

FUNDAMENTALS OF TURKISH BUSINESS LAW

YENİARAS | ATTORNEYS AT LAW

ISTANBUL

NOVEMBER 2017

DISCLAIMER

The information contained in this printed material is provided for informational purposes only, and should not be construed as legal advice on any subject matter.

No recipients of content from this memorandum, clients or otherwise, should act or refrain from acting on the basis of any information included herein without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue. This memorandum contains general information and may not reflect current legal developments, verdicts or legislation. Yeniaras Attorneys at Law expressly disclaims all liability in respect to actions taken or not taken based on any or all the contents of this memorandum.

Furthermore, this memorandum is prepared in accordance with the professional rules of conduct of Istanbul Bar Association and is not intended to be used as a means of advertising any services provided by Yeniaras Attorneys at Law.

Yeniaras | Attorneys at Law

www.yeniaras.av.tr
info@yeniaras.av.tr

İnönü Caddesi, Miralay Şefik Bey Sokak,
Antalya Palas Apt. No:5/11
Gümüşsuyu Beyoğlu
İstanbul
TURKEY

FOREWORD

In today's world where the effects of the globalization have overwhelmed the traditional methods of doing business, professionals are increasingly in need of what is truly the world's most valuable resource: Information.

The challenge lies not in the accessibility of information, but in the variety and credibility of the myriad sources. Efficient and cost effective access, analysis, and processing of information are essential for accurate and timely decision-making in an era of steady elimination of many limitations on international transactions. For this reason, having a basic understanding of the legal system of any target jurisdiction is at the very heart of assessing the accuracy and usefulness of the information provided by sellers and advisors.

It was from this perspective that we have endeavored to assemble the basic principles of Turkish business law in a convenient format for investors seeking to understand the legal and administrative investment climate in Turkey. We hope this work will serve as a useful departure point for your efforts.

TURKEY: GROWING OPPORTUNITIES IN AN EMERGING MARKET

The rise of Turkey as an appealing environment for foreign investors coincides with a change in the local regulatory and institutional climate that occurred in the late 80's. This was the result of decisive governmental policies established to eliminate the legal, administrative and economic barriers to private investment.

Undoubtedly, the great advantage of Turkey is its unique geographic position as a logistically convenient market for Russia and former Soviet Republics, the European Union, and the Middle East. Turkey's close cultural proximity to the Islamic capital countries is another key factor in appreciating the commercial advantages of locating a company on Turkish soil. These geographic advantages, together with the availability of a young and cost effective labor-force and a globally integrated economic system, has turned Turkey into an attractive center for individual investors and multi-national companies interested in emerging markets.

The efforts to align Turkish legislation with the European Union, and Turkey's eagerness to play the leading role in the region have resulted in a rapidly modernizing infrastructure in the financial and legal fields that can meet the needs of foreign investors. Consequently, Turkey has seen an explosion in foreign direct investments; culminating in an all-time high of USD 22 billion in 2007. In 2016, the total FDI (equity investment, intra-company loans and real estate investments) reached a total of USD 12.3 Billion despite restraining economic factors that affected world markets.

The FDI inflow chart below indicates a five-year perspective:

FDI Inflow to Turkey by Year

USD million					
	2012	2013	2014	2015	2016
FDI Total (Net)	13,628	12,896	12,828	17,550	12,273
Equity Investments (Net)	10,128	9,322	8,370	11,710	6,277
▶ Inflows	10,761	9,890	8,631	12,074	6,886
▶ Liquidation Outflows	633	568	261	364	609
Intra-Company Loans*	864	525	137	1,684	2,106
Real Estate (Net)	2,636	3,049	4,321	4,156	3,890

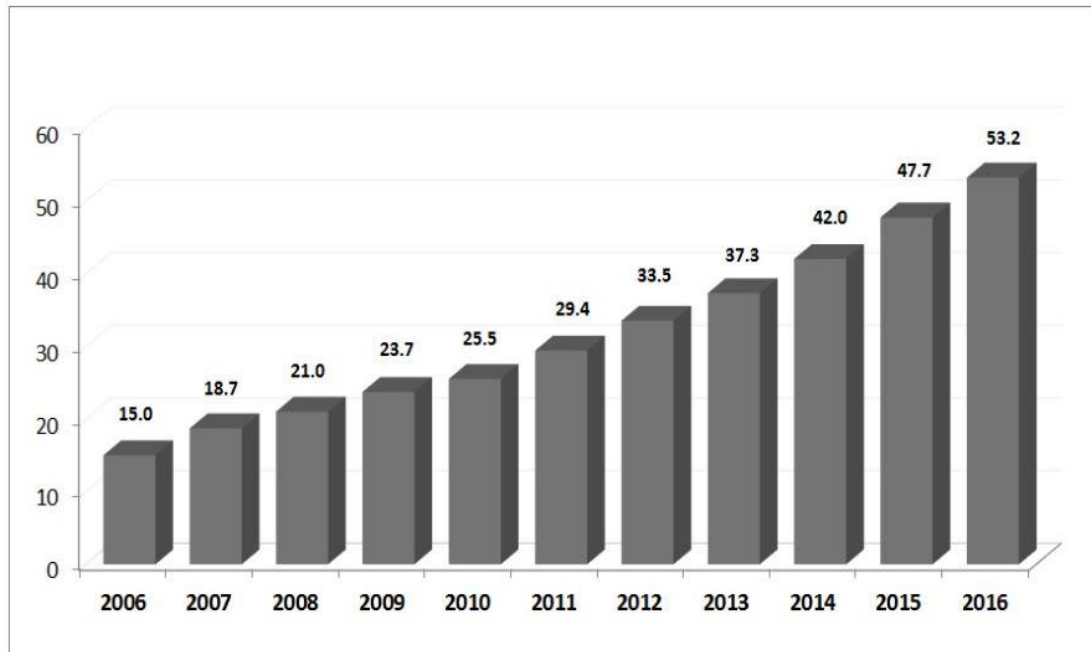
*Loans that companies with foreign capital are given by foreign partners

Source: Central Bank of the Republic of Turkey

In addition, the private equity investors' interest in Turkey has significantly increased in last few years, reaching nine-digit numbers in terms of transaction size, although venture capital structuring remains relatively immature. Turkey currently has the world's 17th largest, and Europe's 5th largest, economy.

As of December 2016, 52.300 companies with foreign capital are active in Turkey.

Number of Companies with International Capital (Cumulative, in thousands)



Source: Ministry of Economy

Elimination of cumbersome bureaucratic barriers in business life has been among the top goals of the Turkish legislature's agenda. Of 181 countries, Turkey is ranked 60th in the World Bank's *Ease of Doing Business Index* in 2016, with best records in property registration, enforcement of contracts, and starting of business activities. The Turkish GDP for 2016 was approximately USD 857 Billion. Turkey's imports in 2016 amounted to USD 188 billion while the exports left a trade deficit of USD 49 billion with the exports reaching USD 139 billion. With a total population of over 75 million people, Turkey has a strong labor force of more than 25 million individuals.

Based on these facts, Turkey's world-oriented regulatory environment makes for one of today's most promising emerging markets for global investors and international business organizations. The globalization of the Turkish economy and legal practice opens new horizons for international growth and cooperation.

CONSTITUTIONAL FRAMEWORK FOR PRIVATE INVESTMENT

Under the democratic parliamentary system based on the principles of the rule of law, equality and secularism, the Constitution of the Republic of Turkey provides for a strict protection of private entrepreneurship by clearly stating that every person has the freedom of employment and the freedom to enter into contracts in any area not prohibited by law. Moreover, the Constitution assigns to the government the duty to take necessary measures to ensure the safe and stable functioning of the private sector. It has also been repeatedly confirmed by Turkey's Constitutional Court that the governmental duty to protect private entrepreneurship extends to all fields of private law including the enhancement of investment opportunities as well as equal treatment of investors.

the governmental duty to protect private entrepreneurship extends to all fields of private law including the enhancement of investment opportunities as well as equal treatment of investors

One practical consequence of this constitutional provision is the possibility for subsequent challenge of the constitutionality of the laws governing entrepreneurial activities before the Constitutional Court. Although this remains the sole legal procedure to challenge laws and certain executive acts (individual recourse is not allowed), the *ex post* control of constitutionality forms a strong jurisdictional medium that functions effectively. In this respect, combined with the liberal underpinnings of Turkish legal system, the governmental duty to protect the private sector is the major safeguard placed at the top of the hierarchy of rules.

TURKISH JUDICIAL SYSTEM AND DISPUTE RESOLUTION

A. CONSTITUTIONAL PRINCIPLES

The Constitution of the Republic of Turkey sets forth the governing principles of the judicial system.

Article 138 of the Constitution allows independent courts to exercise the judicial power on behalf of the citizens of Turkey. The judges must make their rulings within the limits of the Constitution and the laws. All individuals are equal without any discrimination before the law, regardless of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any other such considerations. Moreover, no person or institution (public or private) may order, counsel, suggest or otherwise influence the courts to act in a specific manner during the exercise of the judicial power. The executive and legislative branches of the government must comply with the rulings of the courts, without exception.

It should be also emphasized that no one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court cannot be established.

Under Articles 139 through 144, the Constitution ensures the proper functioning of the judicial system by introducing the concepts of “professional assurances of judgeship and public attorneyship”, prohibiting dismissal of judges from office, ensuring fair trial procedures such as open hearings, requiring the rulings to be reasoned and transparent, and compelling the finalization of lawsuits in an expeditious and cost-efficient manner before the competent courts.

In light of the governing principles of the Turkish Constitution and its system of checks and balances, the entire judicial system and the use of discretionary powers of the judges are subject to the continuous monitoring by inspectors designated by the Ministry of Justice.

*no person or institution
(public or private) may
order, counsel, suggest or
otherwise influence the
courts to act in a specific
manner during the
exercise of the judicial
power*

B. COURT SYSTEM IN THE REPUBLIC OF TURKEY

The Turkish judicial system consists of four types of courts: Constitutional, Judicial, Administrative and Military. Each system includes courts of first instance and higher appellate courts. In addition, a Court of Jurisdictional Disputes rules on controversies that cannot be classified readily as falling within the purview of a single court system.

1. CONSTITUTIONAL COURT

The Constitutional Court has jurisdiction over the constitutionality of laws and executive decrees that have the force of law. Its members are selected by the President of the Republic and include the judges of the highest appeals court within each class of courts. The members of high courts and the holders of the highest executive and legislative offices are subject to the jurisdiction of the Constitutional Court for allegations pertaining to their acts in relation to their official duties. The

Court also has the authority to hear actions for prohibition of political parties and the removal of the legislative immunities of members of the parliament.

2. JUDICIAL COURTS

The judicial courts consist of the civil and criminal courts. Review of the rulings of the judicial courts is handled by the Court of Appeals (*Yargıtay*) that has the final word on the legality of the rulings of the civil and criminal courts of first instance.

a. CIVIL COURTS

The Civil Courts under the Turkish judicial system are categorized under two classes: Civil Courts of General Jurisdiction and the Civil Courts of Specific Jurisdiction. For purposes of efficiency and accuracy in trials of specific matters, cases requiring specific expertise are assigned to the courts of specific jurisdiction. All the rulings of the Civil Courts, either of general or specific jurisdiction, are subject to the review of the Court of Appeals.

i. CIVIL COURTS OF GENERAL JURISDICTION

The civil courts of general jurisdiction are “the civil courts of peace” (*Sulh Hukuk Mahkemeleri*) which are the lowest-level courts having jurisdiction (usually) over matters with lower disputed amounts and “the civil courts of first instance” (*Asliye Hukuk Mahkemeleri*) which handle the cases with relatively higher amounts in dispute.

ii. CIVIL COURTS OF SPECIFIC JURISDICTION

Following are the most common Courts of Specific Jurisdiction that have authority to rule on fields of law in which judges must have expertise with and knowledge of a specific set of rules and customs of the relevant practice areas:

The “Commercial Courts” (*Ticaret Mahkemeleri*) are the civil courts established to resolve disputes between merchants within the scope of the Turkish Commercial Code.

The “Labor Courts” (*İs Mahkemeleri*) have the authority to resolve employment disputes between employers and employees under the Labor Law.

The “Courts of Intellectual and Industrial Rights” (*Fikri ve Sinai Haklar Mahkemeleri*) are vested with jurisdictional powers under different laws and regulations, and have, *inter alia*, jurisdiction over matters concerning protection of trademarks, geographical signs and patent rights.

The “Cadastral Courts” (*Kadastro Mahkemeleri*) have jurisdiction over disputes relating to land ownership matters.

The “Execution Courts” (*İcra Mahkemeleri*) rule on complaints and requests regarding the acts of the execution and bankruptcy offices.

The “Family Courts” (*Aile Mahkemeleri*) decide on matters relating to family law.

b. CRIMINAL COURTS

There are three types of criminal courts in the Turkish judicial system. The courts are ranked in accordance with the severity of the crimes over which they have jurisdiction. They are the criminal courts of peace, the criminal courts of first instance, and the criminal courts for high crimes. The jury trial does not exist in the Turkish legal system. Instead, the criminal courts for higher crimes

consist of a bench of three judges while only one judge administers the trial at other criminal courts. The criminal chambers of the Court of Appeals review the rulings of all criminal courts, including the courts of peace.

3. ADMINISTRATIVE COURT SYSTEM

According to the Turkish Constitution, all physical and legal acts of the administration must conform to law, and the control of the legality of such acts is within the jurisdiction of the Administrative Courts. The Administrative court system consists of the “Administrative Courts” (*İdare Mahkemeleri*) and the “Tax Courts” (*Vergi Mahkemeleri*). The decisions of these courts are subject to judicial review by the relevant “Administrative Court of Circuit” (*Bölge İdare Mahkemesi*) and/or the “Council of State” (*Danıştay*) (i.e. the highest administrative court).

a. ADMINISTRATIVE COURTS

The Administrative Courts have jurisdiction over (i) actions for the nullification of administrative acts, (ii) actions for damages resulting from the acts of the administration, and (iii) disputes regarding public service concession agreements.

b. TAX COURTS

The Tax Courts rule on tax-related disputes between the government and natural or legal persons, and matters relating to the collection of the government’s receivables under the procedures set forth under the Law on Procedure of Collection of Public Receivables.

4. MILITARY COURT SYSTEM

The “Military Court” (*Askeri Mahkeme*) is the court of first instance for crimes committed by military personnel in relation to their responsibilities and duties and certain other special circumstances where persons who are not members of the armed forces may be subject to its jurisdiction. The “Military Court of Appeals” (*Askeri Yargıtay*) reviews the rulings of the Military Courts.

The High Administrative Military Court (*Askeri Yüksek İdare Mahkemesi*) is the court that exercises jurisdiction over matters concerning the (administrative) acts of the various military administrations and bureaucracy that affect military personnel. The High Administrative Military Court is a court with exceptional judicial power since its rulings are final, without any recourse to or review by a higher court.

There are also “Discipline Courts” (*Disiplin Mahkemesi*) that handle discipline-related matters within the military court system.

STATUS AND PROTECTION OF FOREIGN DIRECT INVESTMENTS IN TURKEY

The main body of law applicable to foreign investments in Turkey is the Foreign Direct Investment Law (the “**FDI**”), enacted in 2003. The FDI places the rule of “equal treatment” at the heart of the foreign direct investments regime in the Republic of Turkey. The FDI aims at aligning the rights of foreign investors with international standards by eliminating certain bureaucratic procedures and fostering cost-effectiveness, transparency, and consistency in the Turkish market.

“Foreign direct investment” is described as (i) establishing a company or branch, or (ii) acquisition of shares from non-listed companies or acquisition of shares representing at least 10% of the target listed companies. To achieve these criteria, convertible cash capital, corporate securities, machinery and tools, and industrial or intellectual property rights brought into Turkey from abroad may be freely used. Dividends, receivables, profits and similar rights, as well as the rights pertaining to the search and extraction of natural resources qualify as “direct foreign investment” for purposes of the criteria. Foreign investors may freely invest in Turkey and they have the absolute right to equal treatment under law.

*foreign investors may
freely invest in Turkey
and they have the
absolute right to equal
treatment under law.*

In addition to the equal treatment doctrine, the FDI stipulates that:

- (i) Direct foreign investments may not be expropriated without just compensation,
- (ii) Profits, dividends, transactional proceeds, amounts receivable under license agreements, re-payments of loans and the interest due thereon may be freely transferred to foreign countries through financial institutions,
- (iii) Companies established or owned by foreign investors in Turkey may freely acquire title to real estate or the rights of usage thereon,
- (iv) Disputes relating to private law contracts of foreign investors may be solved by arbitration,
- (v) Citizens of foreign countries may work in Turkey under the rules set forth by the Ministry of Labor and Social Security, and
- (vi) Foreign companies may establish liaison offices under the rules set by relevant public authorities.

In addition to the protections of the FDI, Turkey has entered into international agreements on mutual protection of investments with 84 nations. Albania, Argentina, Afghanistan, Austria, Azerbaijan, Bangladesh, Belarus, Belgium/Luxembourg, Bosnia and Herzegovina, Bulgaria, China, Croatia, Cuba, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, Georgia, Germany, Greece, Hungary, Indonesia, Islamic Republic of Iran, Israel, Italy, Japan, Jordan, Kazakhstan, Republic of Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Republic of Macedonia, Malaysia, Malta, Moldova, Mongolia, Morocco, Netherlands, Pakistan, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Kingdom, United States, Uzbekistan, and Yugoslavia are among the countries with whom the Republic of Turkey entered into such mutual protection agreements.

The Republic of Turkey is also a party to the Customs Union and has executed free trade agreements with EFTA (Austria, Finland, Iceland, Lichtenstein, Norway, Sweden, and Switzerland), Israel,

Romania, Bulgaria, Macedonia, Croatia, Bosnia and Herzegovina, Morocco, Palestine, Syria, Tunisia and Egypt. There are also other sector-specific free trade agreements in effect between Turkey and multi-national organizations throughout the world.

It should be equally emphasized that the accession negotiations are ongoing with the European Union. The accession of Turkey to the European Union is likely to launch a remarkably more intensive set of commercial and legal relations with other member states.

BUSINESS ORGANIZATIONS

Although not always the case, doing business in Turkey may require the incorporation of a company under the laws of the Republic of Turkey. Turkish law provides different options to investors in terms of company types, based on the size, liability regime, taxation concerns and expansion possibilities. Although the mainstream approach to this question is to proceed with a joint stock company or a limited liability company in Turkish commercial life, a thorough analysis of the case-specific needs is necessary to avoid possible future shortcomings due to inappropriate choices.

The Turkish Commercial Code (the “TCC”) provides for different company types, namely the “Collective Company”, the “Commandite Company”, the “Joint Stock Company” and the “Limited Liability Company”. Another type of company regulated under the Code of Obligations (the “CoO”) is the “Partnership”.

Other business organizations can be established through legislative acts, *e.g.* companies rendering public services, companies operating in areas that necessitate special expertise and knowledge, and public institutions designed to form the legal grounds for the state activity in certain fields of strategic importance.

A. COLLECTIVE COMPANY

The collective company is an unlimited liability company established in order to run a commercial enterprise under a specific tradename, where the incorporators are personally liable for the debts of the company. The owners’ liability is in the second degree, yet joint and several. Collective companies have relatively easier and less expensive incorporation procedures. Although there are no minimum capital requirements, the TCC requires those companies to have sufficient capital to undertake the commercial tasks described in their incorporation agreements. There must be at least two incorporators, and the owners of the company have to be natural persons.

a number of company types are available for those seeking to establish a commercial presence in Turkey. Investors may enjoy the benefits of limited liability under the most preferred business organizations such as the Limited Liability Partnership or the Joint Stock Company while others may seek more flexible solutions such as entities with personal liability

An “administrator” governs the Collective Company, and is designated in the agreement or is elected after the incorporation. Owners have an absolute right to inspect company books and records and there is further a prohibition of competition with the company and restrictions on the change of ownership structure.

Collective Companies are terminated by the owners’ consent, by judicial decree, or upon occurrence of special circumstances shown under the applicable provisions of the TCC.

Even though it is practically possible to establish a Collective Company, it is rarely chosen by investors as a business organization.

B. COMMANDITE COMPANY

Originally a creation of French Law, the Commandite Company is another type of corporate entity available under Turkish Law and shows similar characteristics to the Collective Company. Unlike the Collective Company, however, owners of a Commandite Company may be either “dormant” or “active”. While the dormant partner is usually responsible of financing the company’s activities through capital contributions, the active partner actually runs the business. Therefore, the dormant partner’s managerial rights are very limited – if not totally removed – in a Commandite Company. Since the dormant partner’s role is merely financing the business, he benefits from a shield of limited liability. Under the same rationale, the active partner is personally liable for the debts of the business.

The TCC requires the Commandite Company to be established by a minimum of two partners and the active partner must be a natural person. The TCC makes reference to the provisions on the Collective Companies on matters concerning the prohibition on competition, change of ownership structure and the right to inspect the company books and records for the Commandite Company. The Commandite Company dissolves upon consensual termination by the owners, the court’s decision, or special circumstances detailed under the TCC.

The Commandite Company, due to the availability of more convenient and time-efficient structures such as the Joint Stock Company and the Limited Liability Company, is another obsolete business organization that is no longer employed in Turkish business life.

C. JOINT STOCK COMPANY

According to its description under Turkish Law, the Joint Stock Company (the “JSC”) is the type of business organization operating under a trade name and a distinct legal personality, the capital of which is divided into shares, and where the shareholders’ liability is limited to their capital contribution. The company’s liability to its creditors is limited to the company assets. The capital of the company must be fully subscribed and a legally prescribed portion thereof must be paid at the stage of incorporation. Although the TCC and the Capital Markets Law (the “CML”) (the subject matter of which is public companies) set forth the rules governing JSC’s, they may be subject to special regulations depending on their field of activity or their purpose of incorporation (*e.g.* rendering public services). The shares are represented by share certificates or temporary share certificates; nevertheless, the shareholding status may be recorded on the shareholders’ ledger of the JSC without any certificates issued. Legal persons as well as natural persons may be shareholder of JSC’s.

The JSC may be established for any economic purpose not prohibited by law and its duration may be indefinite. Except for companies seeking to show commercial activity in areas subject to tighter regulations (*e.g.* commercial banks, financial institutions, insurance companies, financial leasing or factoring companies, public companies and companies formed for the purpose of operating free trade zones), the Turkish Law does not require permission to be obtained from public authorities in the incorporation phase of JSC’s.

Turkish Law details clear incorporation procedures for JSC’s. The “instantaneous incorporation” whereby all the shares are subscribed by the incorporators. Statutorily, the incorporation is a three-step procedure, consisting of (i) the preparation of the Articles of Association (the “AoA”), (ii) the approval of the notary public, and (iii) recording with the Trade Registry and subsequent declaration of its existence to the public. However, the well-established practice of public authorities may require submission of various statements and/or documents throughout the formation process. The minimum capital requirement for establishing a JSC is 50,000 TL.

The mandatory corporate bodies of a JSC are (i) the board of directors (the “**BoD**”) and (ii) the general meeting (the “**GM**”). Public companies may be subject to additional auditing standards and disclosure requirements. Although the governing principle of corporate governance is to honor the will of the majority of shareholders, the TCC confers minority rights to the holders of 10% of the company shares.

The Turkish Law uses a one-tier board model. The BoD is responsible for the governance and daily business operations of the JSC while the GM elects the members of the BoD and for all practical purposes is the only means for the shareholders to participate in corporate governance. While the “ordinary GM” convenes once a year as a general rule, extraordinary meetings may be arranged depending on the needs of the organization. The TCC requires the meetings to be held under formal circumstances and the quorum is stipulated by the law, the breach of which may result in an action for nullification of BoD and/or GM decisions.

The members of the governing bodies of the JSC, especially the members of the BoD, have the duty to act in good faith, in a reasonably informed manner, and in the best interests of the JSC. These fiduciary duties of care and loyalty of the BoD members are at the very core of the TCC’s provisions relating to JSC’s.

One particular advantage of the JSC form is the transferability of the shares. As a general rule, restrictions on alienation of the shares are void, and a shareholder may dispose of the right to exit by selling their shares without any permission or approval, provided that the AoA did not put restraints on the sale of shares through “restriction clauses”. It should be noted that the JSC may not acquire its own shares under Turkish Law (with some exceptions) and the JSC may refuse to record the acquisition of the shares on the shareholders’ ledger if the shares are not fully paid. There may also be additional requirements for share transfer transactions, such as the permission or approvals of regulating authorities, depending on the activity area of the JSC (e.g. oil extraction, industrial gases, telecommunication, and national security concerns). Additionally, the approval of the Turkish Competition Authority must be obtained in order for M&A transactions beyond certain thresholds to be valid.

the JSC may be established for any economic purpose not prohibited by law and its duration may be indefinite. Flexibility in terms of structuring JSC’s makes it a commonly used type of business organization in Turkey

The JSC may be terminated (i) upon expiration of the duration stipulated in the AoA, (ii) occurrence of events listed in the AoA or under the law, (iii) a decrease of the capital below certain limits, (iv) the impossibility to achieve the corporate purposes, or (v) bankruptcy. The court may decide to dissolve the JSC under specific circumstances as well. The legal personality of the JSC is terminated upon completion of the liquidation procedures, through which the liquidation officials sell company assets, pay off the debts and distribute the remains to the respective interest holders.

D. LIMITED LIABILITY PARTNERSHIP

Limited Liability Partnership (the “**LLP**”) is one of the most preferred business organization types under Turkish Law for reasons of (i) the limited liability of the partners, (ii) a lowered minimum capital requirement of 50,000 TL, (iii) fewer governing procedural requirements, and (iv) the

partners' enhanced rights to participate in the direction of the organization. Since it is considered as a closely held business type, the transfer of shares is subject to stricter restrictions at the LLP, and the number of shareholders may not be greater than 50.

As a distinct legal person, the incorporation of the LLP is completed through a three step procedure: (i) preparation, and (ii) notarization of the AoA, and (iii) recording with the Trade Registry and declaration of its existence to the public. Nevertheless, the recordation and registration procedures may require detailed filing and disclosure procedures with the relevant public authorities.

The statutory managing bodies of a LLP are the General Meeting (the “**GM**”) and the Board of Directors (the “**BoD**”). The GM is the forum where all the shareholders may participate in the decision making process of the LLP. The directors may be elected by the GM or through the AoA, nonetheless all the partners are deemed to be directors of the LLP in the absence of such prior election or appointment. LLP's with more than 20 partners must have an appointed auditor, as well. While the BoP handles the strategic issues and decisions concerning the direction of the LLP, the directors dispose of managerial rights and responsibilities.

All of the rights and duties of a shareholder are represented by his/her share in the LLP, and the share may be freely transferred to third persons unless the AoA stipulates otherwise. A written transfer agreement and its notarization, followed by the approval of the partnership with qualified quora are necessary for the conveyance of title to the share in an LLP. The LLP may be terminated (i) upon occurrence of the events indicated in the AOA or under the law, (ii) upon its bankruptcy, or (iii) for good reason by the court, upon request of a partner. The owners of $\frac{3}{4}$ of the share capital of the LLP may also terminate the partnership without a court decree. The legal personality of the partnership dissolves upon completion of the liquidation procedure.

*relatively easier
incorporation
procedures, simplicity in
governance and
efficiency in decision
making processes are
among advantages of
LLP's*

CAPITAL MARKETS LAW AND

BORSA ISTANBUL (ISTANBUL STOCK EXCHANGE)

A. REGULATION EFFORTS AND TURKISH CAPITAL MARKETS' BRIEF HISTORY

Although its historical roots are relatively shorter than some of Europe's other markets, Turkish capital markets have witnessed intensive institutionalization and regulation since the enactment of the Capital Markets Law (the "CML") in 1981 and the subsequent establishment of the Capital Markets Board (the "CMB") as the gatekeeper of the markets and the supervisor of securities transactions. The inauguration of the Istanbul Stock Exchange (the "ISE") in 1985 was another milestone in the effort to structure a capital market system followed by the current Borsa Istanbul that was established in 2013 – the re-structured stock exchange that meets the needs of a modern, global economy.

The introduction of a Bonds and Bills Market, a Repo and Reverse Repo Market; the launches of Regional Markets, the Wholesale Market, the Real Estate Certificates Market and the Watch List Companies Market; the recognition of the ISE by the US Securities Exchange Commission and the Japan Securities Dealers Association as a "Designated Off-Shore Securities Market"; the establishment of the ISE Settlement and Custody Bank and Istanbul Gold Exchange; the founding of the Central Registry Agency for electronic record keeping and the initiation of the Corporate Governance Index are also among the noteworthy events to date.

B. CAPITAL MARKETS LAW AND CAPITAL MARKETS BOARD

The CMB, acting as the regulatory and supervisory authority in charge of the securities markets within the powers granted to it under the CML, ensures the proper functioning of the capital markets and the protection of investors through fair, transparent and efficient practices. Modernization of the market structure, enhancing the infrastructure of the markets, and implementation of the international standards into the internal system are among the other strategic objectives of the CMB.

To achieve its objectives, the CMB exercises its powers mainly over the publicly held companies, intermediary institutions, banks and mutual funds, investment trusts, portfolio management companies, independent audit companies and real estate appraisal companies.

Lastly, the evolution of the regulatory environment surrounding the capital markets towards the direction of the *acquis communautaire* is another noteworthy development in this area.

there are currently no restrictions on foreign portfolio investors trading in the Turkish securities markets. Natural and legal persons located outside of Turkey (including investment trusts and investment funds abroad) can freely purchase and sell all sorts of securities and other capital market instruments

C. BORSA ISTANBUL (ISTANBUL STOCK EXCHANGE)

At the very heart of the Turkish capital markets practice stands the Borsa Istanbul, providing for one of the most liberal exchange regimes in the world for domestic and foreign issuers and investors. With a trading value exceeding USD 431 billion and a daily average trading volume of 1.37 billion, Borsa Istanbul has evolved into a dynamic arena for institutional and individual investors throughout the worldwide financial markets. Borsa Istanbul, ranking as the 3rd largest equity market worldwide in terms of share turnover velocity, is also member of numerous organizations, such as the World Federation of Exchanges (WFE), the Federation of Euro-Asian Stock Exchanges (FEAS), the International Securities Services Association (ISSA), the International Capital Market Association (ICMA), the European Capital Markets Institute (ECMI), and the International Organization of Securities Commissions (IOSCO).

There are currently no restrictions on foreign portfolio investors trading in the Turkish securities markets. Natural and legal persons located outside of Turkey (including investment trusts and investment funds abroad) can freely purchase and sell all sorts of securities and other capital market instruments. However, a foreign institutional or individual investor should use a Turkish intermediary institution for securities activities. (e.g. buying and selling securities, repo, reverse repo, portfolio management, investment consultancy, underwriting, margin trading, securities lending etc.) It should be equally emphasized that the repatriation of the profits and capital are free from limitations for the stock and bond markets, in accordance with the general policy striving to attract foreign investors within an advantageous market structure.

Borsa Istanbul brings together all the exchanges operating in the Turkish capital markets under a single roof. Its Articles of Association was prepared by the Capital Markets Board, and following its approval by the Minister in charge, it was registered on April 3, 2013, thereby receiving a foundation and operation permit

COMPETITION LAW

The Grand National Assembly of the Republic of Turkey enacted the Law on Protection of Competition (the “**LoPC**”) in 1994, whereby the Turkish Competition Authority (the “**Competition Authority**”) was established as the regulatory administrative authority on competition matters. The Competition Authority has developed a substantial amount of law and regulations during the course of the past 14 years, and is for all intents and purposes in conformance with the European Commission’s rulings and principles. Although the Turkish competition law shares common roots with the European system, American anti-trust law principles became a source of inspiration in some cases.

The purpose of the LoPC and the duties of the Competition Authority are to prevent agreements, decisions and practices distorting or restricting competition in markets for goods and services, and the abuse of market dominance by monopolies, and to ensure the protection of competition by introducing necessary regulations and initiatives. To achieve these goals, the LoPC sets forth the rules applicable to agreements, concerted practices and decisions between the undertakings (companies and enterprises), the abuse of dominant position as well as mergers and acquisitions in the market. It also provides for a detailed exemptions system supported by a set of sector-specific regulations.

the Competition Authority has developed a substantial amount of law and regulations during the course of the past years, and is for all intents and purposes in conformance with the European Commission’s rulings and principles

Merger or acquisition transactions that create the risk of significantly decreasing the competition in the market are also under the control of the Competition Authority. In this respect, one of the keystones of M&A practice in Turkey is arguably the clearance that the acquiror must obtain from the Competition Authority. According to Article 7 of the LoPC, the merger of two or more undertakings, aimed at creating or strengthening a dominant position, as a result of which competition is significantly harmed in any market for goods or services within the whole or a part of the country, or acquisition, except acquisition by way of inheritance, by any undertaking or person of another undertaking, either by acquisition of its assets or all or a part of its partnership shares, or of other means that confer on it the power to hold a managerial right, is illegal and prohibited. The Competition Authority further set out the thresholds of their “harming the competition” criterion in a *communiqué*, whereby it stated that if the total yearly turnover of the transacting undertakings in Turkey exceed 100,000,000TL in aggregate or (ii) if at least each of the two of the transacting undertakings’ yearly turnovers exceed 30,000,000TL, or (iii) if two of the transacting undertakings’ yearly turnovers exceed 30,000,000TL in Turkey and 500,000,000TL worldwide respectively in the relevant market, it is necessary for them to obtain a clearance from the Competition Board. The violation of this rule may result in administrative fines.

ENERGY LAW

The Energy Market Regulation Authority (“**EMRA**”) is the regulatory body in the Turkish energy market. EMRA’s purpose is to ensure the provision of low-cost electricity, natural gas, petroleum products and LPG to the general public in sufficient quantity and high quality, on a continuous base and in conformity with the requirements of a healthy environment. EMRA is equally responsible for maintaining the energy markets financially strong, transparent and stable condition, by exercising its semi-independent legal status as an administrative regulatory authority. To achieve those ends, EMRA issues licenses in relation to all energy related commercial activities, and supervises the orderly functioning of the markets under its special legal status. Appeals of EMRA’s decisions, including but not limited to administrative fines, are handled by the Council of State - the highest administrative court in the country.

The legislation concerning the energy markets has traditionally focused on four main areas, *i.e.* electricity, natural gas, petroleum and LPG. Each of these specific types of energy is separately regulated under corresponding laws which are subject to the intense supervision and regulation by EMRA through communiqués, regulations and resolutions as well as decrees of the Council of Ministers. In light of the latest developments on global warming and public demand in recent years, Turkish parliament has undertaken a legislative initiative on renewable energy resources and nuclear energy.

the legislation concerning the energy markets has traditionally focused on four main areas, i.e. electricity, natural gas, petroleum and LPG. However, in light of the latest developments on global warming and public demand in recent years, Turkish parliament has undertaken a legislative initiative on renewable energy resources and nuclear energy

A. ELECTRICITY MARKET

1. In General

The Law on Electricity Market (the “**LoEM**”) is the main legislative act with regard to the production, transmission, distribution, sales, import and export of electric power, along with the procedures applicable to the privatization of resources used for the generation and distribution of electricity. The LoEM provides for a detailed licensing system for the legal persons seeking to show activity in these areas. In addition, the organized industrial zones are subject to a special licensing procedure. Six types of licenses (production, transmission, distribution, wholesale, retail sale, autoproducer and group of auto-producers) correspond to these specific areas with regard to electric-related activities, which are specified in great detail under the LoEM and the relevant regulations.

2. Use of Renewable Energy Sources for Production of Electricity

Parliament enacted the Law on Utilization of Renewable Energy Resources for the Purpose of Generating Electrical Energy (the “**LoRER**”) in May 2005, in order to expand the use of renewable energy resources for generating electrical energy, to benefit from these resources in a secure, economic and highly efficient manner, to increase the diversification of energy resources, to reduce greenhouse gas emissions, to process waste products, to protect the environment and to develop the

the total amount of investment required to meet the energy demand in Turkey by 2023 is estimated to be USD 120 billion, more than double the total amount invested in the last decade

related manufacturing sector for achieving these objectives. The LoRER considers wind, solar, geothermal, bio-mass, bio-gas, wave, current and tidal energy resources together with hydraulic generation plants either canal or run of river type or with a reservoir area of less than fifteen square kilometers as renewable energy generating resources. EMRA issues the Renewable Energy Resource Certificate (the “**RERC**”) to the holders of the production licenses in order to determine the type of resource at the national or international markets for sale of renewable energy. The period of validity of RERC is one year from the date of its issuance.

The LoRER provides for an incentive for the “investment period” for the generation of renewable energy by private investors. Under this incentive scheme, the State Water Affairs and the Administration of Studies for Electrical Affairs render free-of-charge consultancy services for power plants established merely for the isolated use of the investors, provided that their capacity does not exceed 1,000 kW and the power is used for internal purposes only. The Ministry of Finance or the Ministry of Environment and Forestry also grants the usage rights on the state-owned real estate to the investors willing to develop power plants on renewable energies.

B. NATURAL GAS MARKET

The Law on Natural Gas Market (the “**LoNGM**”), enacted in 2001, sets forth rules for the provision of natural gas on an inexpensive, continuous and high-quality manner under the principles of open and fair competition in the market. The scope of the law extends to the import and export, transmission, distribution, storage, marketing and trade of natural gas. The licensing of each activity is EMRA’s responsibility, and its decisions are open to judicial review.

The main criteria used in relation to the assessment of the licensing applications are the ability of the applicant to competently conduct natural gas related activities and the financial power to guarantee a certain level of stability in the provision of this sensitive resource. The seasonal planning of the offer capacity, contracting with storage companies, coordination with the General Directorate of the Petroleum Affairs and other suppliers of natural gas, and a commitment to the impartial and equitable supplying of natural gas are among the additional criteria observed by EMRA in the licensing and supervision of natural gas related businesses.

the role of natural gas in meeting Turkey's growing energy need is becoming increasingly important. Natural gas has become the fuel of choice in industrial and household

C. PETROLEUM MARKET

Under the governing principles of transparency, equal treatment, stability and security, the Law on Petroleum Market (the “**LoPM**”) is the applicable body of law to nationwide petroleum and lube-oil related commercial activities, with the exception of those regarding the production lines of the Turkish Military Forces and the NATO POL facilities established within the boundaries of Turkey.

The LoPM also governs a very sensitive area in the daily petroleum commerce: Petroleum smuggling. The national marker, the substance that is added to the petroleum at the refineries or customs check-points, is currently the main tool used against smuggled petroleum. EMRA, the police and the gendarmerie continuously conduct their regular inspections on the storage areas and the gas stations that are the final sale spots to the end consumers.

The LoPM sets forth two categories of license with regard to the petroleum market: The licenses for (i) the refining, processing, storage, transmission, independent use of petroleum and the production of lube-oil, as well as the establishment of industrial facilities for those ends, and (ii) the distribution, transportation and retail dealership of petroleum. EMRA may issue, update, temporarily suspend or annul the license as the need may be under the applicable rules. Compliance with the technical and commercial requirements, protection of environment, insurance of facilities, security of general public, allowing physical on-spot inspections by EMRA, supplying petroleum in conformity with the standards set by EMRA, equal treatment of customers in equal status are among the fundamental duties of persons who show activity in the petroleum market.

The prices in the sale of petroleum are set in accordance with the most accessible global free-market standards and the transportation costs are taken into account in the determination of the national sale price. The *Worldscale* is used for the calculation of carriage costs for the exemplary raw petroleum, and the AFRA percentage for LR-2 tank ships is used as basis for the final determination of carriage costs. The LoPM also provides for other detailed specifications for price policies and quality standards of petroleum.

Petroleum and LPG markets in Turkey have been, to a considerable extent, open to competition and private participation for a long time. The first decade of the new millennium, however, witnessed further liberalization in these markets as a result of reforms in the energy markets in general that took place in this era. The existing, if any, restrictions have been eliminated to a great extent thanks to the enactment of Petroleum Market Law and LPG Market Law in 2003 and in 2005, Law No: 5015 and Law No:5307 respectively.

D. LIQUEFIED PETROLEUM GAS MARKET

The Law on Liquefied Petroleum Gas (the “**LoLPG**”) dated March 2005, and the related regulations set forth the rules with regard to the domestic or foreign supply, distribution, transportation and sales of LPG along with the rights and duties of the persons engaged in these activities. The distribution, transportation and dealership of LPG products for automobiles, storage of LPG, as well as production, refilling, inspection, maintenance and repairing of LPG tanks are subject to the licensing of EMRA. The holders of petroleum distribution license may apply for a LPG license. The licensing is based on the examination of certain criteria such as compliance with labor safety regulations, technical specifications, environmental effects, zoning and social benefit. The main categories of licenses are (i) production and distribution licenses, and (ii) transportation, storage, tank production, tank inspection, repairing and maintenance licenses. Under a special category, the station owners that are selling LPG to automobiles must buy the gas exclusively from one supplier and they are not allowed to refill or sell LPG tanks in their stations.

Although the dealers of tanked LPG do not have to apply for an EMRA license, they are subject to strict regulations with regard to the marketing, advertising and storing the tanks. Also, the environmental clearances, permits and zoning regulations remain in full force and effect for these dealers.

The prices are set according to the most accessible global free-market standards under the LoLPG. Refinery operators and distributors must report their price ceilings to EMRA. However, the LoLPG vests the authority of setting the maximum and the minimum prices upon EMRA in the event of concerted practices on the part of the market participants in order to ensure a fair and efficient competition. The Ministry of Energy and Natural Resources can also indirectly intervene with the market pricing through aids and subventions to the end-users.

E. NUCLEAR ENERGY

While the Law on the Establishment and Operation of Nuclear Power Plants and Sale of Nuclear Energy (the “**LoNE**”) dated November 2007 is the main legislative act with regard to the nuclear energy in Turkey, EMRA and other public authorities issued several regulations concerning the application of the LoNE, the nuclear energy fields, design methods and principles, special safety principles, establishment of consultancy committees, inspections and penalties, control of nuclear substances, basic requirements for quality standards at nuclear facilities, nuclear emergency situations, export of nuclear substances, physical protection of specific nuclear material and the establishment of Turkish Atomic Energy Institution. Although some of the regulations pre-date the LoNE, the regulatory action was remarkably increased over the past few years.

The selection of the site for the construction of a nuclear power plant involves a multi-dimensional study handled by several governmental institutions. The Ministry of Energy and Natural Resources initiates the selection process under the principles set out in the LoNE and the corresponding regulations. The companies seeking to construct the power plant must comply with the specifications set and declared by the Turkish Atomic Energy Institution.

The tender for granting the privilege to construct a nuclear power plant is organized in accordance with the tender specifications and requirements that the Turkish Electrical Commerce and Undertakings Corporation (the “**TECUC**”) declares. The bids are filtered through a three-layer control mechanism, whereby the TECUC eliminates the bids that do not meet the necessary criteria and the Council of Ministers approves the “most advantageous” bid as recommended by TECUC. EMRA issues the actual license for production of nuclear energy to the company that was approved by the Council of Ministers and that has contracted with TECUC by virtue of this approval. Non-compliance with the rules of any of these governmental bodies may result in the nullification of the tender. The successful bidder finally enters in to an agreement with TECUC for the sales of energy for a maximum period of fifteen years. The TECUC has the statutory duty to purchase the energy generated by the nuclear power plant. In this scheme, TECUC sells the power to third persons. The operator of the power plant may also elect to sell the electricity to third persons, provided that it complies with the rules set forth by EMRA. The operating company is responsible for disassembling the power plant at the end of its operational life.

The relevant regulations provide a detailed procedure for nuclear waste management and the disposal of hazardous substances throughout the production period. Insurance requirements and liability for damages are among other keystones of the regulatory regime concerning nuclear energy in Turkey.

REAL PROPERTY LAW

Real property is technically classified as an “immovable” under Turkish Law. Immovable property includes the lands, independent and continuous rights that are recorded with the land registry (the “**Land Registry**”), and independent condominium units recorded with the condominium registry (the “**Condominium Registry**”). Title to the land gives to its holder the ownership right over a fictional three-dimensional column comprising the air above and soil below grade, including the buildings and other human made improvements and construction.

The Land Registry is the general record keeping office for real property where the records of the title deeds (the “**Deed Registry**”) and the condominium properties (the “**Condominium Registry**”) are systematically stored. The Deed Registry and the Condominium Registry make public certain records and annotations on real property. One may examine the current status of real property as to (i) the title, (ii) the current and past encumbrances, and (iii) the burdening or benefiting from/of easement rights, on a separate page allocated to each property. As a general rule, the government is liable for all damages resulting from misleading information that appears on the Deed and Condominium Registry.

A. SALE OF REAL PROPERTY

The title to real property passes upon recordation with the relevant official registry unless it falls within one of the exempt categories (*e.g.* through wills, eminent domain, execution procedures, court decree) following execution of an official agreement before the Land Registry officials. In other words, the land contract and the closing phases are merged into a single transaction, whereby the seller conveys the title to the buyer in exchange for the purchase price. Non-compliance with the formal requirements automatically results in the invalidity of the transaction. The ownership of real property is strictly protected by law, and the statutory period for adverse possession is either 10 or 20 years depending on the facts.

technically categorized as immovable property in civil law, the real property comprises the land, the human-made developments that encompass the land and certain rights in relation thereto. While conveyance of title, tenancy rights and rights in rem follow the mainstream liberal Continental European approach, Turkish practice presents important institutional and transactional peculiarities, especially concerning administrative procedures

Another tool to create a duty to convey the title at a later date is the “promise to sell agreement” under Turkish Law, through which the seller of the property promises to sell the property at a future date to the buyer on terms presently agreed upon. The promise to sell is subject to lessened formal requirements; however the future conveyance of title is governed by the same principles stated in the above paragraph.

Turkish law provides the legal grounds for the sale of real property to the citizens of foreign countries, as well as to companies established according to the laws of foreign countries under

certain restrictions. The recent rulings of the Constitutional Court emphasized the need to limit the amount of real estate that foreigners may acquire and the government was compelled to take action in this regard.

1. Acquisition of Real Property by Foreign Natural Persons

The Title Deed Law (the “**TDLaw**”) sets forth a multi-layer restriction mechanism for the citizens of foreign countries with regard to the acquisition of real property in the Republic of Turkey.

As a general rule, foreign natural persons may purchase real property for residential or commercial purposes if (i) their country of origin reciprocally (legal and actual reciprocity) allows Turkish citizens to purchase real property, and (ii) such acquisition does not violate the statutory limitations mandated by applicable legislation. The total surface area of the real properties that foreign nationals may acquire the title of or establish “limited rights *in rem*” on may not exceed 30 hectares (approximately 75 acres) in aggregate. In addition to the foregoing, the total area of real properties that the same persons may purchase is limited to 10 percent of the areas that are covered by the applicable zoning plans, at the districts and central districts. The Council of Ministers possesses the authority to decrease this percentage based on a set of factors regarding security, energy, economics, culture, environment and agriculture.

Upon proposal of the competent public authorities, the Council of Ministers also has the power to totally prohibit the acquisition of real property by foreign natural persons in the sensitive areas of irrigation, energy, agriculture, and mining, areas of religious significance, special protection zones, areas of special floral characteristics, and strategic lands.

2. Acquisition of Real Property by Foreign Legal Persons

Art. 35 of the TDLaw substantially limits the acquisition of real property by foreign legal persons (*i.e.* companies). The term “foreign legal person” specifically refers to those established in foreign jurisdictions with no record in Turkey. These legal persons may acquire the ownership of, or establish “limited rights *in rem*” on, real property only if such action is specifically permitted by statute. In other words, the general rule of freedom for foreign nationals is reversed for foreign entities, and is replaced by a general restriction where the reciprocity is not taken into consideration at all. The geographical limitations that are in effect for foreign natural persons (30 hectares and 10 percent) do not exist for foreign entities while the limitations on strategic zones referred to above remain fully applicable.

3. Acquisition of Real Property by Foreign Capital Companies Established in Turkey

In light of the extensive protection provided by the equal treatment rule, foreign investors may form business organizations in Turkey and benefit from the equal treatment rule. The effect of this rule extends to the acquisition of real property in Turkey. The TDLaw provides that the companies formed or partly owned by foreign investors in Turkey may acquire real property or benefit from “limited rights *in rem*” on the same, so long as these transactions are permitted by their articles of association.

Notwithstanding the generality of the equal treatment principle, the TDLaw brings a limitation with regard to specific security-sensitive zones. The acquisition of real estate by foreign capital companies is contingent upon the approval of the General Staff, the highest military authority, and must not be within prohibited military zones, security areas, and strategic areas specified in accordance with the Law on Prohibited Military Zones and Security Areas. the official commissions

established under the relevant city governorships are generally competent to give approval for acquisitions in the special security zones, should they wish.

B. LEASE OF REAL PROPERTY

Real property may be freely leased without any restrictions of time or rental amount under Turkish Law. Landlords and tenants may enter into lease agreements in writing or even verbally, although the involvement of the public notary in the process is seen as a safer method for evidentiary purposes. Save for some exceptional restrictions, the lessees enjoy usage rights without governmental or administrative interference.

Turkish legislation grants a higher degree of protection to persons who lease real property that is enclosed with walls and topped by a roof, and located in the municipal districts. The rationale for this bias is the protection of lessees of residential units in areas where lack of housing significantly threatens “public peace”. Despite its social underpinnings, this favored class also extends to all lessees of offices, stores and similar real property in municipal areas. The protection becomes important especially with regard to the statutory limitations on the terms of lease agreements and the conditions for eviction.

Foreign individuals and companies may freely enter into real property lease agreements in the Republic of Turkey.

TAX LAW

finding its roots in the government's constitutional duty to "levy taxes proportionate to the financial capabilities of the taxpayers"; Turkish tax law contains a detailed, well-categorized, tax implementation and exemption system

Briefly described below are the most common taxation methods under the applicable tax laws and regulations in the Republic of Turkey, together with their most significant characteristics. It should be emphasized that there may be other sector-specific or local taxes, duties or charges payable to public authorities, and that the Turkish taxation system interacts with a set of international bilateral and multilateral agreements that may put other taxation practices into effect.

A. INCOME TAXES

1. PERSONAL INCOME TAX

The income of natural persons is subject to taxation on a yearly basis. The tax base consists of commercial and agricultural income as well as salaries, earned fees, and movable and immovable capital gains. The principle of "full-taxation" applies to persons residing in Turkey and their entire income inside and outside of Turkey. Accordingly, the tax base for persons who do not reside in Turkey is merely their income generated within Turkey. Since the Turkish tax system adopts the principle of an "increasing tax rate proportionate to the income", the applicable tax rates may substantially vary based on the amount of income. It should be also noted that a detailed exemptions system is in place for personal taxpayers based on their income generating activities.

2. CORPORATE INCOME TAX

Business organizations must pay a 20% corporate income tax. Companies whose headquarters or place of incorporation is in the Republic of Turkey are considered "full-taxpayers", therefore their entire income generated inside and outside of Turkey is subject to taxation in Turkey. On the other hand, the "limited-taxation" principle provides that companies incorporated and based outside of Turkey are subject to taxation merely on the income generated in Turkey. The Law on Corporate Income Tax and related regulations and communiqués also put in place a detailed system of deductibles, exemptions and depreciations that require a thorough analysis.

Dividend distributions may also be subject to a withholding tax depending on the legal status and residence of the shareholder, this is paid to the government by the relevant company on behalf of the dividend distributees.

B. PROPERTY TAXES

Real property in Turkey is subject to the real property tax payable on an annual basis. The tax burden is on the fee-holder of the property or on the holder of the usufruct rights. Notwithstanding the exempt categories cited under the Law on Real Property Tax, the applicable real property tax rate varies from 1/1000 to 6/1000 of the tax value of the property, and the Council of Ministers may change those rates within the limits indicated under the law.

C. VALUE ADDED TAX

The value added tax (the “VAT”) is the tax levied basically upon the transactions of provision of goods and services through commercial, industrial, agricultural, and professional activities, as well as importation of goods and services of any kind into the Republic of Turkey. Moreover, the Value Added Tax Law and related regulations cite other items that may be subject to VAT.

The applicable VAT rate, which varies within a range of 1% to 18%, is regulated under the communiqués and regulations of the Ministry of Finance.

D. SPECIAL CONSUMPTION TAX

Another peculiar tax burden for businesses operating in Turkey is the special consumption tax that arises from the transactions relating to the products cited under the lists annexed to the Law on Special Consumption Tax. Therefore, the determination of the tax burden requires a case-specific analysis. This tax is a one-time levy, as opposed to the VAT that may be levied repeatedly, *i.e.* at each transfer or provision of relevant goods or services to different persons.

E. STAMP DUTY

Turkish tax authorities levy the stamp duty, either over the monetary amounts stipulated in legal instruments (*e.g.* agreements) indicated under the Law on Stamp Duties or based on the legal qualification of the documents sought to be introduced into the official registries. The signatories to the subject legal documents are responsible for the payment of the stamp duty. The stamp duty becomes due at the moment any party moves to benefit from its content before the official authorities or upon presentment to governmental bodies or agencies. The applicable stamp duty rates depend on the legal nature of the document or transaction, however the maximum amount payable may not exceed 1,545,852.40TL (approximately USD 670,000) irrespective of the magnitude of the duty base.

F. WITHHOLDING TAX

The withholding tax is the amount withheld by the payor from the amount actually paid to the payee and submitted to the taxation authorities. Typically, the salaries payable to employees, rental payments and professional fees are within the class of accruals subject to application of withholding tax. The rates applicable to companies and to individuals differ and they are set out under different regulations.

LABOR LAW

Save for the statutory exceptions, the Labor Law governs all the employment relations established through an employment agreement between employers and employees. The Labor Law, in compliance with the Constitution, strictly prohibits all discrimination whatsoever based on sex, gender, race, color, religion, as well as between full-time and part-time employees, and employees working for either a finite period of time or an indefinite duration. The existence of an employment-like relationship based on the provision of services in exchange for a benefit usually qualifies as an employment contract, without strict formal requirements.

The overall approach of the law to the employment relations is to grant the employees a higher degree of protection because of their financially less advantageous social position. In this respect, employees enjoy well-structured rights under the Labor Law. The Labor Law specifically also sets out the employment rules applicable to pregnant women, handicapped people, and persons under the age of 18.

Conditions for the dismissal of employees are another focal point of the Labor Law, which usually mandates that employers show cause in dismissing an employee. Non-compliance with the dismissal conditions may result in compensation claims of up to eight months of the employee's salary. While this serves as another employee protection measure, employers may benefit from employee evaluation periods of up to four months, depending on case-specific facts.

The minimum net statutory salary is approximately 846 TL (approximately USD367) for employees over the age of 16 and the salary must be paid at least on a per-month basis. Overtime pay is calculated as 1 ½ - 2 times the employee's regular hourly salary for working time exceeding 45 hours per week. However, overtime work may be balanced under specific circumstances with fewer working hours in other weeks, without additional compensation. The Labor Law sets forth the paid annual vacation rules depending on the number of years worked.

Compliance with workplace safety requirements are of paramount importance under the Labor Law. The authorized officials of relevant public authorities are entitled to inspect the working conditions, and the administration may take necessary measures to order a temporary closure of the workplace, as well as levy administrative fines to meet these ends. Employers may be held liable for accidents occurring within the working hours and under the scope of the employment, and Turkish courts generally have a pro-employee bias in such claims. Negligence of the employers in safety measures may also result in claims for damages based on theories of strict liability.

the overall approach of the law to the employment relations is to grant the employees a higher degree of protection because of their financially less advantageous social position. In this respect, employees enjoy well-structured rights under the Labor Law

ENVIRONMENTAL LAW

The regulatory framework for protection and preservation of the environment is advanced and detailed. Turkey is a party to a number of key international treaties and declarations on the protection of environment. However, current efforts to integrate European norms into the Turkish system place new challenges in terms of harmonization with the Turkish legislative and administrative agendas.

The Ministry of Environment and Forestry, established in 2003 by a merger of two formerly separate ministries, exercises its powers through eight general directorates and local administrative offices in 80 cities and their subdivisions across the country. The Ministry of Culture and Tourism, the Ministry of Rural and Village Affairs and various Undersecretariats, the State Planning Organization, and the Environment Commission of the Grand National Assembly of the Republic of Turkey are among the authorities possessing regulatory and/or inspection powers over environmental matters. The increasing involvement of NGO's through civil activism and their actions before the administrative courts are creating an environmentally conscious marketplace for investment.

the Law on Environment provides for an extensive set of responsibilities for industrial facilities conducting activities that are likely to have a negative impact on the environment. In this respect, the liability of polluters is a major concern of the law

The main legislative act on the protection of the environment is the Law on Environment (the “LoE”). The LoE provides for an extensive set of responsibilities for industrial facilities conducting activities that are likely to have a negative impact on the environment. In this respect, the liability of polluters is a major concern of the LoE. An application to the administrative authorities in order to obtain an “environmental impact assessment clearance” may be essential for many enterprises seeking to develop or operate commercial facilities. An “environment contribution duty”, which helps finance the supervisory activities of the administrative offices in charge, may also be applicable at rates indicated under relevant regulations.

CONSUMER PROTECTION LAW

The concept of consumer protection has evolved to one of the most dynamic fields of law in Turkey over the past 10 years. The enactment of the Law on Protection of Consumers (the “LoPC”) in 1995 was a major milestone, and has triggered a high degree of consumer awareness. The LoPC was renewed in 2013 with stronger tools and layers of protection of the consumers.

The LoPC sets forth the governing principles on the rights and liabilities of sellers as well as consumers concerning defective goods and/or services, unfair sale conditions, installment sales, timeshare vacation packages, discounted sales, distance contracts for sale of goods, door-step selling transactions, consumer loans, credit cards, residence financing agreements, periodic publications, membership agreements, formal aspects of pricing requirements, warranty conditions, user’s manuals, post-sale services, and commercial advertisements.

Dispute resolution is handled through arbitration commissions and courts of specific jurisdiction while a consumer council organized under the Ministry of Industry and Trade aims at fostering the protection of the consumers at a more global level of policy making. The consumer protection rules thus provide procedural advantages vis-à-vis traditional litigation channels under Turkish Law, especially through enhanced access to decision making authorities and improved flexibility of non-traditional dispute resolution mechanisms.

Non-compliance with the provisions of the LoPC is punishable by a wide range of sanctions, among which are various fines, seizure of certain products or withdrawal of the goods from circulation in commercial markets.

It should be equally emphasized that the transposition and application of the Community *acquis* forms a substantial part of the efforts in strengthening consumer protection in Turkey during the course of negotiations for accession to the European Union.

*the transposition and
application of the
Community *acquis* forms
a substantial part of the
efforts in strengthening
consumer protection in
Turkey during the course
of negotiations for
accession to the
European Union*

INTELLECTUAL AND INDUSTRIAL PROPERTY LAW

The recent evolution of Turkey into a competitive market for the provision of goods and services based on legal and commercial principles of international commercial relations has emphasized the protections of intellectual property rights. The Turkish government has responded to the increasing demand for better and more effective regulation by enacting “decrees in force of law” to establish the Turkish Patent Institution, which protects patent rights, industrial designs, geographical signs, and trademarks. The government also introduced the Law on Protection of Intellectual and Artistic Products, and Turkey is a signatory state to a number of protective international treaties on various aspects of intellectual property rights.

Turkey has largely adhered to the provisions of the Bern and the Rome Conventions with respect to copyrights. The governing rules with regard to the reproduction and distribution rights on products of intellectual work, as well as the right of communication to the public are in line with the European Directives in effect. The rights on computer software and scientific and literary works are also regulated under norms in line with their European counterparts. Distributors’ rights, artists’ resale rights, cross-border transmission/retransmission of programs and protection of semiconductor topographies and databases have been subject to legislative action during last decade.

The scope of the protection of industrial property rights is two-fold in Turkey. Firstly, Turkey is a party to the Paris Convention of 1925, WIPO, GATT and TRIPS agreements, as well as to the Madrid Protocol (but not to the Madrid Agreement), the Nice and Vienna Agreements and the Trademark Law Treaty. Under Turkish Law, a trademark grants to its rightful owner the absolute right to make use of it, prevent the use of signs which are identical or that could lead to confusion, or that could take unfair advantage of, or be detrimental to the distinctive character or reputation of the mark protected. Exhaustion of rights, their protection, transfer and other relevant entitlements and/or transactions are further regulated under the relevant decrees. Patents, biotechnological inventions and industrial designs have been other fields of regulation by Turkish rule-making authorities.

From the perspective of enforcement, Turkish governmental agencies are still under-staffed and the public sensitivity to, and awareness of breaches of intellectual property rights remains lower than expected. However, the shortcomings of administrative and/or judicial measures do not deprive the holders of rights from using effective legal tools for challenging violations. Enhanced police powers, affixation of banderole to certain products and severe sanctions constitute a solid chain of procedural means to protect IP rights and prevent holders from unlawful usage and misappropriation. The Courts of Intellectual and Industrial Rights form the judicial leg of the system, and the judges receive professional education on a continuous basis in order to stay up-to-date in this dynamic area of law.

Turkish governmental agencies are still under-staffed and the public sensitivity to, and awareness of breaches of intellectual property rights remains lower than expected. However, the shortcomings of administrative and/or judicial measures do not deprive the holders of rights from using effective legal tools for challenging violations

FOREIGN TRADE LAW

A. TURKEY AS A MEMBER OF CUSTOMS UNION

In 1996 a free trade area was established between Turkey and the European Union for products covered by the European Coal and Steel Community. Turkey is also a member of the Euro-Mediterranean partnership. More significantly, however, Turkey's membership in the Customs Union took effect on 1 January 2006 and was not only illustrative of a new era in Turkey's foreign trade policy, but also was the express demonstration of Turkey's resolute desire to become a member of the European Union. The Customs Union covers all industrial goods but does not address agriculture (except processed agricultural products), services or public procurement.

The Customs Union, providing for a common external tariff for the products covered, served as guide for the Turkish legislature in its efforts to align internal market regulations with the *acquis communautaire*, especially on areas concerning industrial standards. One peculiar characteristic of the Turkey-Customs Union relation is its large scope extending beyond the typical requirements for removal of restrictions and elimination of customs taxes between the parties and application of a common external tariff. Turkey committed to ensure the free movement of goods, the elimination of trade barriers, the harmonization of its legislation with the European Union and institutional cooperation at the end of a transition period.

B. IMPORT REGIME

In view of the mainstream purposes of implementing the country's international duties through internal regulation and reflecting its rights in relation to international legal documents, Turkey's import regime is characterized by multi-dimensional regulations for each category of goods and products to be imported. The customs duties are expressly indicated for different types of products, namely agricultural products, industrial products, processed agricultural products, fish and fishery products, a number of products indicated in the so called "suspension list", and the goods used in civil aircrafts eligible for exemption from customs duties.

foreign trade, in exports and imports, has grown rapidly and notable changes in the structure of exports have been observed. In this regard, industrial products have gained prominence over agricultural products

As an integral and enforceable part of Turkish Law, the import regulations have been prepared by taking into account the agreement founding the World Trade Organization (WTO), the Customs Union Agreement between Turkey and the European Union, the free trade agreements signed with various countries, the preferential treatments granted by Turkey to the least developed countries and some developing countries within the framework of a generalized system of preferences and also the specific needs and requirements of the agricultural and industrial sectors.

The important features of the Turkish import regime are: (i) regulations aimed at prevention of unfair trading, (ii) a system of safeguards and supervision, and (iii) limitations on import and tariffs. While the main regulatory authority for import practices is the Undersecretariat of Foreign Trade under the Prime Ministry, a number of other public institutions and Ministries are responsible for certain specific products that may affect social well-being (e.g. environment, agriculture). It should be also noted that textile and ready-to-wear clothing products are specifically regulated due to national industry protection concerns.

C. EXPORT REGIME

The export of goods from Turkey has politically and economically been strongly supported over the last three decades to create a globally oriented economic structure within the framework of a free market economy. Exporters have taken advantage of several tax exemptions and expedited procedures that the Turkish government has provided to further this goal.

Despite its eagerness for overwhelmingly pro-export practices, the Republic of Turkey has had to align its legislation with international standards on exports, especially WTO rules and the rules of the European Union regarding customs duties. In view of recent developments, the Undersecretariat of Foreign Trade has promulgated a large number of communiqués in its regulatory efforts in accordance with Turkey's international commitments.

The current export regime in Turkey mainly consists of regulations pertaining to the procedures and their financial aspects; state aid; support of research and development, international advertising of Turkish brands, environmental cost assessment activities, education and employment; operation of the Turkish EximBank (Export Credit Bank of Turkey); granting of "Foreign Trade Capital Company" status to Turkish companies that meet certain export criteria; and extensive consultancy services through public authorities regarding export procedures.

Subject to Turkey's international commitments, all goods, other than those whose exportation is restricted by laws, decrees and/or international agreements, can be freely exported within the framework of the applicable legislation on exportation of goods.

YENİARAS | Attorneys at Law

www.yeniaras.av.tr
info@yeniaras.av.tr

İnönü Caddesi, Miralay Şefik Bey Sokak,
Antalya Palas Apt. No:5/11
Gümüşsuyu Beyoğlu
İstanbul
TURKEY

Tel +90 212 292 8707
Fax +90 212 292 8708