charge of the securities markets in Turkey.

The main objective of the Capital Markets Board is to ensure fair, efficient and transparent capital markets in Turkey, protect the rights and interests of the investors, facilitate modernisation of

the capital markets structure and improve Turkish capital markets competitiveness internationally.

The Capital Markets Board is responsible for regulating the activities of, among others, public companies, capital markets institutions (financial intermediaries including banks acting as intermediary, mutual funds, investment companies; real estate investment companies and private equity/venture capital investment companies, appraisal companies, rating firms and other institutions which engage capital markets activities) and the investors in the concerned markets. Also, upon the enactment of Law No. 7061 which has introduced amendments to the Capital Markets Law, crowdfunding has become one of the permitted and regulated methods of raising equity in Turkey regulated by the Capital Markets Board.

Determining the operational principles of the capital markets and introducing and developing new instruments also fall under the regulatory scope of the Capital Markets Board. In this respect, the Capital Markets Board recently introduced to the Turkish capital markets lease certificates as a new instrument which is modelled on *sukuk* bonds. Also, they introduced real estate certificates which allow investor to acquire ownership of real estate in the form of securities. The Capital Markets Board is expected to develop other types of asset backed securities in the near future.

The Capital Markets Board supervises entire procedures for offering and issuance of all types of securities. The offering and issuance procedures and the documents and information required by the Capital Markets Board during such procedures vary depending on the type of securities being issued and the type of the sale method of such securities. Furthermore, depending on the type of securities being issued and type of the sale method of such securities, the Capital Markets Boards also implements certain disclosure requirements for issuers and corporate governance requirements for all publicly traded companies in order to maintain the transparency and integrity of capital markets. Accordingly, certain information which may affect the value of shares or investor's decisions as well as the financial statements and reports prepared in accordance with

the capital markets legislation are required to be disclosed on the Public Disclosure Platform, which is operated by the Central Registry Agency.

The Capital Markets Board is also entitled to apply certain sanctions against the parties breaching the capital markets legislation, including administrative penalties and licence revocations. Further, the Capital Markets Board can file criminal complaints concerning insider trading and market manipulation which are subject to criminal sanctions including imprisonment.

With the enactment of the Capital Markets Law, Borsa Istanbul was established as the sole securities exchange so as to combine all previous exchanges operating in Turkish capital markets under a single institution. To be allowed to trade securities on different markets of Borsa Istanbul, issuers are required to apply to Borsa Istanbul for approval of the listing of their securities. Further, to promote dual listing practice, the capital markets instruments which are listed on main markets of the foreign exchanges can also be listed in Borsa Istanbul. In this respect, foreign companies listed on Bursa Malaysia, Qatar Stock Exchange, Nasdaq Dubai, GPW Warsaw Stock Exchange, Athens Stock Exchange and Nasdaq OMX Nordic can be dual listed on Borsa Istanbul upon approval of their prospectus / issuance certificate by Capital Markets Board without any further conditions, provided that the market value of the listed shares is at least TRY 100 million.

All capital markets instruments are held through the Central Registry Agency which is responsible for the dematerialization and registration of capital markets instruments in electronic form and the operation of the Public Disclosure Platform.

6.8 INSURANCE

The establishment of insurance and reinsurance companies and their activities in Turkey are regulated by the Insurance Law, the Turkish

Commercial Code and the Code of Obligations and certain other laws and the secondary legislation entered into force thereunder.

An insurance company can only be established as a joint stock company or a cooperative. There is no license requirement for establishment. However, an insurance company, once established, must obtain a license from the Undersecretariat of Treasury to start its operations. Each license is specific to a certain branch of insurance (i.e. life, non-life, life-pension or re-insurance) and each insurance company must hold relevant license to operate in the corresponding market.

The legislation provides for certain requirements in relation to the shareholders, the board members and the capital adequacy and reserve requirements of an insurance company (such as minimum share capital, educational background of the board members etc.)

The Insurance Association of Turkey is a professional organisation and as per the Insurance Law, all insurance and reinsurance companies must be a member of the Insurance Association of Turkey. According to the data provided by the Insurance Association of Turkey, it has a total of sixty-five members and currently, thirty-nine non-life insurance companies, twenty-three life and pension companies, and three reinsurance company are actively operating. Lists of the insurance companies can be found on the Association's website at the following links:

<http://www.tsb.org.tr/non-life-companies.aspx?pageID=965>

<http://www.tsb.org.tr/life-and-insurance-companies.aspx?pageID=962>

<http://www.tsb.org.tr/reinsurance-companies.aspx?pageID=966>

According to the Insurance Law, insurable interests of the residents of Turkey have to be insured in Turkey by the insurance companies operating in Turkey; however certain insurance policies can be purchased abroad, such as transportation insurance for goods subject to export and import, liability insurances arising from the operation of ships, life insurances.

According to the Turkish Commercial Code, there are two types of insurance: the loss insurance (property insurance and liability insurance) and personal insurance (life insurance, accident insurance and health insurance). A wide range of different insurances are offered by the insurance companies, such as fire insurance, earthquake insurance, flood insurance, construction insurance (construction all-risk insurance), loss of profit insurance, credit insurance (for trade receivables), third party liability insurance, professional liability insurance, employers liability insurance, product liability insurance, machinery breakdown insurance, electronic equipment insurance, glass insurance, land vehicles insurance (voluntary), insurance on risk arising out of transportation of goods, health insurance. Insurance, as a principle, is procured on a voluntary basis, however there are certain mandatory insurances that must be procured pursuant various laws and regulations (such as traffic insurance, mandatory earthquake insurance (*DASK*), transportation insurances for passenger transportation through land route and sea transportation, dangerous waste liability insurance).

Director and officer liability insurance is available at a number of insurance companies in Turkey covering losses arising out of or caused while performing their duties during their term of office. Also, general terms and conditions of the indemnity insurance (*kefalet sigortası*) have recently been introduced by the Undersecretariat of Treasury. Whilst the range of products is limited and the market for this insurance is still developing, according to the general terms and conditions of the indemnity insurance, insurance companies in Turkey can offer to their customers indemnity insurance providing coverages such as advance payment coverage (against losses arising of non-repayment of the advance), manufacturing/maintenance/repair coverage (against losses arising out of workmanship deficiencies found after the delivery of the work), fidelity guarantee insurance (against the losses of the employer arising out of fraud or embezzling of an employee), agreement coverage (against losses arising from the non-performance of the obligations under an agreement).

Türk Eximbank has special export credit insurance programs since 1989 which provide cover for Turkish exporters against commercial and political risks. Türk Eximbank's insurance programs are composed of two schemes being short-term export credit insurance, and medium- and long-term export credit insurance. Detailed information can be found at the following links:

<https://www.eximbank.gov.tr/en/product-and-services/credits#short-term-export-credits>

<https://www.eximbank.gov.tr/en/product-and-services/credits#medium-and-long-term-export-credits>

7

ENVIRONMENTAL LAW

The Environmental Law and its secondary legislation regulate the protection of the environment and sanction any action which violates the rules in the legislation and may cause pollution to the environment. The Ministry of Environment and Urbanisation acts as the regulatory authority through its provincial directorates. Depending on the nature and type of the activity, investors may be obliged to obtain environmental impact assessment reports and environmental licenses. Non-compliance with the Turkish environmental legislation may result in the imposition of administrative fines and civil and criminal liability.

7.1 ENVIRONMENTAL PERMITS AND ASSESSMENTS

7.1.1 Overview

Pursuant to the Environmental Law, environmental permits and assessments are governed by the Regulation on Environmental Permit and License and the Environmental Impact Assessment Regulation. These regulations introduce an extensive system of licenses and permits required to be obtained pursuant to the environmental legislation.

7.1.2 Environmental Impact Assessment

Depending on the risk profile that the activity of an entity possesses vis-à-vis the environment, such entity may be required to obtain an environmental impact assessment report. For large-scale industrial investment, it is almost always mandatory to obtain a report analysing whether the investment would have significant adverse effects on the environment. The report itself is not sufficient to obtain the clearance of the Ministry of the Environment and Urbanisation for the implementation of the project. The applicable legislation also requires public consultation meetings and review by a special independent committee before the Ministry of Environment and Urbanisation may issue an “*Environment Impact Assessment Affirmative*” or “*Environment Impact Assessment Negative*” decision.

In the former case, the investor can proceed with the investment, subject to other necessary clearances being obtained (if any), whereas the latter restricts any future activity in connection with the investment. Moreover, for the activities subject to environmental impact assessment without getting the EIA Affirmative decision, no other public procedure such as tenders, incentives, plan approvals could be conducted. EIA behaves like a prerequisite for whole other procedures.

7.1.3 Environmental Permits

Investors are obliged to obtain either a “*Environmental Permit*” or “*Environmental Permit and License*” depending on the impact of their activities on the environment. The Ministry of Environment and Urbanisation issues an “*Environmental Permit*” in connection with air emission, environmental noise, deep sea discharge, or hazardous waste discharge from a facility. Investors have to obtain an “*Environmental Permit and License*” in relation to the technical sufficiency of the relevant facility. Each permit and license issued under the Environmental Law is valid for 5 years from the date of issuance and is renewable for additional 5-year periods thereafter.

As a general rule, entities active in the energy, mining, construction and building materials, metal, chemical, surface coating, forest products, food, agriculture and stockbreeding, and waste management sectors and industries are required to obtain either an “*Environmental Permit*” or an “*Environmental Permit and License*”, depending on their production capacity and their discharge requirements. Even if an entity is not subject to licensing under the environmental legislation, it must still comply with the same whilst engaging in activities.

7.1.4 Other Environmental Obligations

Although most of the environmental obligations are covered by (i) Environmental Law, (ii) Environmental Permits and Licenses Regulation and (iii) Environmental Impact Assessment Regulation,

other (in particular sector-specific) environmental obligations are included in other regulations. Entities should also comply with other environmental obligations with respect to the area of activities, specified in the Industrial Air Pollution Control Regulation, Regulation on Assessment and Management of Environmental Noise, Regulation on Protection of Wetlands, Waste Management Regulation, Oil Waste Control Regulation, Packaging Waste Control Regulation, the Regulation on Mitigating the Impacts and Preventing the Severe Industrial Accidents, Radiation Safety Regulation.

7.2 **SANCTIONS**

The Environmental Law introduces a strict no-fault liability regime for non-compliance with the law and polluting the environment. Polluters are liable for the loss occurred due to their actions, regardless of the degree of fault.

In case of a violation, the accused company may be given a reasonable time (not exceeding 1 year) to remedy the breach failing which it may face sanctions. Although most sanctions exist in the form of an administrative fine, violating the Environmental Law and its secondary legislation may also lead to criminal liability for the polluter.

For 2019, the administrative fines due to non-compliance with the Environmental Law and its secondary legislation may reach up to TRY 6,017,320 depending on the severity of the breach. Each year, applicable administrative fine is increased pursuant to a rate announced by the President.

8

COMPETITION LAW

8.1 OVERVIEW

The Turkish Commercial Code and the Competition Law are the primary legal sources protecting competition in Turkish markets. The Turkish Commercial Code deals with unfair competition arising out of deceptive and misleading practices whereas the Competition Law regulates prohibited actions and exemptions thereto, abuse of dominant position, clearances for certain mergers and acquisitions exceeding the relevant monetary thresholds and administrative measures to protect the markets. It is fair to say that the Competition Law and its secondary legislation are substantially aligned with European Union competition legislation.

The Competition Authority is the main body responsible for monitoring and enforcing the Turkish competition legislation and has the authority to, *ex officio* or upon application, inquire and investigate undertakings and transactions that may be in breach of Turkish competition legislation.

8.2 PROHIBITED ACTIONS AND EXEMPTIONS

As general rule, the Competition Law prohibits any and all agreements and concerted practices the object, effect or possible effect of which is to, directly or indirectly, prevent, distort or restrict competition in a market for goods and services unless a block or individual exemption is granted by the Competition Authority.

8.2.1 Prohibited Actions

The Competition Law lists instances it considers prohibited, but these are not limited in numbers. Any and all agreements and concerted practices with similar effects as below shall be deemed to be in breach of the Competition Law:

- (i) determining (i) purchase or sale prices or (ii) factors such as cost and profit or (iii) conditions governing the purchase and sales of goods and services,

- (ii) sharing or controlling market of goods or services and sources of supply of the market,
- (iii) controlling the supply or demand or determining such factors outside of the relevant market,
- (iv) aggravating or restricting activities of competitors, or eliminating other undertakings that operate in the market by boycotts or other practices, or preventing newcomers from entering into the market,
- (v) except for exclusive dealership agreements, applying dissimilar conditions to equivalent transactions with other trading parties, and
- (vi) making the conclusion of contracts subject to (i) purchase of another good or service, (ii) display of another good or service, or (iii) re-supply of goods and services in contradiction to the nature of the agreement or commercial usage.

Nonetheless, the Competition Law allows each undertaking being party to such agreement or concerted practice to defend against such liability by demonstrating that their actions do not constitute a breach of the Competition Law on the basis of economic rationale. Each such undertaking may also benefit from immunity and leniency which would be in the form of full immunity or a reduction of administrative fine.

Pursuant to an official enquiry and investigation, the Competition Authority may impose administrative fines and apply other necessary measures such as cancelling the agreement or reversing any benefit derived therefrom. Although not very common, it may also file a criminal complaint if the agreement or practice breaching the Competition Law constitutes a criminal act. Depending on the gravity of the infringing act, the Competition Authority may fine (i) each concerned undertaking up to 10% of its Turkish turnover generated in the financial year preceding its decision's date; and (ii) each director or employee of such undertaking that had a determining effect on the infringement up to 5% of the concerned undertaking's fine.

8.2.2 Exemptions

Prohibited agreements or practices may benefit from an exemption established or granted by the Competition Authority. Exemptions provided under the Turkish competition legislation can be classified under two sub-sections: block exemptions and individual exemption. Currently, block exemptions granted by the Competition Authority consist of the:

- (i) general block exemption on vertical agreements,
- (ii) block exemption on vertical agreements and concerted practices in the motor vehicle sector,
- (iii) block exemption on research and development agreements,
- (iv) block exemption on specialisation agreements,
- (v) block exemption on the insurance sector, and
- (vi) block exemption on technology transfer agreements.

To benefit from any of the block exemptions, the relevant agreement or practice must fulfil certain criteria set forth under each corresponding communiqué of the Competition Authority including without limitation a market share below 40% or 30% depending on the market. Exemption will stand as long as the criteria are met.

Where an agreement or practice does not or cannot benefit from any of the block exemptions, parties may request the Competition Authority to grant an individual exemption. The Competition Authority may grant such individual exemption provided that such agreement or practice:

- (i) contributes to new developments or the technical or economic improvement in production or distribution of goods and in providing services,
- (ii) allows consumers to benefit from such new developments and improvements,
- (iii) does not eliminate competition in the majority of the relevant market, and
- (iv) does not restrict competition more than is required to achieve the purposes set forth under (a) and (b).

The Competition Authority may grant an individual exemption for a limited or unlimited term and/or make it subject to the fulfilment of certain conditions. It has the full authority to revoke any exemption previously granted if circumstances change, conditions are not met, or it is understood that misleading information has been submitted.

8.3 ABUSE OF DOMINANT POSITION

The Competition Law defines a “*dominant position*” as “...*the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers...*”. Although a market share above 40% would be the first indication of a dominant position in a particular market (or even a lower market share in certain markets), the Competition Authority takes into account various other factors in determining whether an undertaking is in a dominant position in a particular market, such as barriers to market entry, economic power of the dominant undertaking etc.

The Competition Law lists certain forms of abuse on a non-exhaustive basis, however any direct or indirect abusive action affecting any concerned market shall be unlawful and prohibited. Accordingly, abuse can be in the form of:

- (i) preventing entries by other enterprises into the market or impeding the activities of competitors in the market,
- (ii) implementing discriminative practices by imposing different terms on persons with equal status for equal rights, obligations and acts,
- (iii) restricting the purchase and sale conditions during resale of goods and services either by contract bundling or price fixing,
- (iv) distorting competition in other markets by taking financial, technological and commercial advantages created by the dominant position in relevant the market, or
- (v) restricting production, marketing or technical development causing a disadvantage for customers.

8.4 MERGER AND ACQUISITION TRANSACTIONS

A prior clearance of the Competition Authority is required for transactions resulting in a change of control if certain thresholds on the turnover of the transaction parties and/or the target have been exceeded. The transactions requiring clearance could be in the form of a merger, share transfer, asset transfer or otherwise. Accordingly, clearance of the Competition Authority shall be required if:

- (i) the total turnover of the transaction parties in Turkey exceeds TRY 100,000,000 and turnovers of a least 2 of the transaction parties in Turkey each exceed TRY 30,000,000, or
- (ii) the asset or activity subject to the acquisition (i.e. the target) has a turnover in Turkey exceeding TRY 30,000,000 and the other party to the transaction has a global turnover exceeding TRY 500,000,000.

The relevant communiqué of the Competition Authority defines “control” as “rights, contracts or other instruments which, separately or together, allow *de facto* or *de jure* exercise of decisive influence over an undertaking”.

8.5 INVESTIGATIONS AND COMPLAINTS

The Competition Authority may start investigations against any party which is infringing the Competition Law *ex officio* or upon complaint. The applicable statute of limitation is eight years. An investigation may consist of three stages: (i) preliminary investigation, (ii) investigation, and (iii) hearings.

In case of a preliminary investigation, the Competition Authority appoints experts which will collect relevant information and provide the Competition Authority with their opinion in writing within 30 days. At this stage, the Competition Authority does not notify the concerned undertakings of the preliminary investigation. The Competition Authority shall evaluate the outcome of the preliminary investigation within 10 days following receipt of the experts’ written

opinion and decide whether to start an investigation. Once started, investigations shall be completed within 6 months. An additional period of 6 months may be granted by the Competition Authority, if necessary.

Upon initiation of an investigation, the Competition Authority shall inform the relevant undertakings of the investigation within 15 days and such undertakings are granted a 30-day period in order to submit their first written defences together with sufficient information on the matter. The parties shall have the right to request a hearing. Such hearing shall be held separately.

In case a hearing is held, the final decision shall be announced on the same day or within 15 days from the date of the hearing. Otherwise, the final decision shall be made within 30 days following the completion of the investigation process. The verdict may be challenged before the competent administrative court.

9

PUBLIC PROCUREMENT REGIME

9.1 OVERVIEW

The public procurement regime is subject to the Public Procurement Law that governs the pre-tender and tender phases, and the Public Procurement Contracts Law that governs the contract and post-contract phases. The Public Procurement Authority, an administratively and financially autonomous public legal authority, has been established in order to supervise and administer the tender process and to secure the application of procedures and principles specified under the Public Procurement Law. The Public Procurement Authority is mainly responsible for the (i) evaluation of complaints regarding the tender process, (ii) preparation and development of all the legislation concerning the Public Procurement Law and the Public Procurement Contracts Law, and (iii) issuance of all standard tender documents and contracts.

The Public Procurement Law, the Public Procurement Contracts Law and their secondary legislation apply to all tenders concerning the procurement of goods, services and construction works by the following public administrations:

- (i) public departments/institutions (subject to general budget or private budget), governorships, municipalities as well as certain entities incorporated by them;
- (ii) public commercial enterprises,
- (iii) Social Security Institution, funds and certain legal entities granted the status of “public authority” by law,
- (iv) any legal entity (including companies), where more than 50% of their shares are controlled by any of the foregoing entities, and
- (v) certain government-owned banks.

Procurement of certain goods, services and construction works by certain public authorities are explicitly exempted from the Public Procurement Law, without prejudice to the provisions of the Public Procurement Law concerning administrative fines and the rules on prohibition to participate in public tenders.

9.2 PROHIBITION FROM PARTICIPATION IN TENDERS

The Public Procurement Law bars the following persons from bidding in public tenders directly or indirectly or as a sub-contractor:

- (i) those who have been prohibited from participating in tenders by governmental offices or by court order temporarily or permanently, and those who have been convicted of crimes related to terrorism or bribery,
- (ii) those who have been involved in fraudulent bankruptcy,
- (iii) authorised persons of the administration organising the tender and those who are assigned to prepare, execute, complete and approve all tender proceedings,
- (iv) spouses, relatives up to third degree and marital relatives up to second degree, foster children and adopters of those specified above,
- (v) the partners and companies of those specified above from (a) to (d), or
- (vi) those who are presumed to have connection to terrorist organisations, as notified by the National Intelligence Agency or the Directorate of Public Security.

Additionally,

- (i) those who perform prohibited acts under the Public Procurement Law (i.e. committing fraud, forging documents, causing confusion among bidders, endangering the competition, forging documents, submitting more than one tender on its own account or on behalf of others, using defected materials during performance of the work etc.) shall be prohibited from participation in any tender for at least 1 year and up to 2 years depending on the nature of their acts, and
- (ii) those who fail to conclude an agreement, except for force majeure, despite winning the tender shall be prohibited from participation in any tender for at least 6 months and up to 1 year.

Those who have committed prohibited acts and who have been convicted repeatedly, together with any companies in which they own half of the share capital or partnership companies in which they are a partner, shall be permanently prohibited from participating in public tenders by court decision.

9.3 PROCUREMENT PROCESS

The basic principles of a tender are transparency; competition; equal treatment; reliability; confidentiality; public supervision and efficient use of resources; and no consolidation of purchase of goods, services and construction works in the same procurement (unless there is an acceptable natural connection).

Procurements may be held via the open method tender, restricted method tender or bargaining method tender. Open method and restricted method tenders are most commonly used methods. Open method tender is a procedure where all bidders may submit their bids, whereas the restricted method tender is a procedure in which only bidders who are invited by the contracting administration following the pre-qualification stage may submit their bids. The restricted method tender is more common where goods, services or work to be procured requires a certain experience and/or speciality or consists of the procurement of a high technology (such as national defence procurement).

Tenders are prepared by the contracting administration by calculating the estimated cost, preparing administrative and technical specifications and determining the procurement method and rules of qualification. Following this, the tender procedure is approved, the tender commission is established, and finally the tender is announced. Tender announcement includes important information such as (i) name and characteristics, (ii) rules of participation, (iii) indication of whether the tender is limited only to domestic bidders (and whether there is a price advantage for the same), and (iv) the place, date and hour of the official bidding

deadline and tender. Tender announcement periods change depending on the method of procurement.

All documents including the offer letter and the bid bond (not being less than 3% of the offered price) shall be placed in an envelope and submitted to the relevant administration. Documents submitted after the deadline shall not be accepted. Offers are evaluated by the tender commission. Upon evaluation, the successful bidder is notified and will be entitled to enter into a contract on the condition that a performance bond in the amount of 6% of the tender price is provided within 10 days following such notification.

9.4 DISPUTES

Bidders and potential bidders have the right to (i) file a complaint before the contracting administration, (ii) appeal against the outcome of such complaint before the Public Procurement Authority, and (iii) to file a lawsuit regarding the procurement process before an administrative court. The complaint before the contracting authority and appeal procedure before the Public Procurement Authority are mandatory administrative procedures and must be exhausted before filing a lawsuit before an administrative court.

10

PROTECTION OF PERSONAL DATA

Until very recently, Turkey did not have specific legislation governing protection of personal data. The situation has changed upon the enactment of the Data Protection Law. The Data Protection Law has introduced solid principles of data protection in Turkey that are in line with compatible principles of European Union regulations. The Data Protection Law aims to protect fundamental rights and regulate the transfer, processing and storage of personal data. It applies to individuals whose personal data are processed and to individuals or legal entities who process personal data wholly or partially through automatic means or through non-automatic means, provided that the process is a part of a data registry system.

In principle, pursuant to the Data Protection Law, personal data cannot be processed or transferred (domestically or abroad) without the explicit consent of the data subject. The exceptions to this rule are in line with, but more broadly drafted than the relevant regulation of the European Union on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The Data Protection Law classifies certain data as “*sensitive personal data*” which includes biometric and genetic data of individuals together with data regarding their race, ethnic background, philosophical and political view, religion, union affiliations, health and/or sexual life. The major difference between personal data and sensitive personal data is that the general exceptions to the prohibition on processing personal data under the Data Protection Law do not apply to certain types of sensitive personal data (such as personal data related to health and sexual life) and consequently such sensitive personal data can only be processed upon the data subject’s explicit consent or only for the purpose of the protection of public health, rendering preventive medicine, medical diagnosis, treatment and care services, planning and management of healthcare services and financing.

The Data Protection Authority has been established in order to supervise implementation of the Data Protection Law and publish its secondary legislation. Data controllers either individuals or

legal entities, (i) residing abroad or (ii) who employ more than 50 employees annually or (iii) have an annual balance-sheet total exceeding 25,000,000 TRY have to register to the data controllers registry by 30 September 2019. Turkish residents which do not meet this threshold are not subject to such registry obligation, unless they process sensitive personal data, data controllers registry will include the identity of data processor, the purpose of processing, receiver groups to which personal data are transferred, personal data considered to be transferred to foreign countries, measures taken for personal data security, and the maximum time for personal data to be stored. The Regulation on the Data Controller Registry has exempted public notaries, associations, foundations and workers' unions (established per relevant laws and providing that the respective legal entity only processes data limited to their scope of activities), attorneys and certified public accountants and sworn-in certified public accountants from the obligation to register.

Following registration, data processors must ensure that processed data is collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Within this context, while processing personal data the data controller must hold an inventory, which includes the details of data processing with a company policy covering how and when the personal data, retained by the data controller will be destroyed.

Legal entities residing abroad must appoint a representative authorized to communicate with the Data Protection Authority and notify necessary information during registration.

Additionally, the data subject must be informed of the identity of the controller; the purpose of the data processing; third parties to whom the data may be transferred and the purpose of such transfer; the methods and legal reasons for collection of personal data; and data subject's rights.

Data subjects have the right to apply to data controller to:

- (i) learn whether their personal data are processed;

- (ii) request information if their personal data are processed;
- (iii) learn the purpose of the processing of their personal data and whether this data is used for intended purposes;
- (iv) know who the third parties are to whom their personal data is transferred within Turkey or abroad;
- (v) request rectification of incomplete and inaccurate data;
- (vi) request the deletion or destruction of personal data under certain conditions;
- (vii) request notification of their requests and actions taken in relation to (e) and (f) to whom personal data have been transferred;
- (viii) object to the processing, exclusively by automatic means, of their personal data, which leads to an unfavourable consequence for data subject; or
- (ix) request compensation for damages arising from the unlawful processing of their personal data.

Non-compliance with the aforesaid principles and procedure may lead to a monetary fine of up to TRY 1,000,000 and a custodial sentence from 1 to 4 years.

Finally, the Data Protection Law does not apply to data processing:

- (i) by data subjects concerning their purely personal activities or those of family members living in the same dwelling, provided that the data are not disclosed to third parties and data security obligations are complied with.
- (ii) for official statistical and planning purposes after anonymization.
- (iii) for artistic, historical, literary, and scientific purposes, or within the scope of freedom of expression without violating national defence, national security, public security, public order, economic security, the right to privacy or personal rights, or without constituting a crime.

- (iv) within the scope of preventive, protective and intelligence activities carried out by authorised public institutions and organizations.
- (v) by judicial/execution authorities in the context of investigation, prosecution, criminal and execution proceedings.

APPENDIX 1
DEFINITIONS

“Banking Law” means the Banking Law, Law No. 5411, which was published in the Official Gazette dated 01.11.2005 and numbered 25983(Duplicate);

“Borsa Istanbul” means Borsa Istanbul Anonim Sirketi, which was established on 30.12.2012;

“BRSA” means the Banking Regulation and Supervision Board of the Republic of Turkey;

“Capital Markets Board” means the Capital Markets Board of the Republic of Turkey;

“Capital Markets Law” means the Capital Markets Law, Law No. 6362, which was published in the Official Gazette dated 30.12.2012 and numbered 28513;

“Central Bank Communiqué No. 6 relating to Decree No. 88/12944” means the Communiqué No. 6 on the Resource Utilisation Support Fund pursuant to the Decree dated 12.05.1988 and numbered 88/12944, which was published in the Official Gazette dated 26.08.1989 and numbered 20264;

“Central Registry Agency” means the central securities depository for capital market instruments, which the Capital Markets Board decides to be dematerialised;

“Code of Civil Procedure” means the Code of Civil Procedure, Code No. 6100, which was published in the Official Gazette dated 04.02.2011 and numbered 27836;

“Code of Labour Courts” means the Code of Labour Courts, Code No. 7036, which was published in the Official Gazette dated 12.10.2017 and numbered 30221;

“Code of Obligations” means the Turkish Code of Obligations, Code No. 6098, which was published in the Official Gazette dated 04.02.2011 and numbered 27836;

“Commercial Enterprise Pledge Law” means the Commercial Enterprise Pledge Law, Law No. 1447, which was published in the Official Gazette dated 28.07.1971 and numbered 13909 and which was

abolished upon the entry into force of the Law regarding Pledges on Movable Property for Commercial Transactions;

“**Competition Authority**” means the Turkish Competition Authority;

“**Competition Law**” means the Competition Law, Law No. 4054, which was published in the Official Gazette dated 13.12.1994 and numbered 22140;

“**Condominium Law**” means the Condominium Law, Law No. 634, which was published in the Official Gazette dated 02.07.1965 and numbered 12038;

“**Constitution**” means the Constitution of the Republic of Turkey, which was published in the Official Gazette dated 09.11.1982 and numbered 17863;

“**Constitutional Court**” means the Constitutional Court of the Republic of Turkey;

“**Consumer Protection Law**” means the Consumer Protection Law, Law No. 6502, which was published in the Official Gazette dated 28.11.2013 and numbered 28835;

“**Council of State**” means the Council of State of the Republic of Turkey;

“**Court of Appeals**” means the Court of Appeals of the Republic of Turkey;

“**Court of Jurisdictional Disputes**” means the Court of Jurisdictional Disputes of the Republic of Turkey;

“**Data Protection Authority**” means the Data Protection Authority of the Republic of Turkey;

“**Data Protection Law**” means the Data Protection Law, Law No. 6698, which was published in the Official Gazette dated 07.04.2016 and numbered 29677;

“**Decree No. 32**” means the Decree on the Protection of the Value of Turkish Currency numbered 32, which was published in the Official Gazette dated 11.08.1989 and numbered 20249;

“**Directorate of Public Security**” means the Turkish Directorate of Public Security;

“**Energy Charter Treaty**” means the Energy Charter Treaty, which entered into force in April 1998;

“**Enforcement and Bankruptcy Law**” means the Enforcement and Bankruptcy Law, Law No. 2004, which was published in the Official Gazette dated 19.06.1932 and numbered 2128;

“**Environment Impact Assessment Affirmative**” means the affirmative decision issued by the Ministry of Environment and Urbanisation pursuant to the Environmental Impact Assessment Regulation;

“**Environment Impact Assessment Negative**” means the negative decision issued by the Ministry of Environment and Urbanisation pursuant to the Environmental Impact Assessment Regulation;

“**Environmental Impact Assessment Regulation**” means the Environmental Impact Assessment Regulation, which was published in the Official Gazette dated 25.11.2014 and numbered 29186;

“**Environmental Law**” means the Environmental Law, Law No. 2872, which was published in the Official Gazette dated 11.08.1983 and numbered 18132;

“**Environmental Permit**” means the environmental permit issued by the Ministry of Environment and Urbanisation pursuant to the Regulation on Environmental Permits and Licenses;

“**Environmental Permit and License**” means the environmental permit and license issued by the Ministry of Environment and Urbanisation pursuant to the Regulation on Environmental Permits and Licenses;

“**EU Member State**” means a member state of the European Union;

“**European Union**” means the economic and political union of 28 member states, established through the Maastricht Treaty of 1993;

“**FDI**” means foreign direct investment;

“**FDI Law**” means the Foreign Direct Investment Law, Law No. 4875, which was published in the Official Gazette dated 17.06.2003 and numbered 25141;

“**GDP**” means the gross domestic product, as defined by the OECD, of the Republic of Turkey;

“**General Directorate of International Workforce**” means the General Directorate of International Workforce of the Ministry of Family, Labour and Social Services;

“**General Directorate of Land Registry and Cadastre**” means the Turkish General Directorate of Land Registry and Cadastre;

“**Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents**” means the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents of 05.10.1961;

“**ICSID Convention**” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14.10.1966;

“**IMF**” means the International Monetary Fund;

“**Industrial Air Pollution Control Regulation**” means the Industrial Air Pollution Control Regulation, which was published in the Official Gazette dated 03.07.2009 and numbered 27277;

“**Insurance Law**” means the Insurance Law, Law No. 5684, which was published in the Official Gazette dated 14.06.2007 and numbered 26552;

“**International Work Force Law**” means the International Work Force Law, Law No. 6735, which was published in the Official Gazette dated 13.08.2016 and numbered 29800;

“**IP Law**” means the Intellectual Property Law, Law No. 6769, which was published in the Official Gazette dated 10.01.2017 and numbered 6769;

“**Istanbul Arbitration Centre**” means the Istanbul Arbitration Centre, which was established through the Istanbul Arbitration

Centre Law, Law No. 6570 and published in the Official Gazette dated 29.11.2014 and numbered 29190;

“Labour Health and Safety Law” means the Labour Health and Safety Law, Law No. 6331, which was published in the Official Gazette dated 30.06.2012 and numbered 28339;

“Labour Law” means the Labour Law, Law No. 4857, which was published in the Official Gazette dated 10.06.2003 and numbered 25134;

“Law No. 1475” means the Former Labour Law, Law No. 1475, which was published in the Official Gazette dated 01.09.1971 and numbered 13943 and which was abolished upon the entry into force of the Labour Law;

“Law No. 7061” means the Law on the Amendment of Some of the Tax Laws and Other Laws, Law No. 7061 which was published in the Official Gazette dated 05.12.2017 and numbered 30261;

“Law on Intellectual and Artistic Works” means the Law on Intellectual and Artistic Works, Law No. 5846, which was published in the Official Gazette dated 05.12.1951 and numbered 5846;

“Law regarding Pledges on Movable Property for Commercial Transactions” means the Law regarding Pledges on Movable Property for Commercial Transactions, Law No. 6750, which was published in the Official Gazette dated 28.10.2016 and numbered 29871;

“Lease Law” means the Law on the Lease of Real Estate, Law No. 6570, which was published in the Official Gazette dated 27.05.1955 and numbered 9013 and which was abolished upon the entry into force of the Code of Obligations;

“Minimum Wage Determination Commission” means the Minimum Wage Determination Commission of the Ministry of Family, Labour and Social Services;

“Ministry of Environment and Urbanisation” means the Ministry of Environmental and Urbanisation of the Republic of Turkey and its regional divisions;

“Ministry of Family, Labour and Social Services” means the Ministry of Family, Labour and Social Services of the Republic of Turkey and its regional divisions;

“Ministry of Foreign Affairs” means the Ministry of Foreign Affairs of the Republic of Turkey and its regional divisions;

“Ministry of Trade” means the Ministry of Trade of the Republic of Turkey and its regional divisions;

“Ministry of Treasury and Finance” means the Ministry of Treasury and Finance of the Republic of Turkey and its regional divisions;

“National Intelligence Agency” means the Turkish National Intelligence Agency;

“New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which entered into force on 07.06.1959;

“OECD” means the Organisation for Economic Co-operation and Development;

“Oil Waste Control Regulation” means the Oil Waste Control Regulation, which was published in the Official Gazette dated 30.07.2008 and numbered 26952;

“Packaging Waste Control Regulation” means the Packaging Waste Control Regulation, which was published in the Official Gazette dated 24.08.2011 and numbered 28035;

“Public Disclosure Platform” means the electronic system under which notifications required to be announced to the public pursuant to Turkish capital markets legislation are disclosed;

“Public Procurement Authority” means the Turkish Public Procurement Authority;

“Public Procurement Contracts Law” means the Public Procurement Contracts Law, Law No. 4735, which was published in the Official Gazette dated 22.01.2002 and numbered 24648;

“Public Procurement Law” means the Public Procurement Law, Law No. 4734, which was published in the Official Gazette dated 22.01.2002 and numbered 24648;

“Radiation Safety Regulation” means the Radiation Safety Regulation, which was published in the Official Gazette dated 24.03.2000 and numbered 23999;

“Regulation on Assessment and Management of Environmental Noise” means the Regulation on Assessment and Management of Environmental Noise, which was published in the Official Gazette dated 04.06.2010 and numbered 27601;

“Regulation on the Data Controllers Registry” means the Regulation on Data Controllers Registry, which was published in the Official Gazette dated 30.06.2017 and numbered 30286;

“Regulation on Environmental Permits and Licenses” means the Regulation on Environmental Permits and Licenses, which was published in the Official Gazette dated 10.09.2014 and numbered 29115;

“Regulation on Financial Holding Companies” means the Regulation on Financial Holding Companies, which was published in the Official Gazette dated 01.11.2006 and numbered 26333;

“Regulation on the Implementation of the FDI Law” means the Regulation on the Implementation of the Foreign Direct Investment Law, which was published in the Official Gazette dated 20.08.2003 and numbered 25205;

“Regulation on the Implementation of the Turkish Citizenship Law” means the Regulation on the Implementation of the Turkish Citizenship Law, which was published in the Official Gazette dated 06.04.2010 and numbered 27544;

“Regulation on Mitigating the Impacts and Preventing the Severe Industrial Accidents” means the Regulation on Mitigating the Impacts and Preventing the Severe Industrial Accidents, which was published in the Official Gazette dated 30.12.2013 and numbered 28867(Duplicate);

“Regulation on Protection of Wetlands” means the Regulation on Protection of Wetlands, which was published in the Official Gazette dated 04.04.2014 and numbered 28962;

“Repealed Code” means the former Code of Obligations, Code No. 818, which was published in the Official Gazette dated 08.05.1926 and numbered 366;

“Repealed Turkish Civil Code” means the former Turkish Civil Code, Code No. 743, which was published in the Official Gazette dated 04.04.1926 and numbered 339;

“Social Security Institution” means the Social Security Institution of the Republic of Turkey and its regional divisions;

“Social Security Law” means the Social Security Law, Law No. 5510, which was published in the Official Gazette dated 16.06.2006 and numbered 26200;

“Stamp Duty Law” means the Stamp Duty Law, Law No. 488, which was published in the Official Gazette dated 11.07.1964 and numbered 11751;

“Swiss Civil Code” means the Civil Code of the Swiss Confederation, which was adopted on 10.12.1907 and in force since 1912;

“Swiss Code of Obligations” means the Code of Obligations of the Swiss Confederation, which was adopted in 1911 and in force since 01.01.1912;

“TAKBIS” means the Turkish Land Registry and Cadastre Information System;

“Trade Union and Collective Bargaining Agreements Law” means the Trade Union and Collective Bargaining Agreements Law, Law No. 6356, which was published in the Official Gazette dated 07.11.2012 and numbered 28460;

“TRY” means the official currency of the Republic of Turkey;

“Turkish Citizenship Law” means the Turkish Citizenship Law, Law No. 5901, which was published in the Official Gazette dated 12.06.2009 and numbered 27256;

“Turkish Civil Code” means the Turkish Civil Code, Code No. 4721, which was published in the Official Gazette dated 08.12.2001 and numbered 24607;

“Turkish Commercial Code” means the Turkish Commercial Code, Code No. 6102, which was published in the Official Gazette dated 14.02.2011 and numbered 27846;

“Turkish International Arbitration Law” means the International Arbitration Law, Law No. 4686, which was published in the Official Gazette dated 05.07.2001 and numbered 24453;

“Turkish Patent and Trademark Institution” means the Patent and Trademark Institution of the Republic of Turkey;

“Turkish Republic of Northern Cyprus” means the Turkish Republic of Northern Cyprus, which was established on 15.11.1983;

“Turkish Statistical Institute” means the Statistical Institute of the Republic of Turkey;

“Turkish Trade Registry Gazette” means the Turkish Trade Registry Gazette in which legally required corporate and commercial affairs are announced;

“Türk Eximbank” means Turkish Export Credit Bank, a state-owned bank acting as the Turkish government’s major export incentive instrument in Turkey’s sustainable export strategy;

“Undersecretariat of Treasury” means the Undersecretariat of Treasury of the Ministry of Treasury and Finance;

“United Nations Convention on Contracts for the International Sale of Goods” means the United Nations Convention on Contracts for the International Sale of Goods, which entered into force on 01.01.1988;

“USD” means the official currency of the United States of America;

“Waste Management Regulation” means the Waste Management Regulation, which was published in the Official Gazette dated 02.04.2015 and numbered 29314;

“World Trade Organization’s Agreement on Trade Related Investment Measures” means the World Trade Organization’s Agreement on Trade Related Investment Measures, which was concluded in 1994 and which entered into force in 1995.



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INVESTMENT OFFICE



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