

Country Focus

Turkey

The Legal Landscape

*In association with
ELIG Gürkaynak Attorneys-at-Law*

GETTING THE
DEAL THROUGH 

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Turkey: The Legal Landscape *In association with* ELIG Gürkaynak Attorneys-at-Law

This new *Getting The Deal Through* initiative is designed to offer in-house legal departments, as well as private practice lawyers with an international clientele, a concise 'helicopter view' of the legal environments in which they do business, or where they may be considering investment.

The Legal Landscape addresses the key factors that underpin civil and common law legal frameworks, policy, regulation and enforcement, taxation, organisational behaviour and investor strategies.

Getting the Deal Through has canvassed general counsel at more than 100 multinational corporations and financial institutions to focus on the first points of legal reference that in-house counsel need to know when assessing unfamiliar jurisdictions where they may seek opportunities or be exposed to risk. The following questions and answers cover the essential areas of consideration in their 'first step' analysis.

We would like to thank the team at ELIG Gürkaynak Attorneys-At-Law, one of Turkey's leading law firms, for their analysis of the country's legal landscape.

GETTING THE
DEAL THROUGH 

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The Legal Landscape

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Country overview

1 Give an overview of the country's economy, its structure and main characteristics, and prevailing government economic policy, particularly as regards foreign investment.

A natural gateway connecting Europe and Asia, Turkey is geographically proximate to Europe, the Middle East, North Africa, Russia and the Turkic states. The workforce is also accessible to foreign investors because of the relative weakness of the Turkish lira against the euro and US dollar.

The main driving force behind the Turkish economy is urban construction and infrastructure projects. Looking at the overall size of the economy, it can be said that Turkish industry has much room for improvement to add value to the economy.

Turkey has a liberal foreign investment policy and aims at equal treatment of foreign and local investors.

Legal overview

2 Describe the legal framework and legal culture in your jurisdiction as regards business and commerce.

Turkey has adopted the national law system, consisting of public and private law. The Turkish legal system has adopted the principles of supremacy of law and separation of powers.

The Turkish legal system has been modelled on various European law systems such as French, German, Swiss, Italian and Austrian law. There have also been significant legal developments to facilitate foreign investments.

Commercial practices are supervised by government authorities, which may impose monetary and administrative penalties on companies. Each year a significant number of companies face sanctions for commercial malpractice. To this end, it would be fair to conclude that the Turkish commercial space is well governed and supervised by the government in line with related legislation, with a culture of litigation.

3 What are the main sources of civil and administrative law applicable to companies?

The main sources of civil law are the Turkish Commercial Code, Turkish Code of Obligations, Turkish Civil Code, Intellectual Property Rights Law, Industrial Property Law and International Private and Civil Procedure Law, while the Turkish Constitution, Turkish Criminal Law, Tax Law, Labour Law, Enforcement and Bankruptcy Law and Administrative Jurisdiction Procedures Law are the main sources of administrative law.

Dispute resolution

4 How does the court system operate with regards to large commercial disputes?

The procedural rules do not make any distinctions based on the size of commercial disputes. One difference in that regard would be in the examination of commercial records, considering that large commercial disputes usually involve large companies or long-lasting commercial relationships, rendering the examination of records more complex.

Due to a recently adopted legislation, after 1 January 2019, it is mandatory to apply to a mediator before filing a lawsuit for specific

types of commercial disputes. The plaintiffs are required to first apply to a certified mediator for compensation as well as receivable claims, before being allowed to initiate a commercial lawsuit. Applying to mediation before filing a commercial lawsuit now constitutes a cause of action. From the perspective of procedural law, this means that if the litigant files a lawsuit before applying to a mediator, then the court will refuse to delve into the merits of the case and reject the lawsuit on procedural grounds. Therefore, it is obligatory and vitally important to exhaust the mediation phase prior to bringing one's claims before a court of first instance.

5 What legal recourse do consumers typically have against businesses?

Consumers can resort to the Arbitration Committee for Consumer Problems for certain claims, and this is a swift remedy for consumers, as the process takes about six months, which is quite fast given that court proceedings usually take about two years. In addition to Arbitration Committees for Consumer Problems, there are specialised courts (ie, consumer courts) that handle consumer disputes over a certain value and objections filed against the decisions of Arbitration Committees for Consumer Problems. Class actions are always a concern for businesses as they may provoke media coverage and ultimately place a significant financial burden on the business. There is no plaintiffs' bar in Turkey, but one can petition the bar association to be assigned an attorney.

6 How significant is arbitration as a method of dispute resolution?

Use of arbitration has increased significantly in international business transactions owing to globalisation and transnational disputes, especially with the establishment of the Istanbul Arbitration Centre. Courts are, however, still seen as the first option.

7 What other methods of dispute resolution are commonly used?

Mediation, which is a fairly new concept in the Turkish legal system, is another dispute mechanism used in Turkey. As explained in this section, currently there are mandatory mediation mechanisms for both employment disputes and commercial disputes. Therefore, despite being a fairly new concept, mediation is becoming more significant in Turkish dispute resolution practice.

8 How easy is it to have foreign court judgments and foreign arbitral awards recognised and enforced in your jurisdiction?

For a court judgment or an arbitral award obtained in a foreign country to gain effect in Turkey, the judgment or the award must be recognised and approved by Turkish courts.

Foreign court judgments may be enforced under International Private and Procedural Law No. 5718 provided that (i) there is reciprocity with regard to enforcement of judgments between Turkey and the country where the judgment is rendered, (ii) the judgment is not rendered in relation with a matter that is within the exclusive competence of the Turkish courts, or by a court relying on exorbitant jurisdiction, (iii) the judgment is not contrary to the Turkish public order, and (iv) the court that rendered the judgment should have enabled the party

against whom enforcement is sought to use its right to defend itself before the court.

Turkey is party to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and therefore it is the primary legal source for recognition and enforcement of foreign arbitral awards. In case this Convention is not applicable, foreign arbitral awards can still be recognised and enforced pursuant to International Private and Procedural Law No. 5718 by Turkish courts.

The recognition lawsuit or the enforcement lawsuit may take approximately two years.

Foreign investment and trade

9 Outline any relevant treaty organisations, economic or monetary unions, or free trade agreements.

Turkey is a party to many treaties, including accession treaties for membership of the Organisation for Security and Co-operation in Europe (OSCE), NATO and the United Nations (www.mfa.gov.tr/sub.en.mfa?7cafe2ef-78bd-4d88-b326-3916451364f3).

Turkey maintains close cooperation with the monitoring bodies of the Council of Europe and is party to almost half of the Council of Europe's Conventions and Protocols.

Turkey entered into the Ankara Agreement with the European Economic Community in 1963, which was then extended by the Customs Union Decision in 1996. Turkey signed the Free Trade Agreement with the European Coal and Steel Community in 1999.

Turkey also has free trade agreements with several countries.

10 Are foreign exchange or currency controls in place?

The main regulation relating to exchange controls is the Council of Ministers' Decision on the Protection of the Value of Turkish Currency. Pursuant to the decision, considerations regarding net profits, dividends, proceeds, liquidation and indemnification, royalty, any of which arises from the activities and operations of foreign investors in Turkey, can be transferred abroad through banks without any restrictions.

The following rules are significant in this regard:

- Foreign currency can be imported and exported without any restrictions.
- Residents in Turkey may freely possess and purchase foreign currency, hold foreign currency with banks and dispose of foreign currency in and out of Turkey through banks.
- Residents in Turkey can accept payment in foreign currency from non-residents, for transactions to be conducted in Turkey in favour of such non-residents.
- Non-residents can purchase foreign currency.
- Residents in Turkey and non-residents may freely transfer foreign currency abroad through banks.
- The transfer of an amount exceeding €10,000 should be carried out in compliance with the rules set out by the relevant ministry.
- Except for certain cases determined by the relevant ministry, residents in Turkey cannot determine contract prices and other payment obligations arising from the contract to be in foreign currency, or indexed to a foreign currency, in contracts for the sale and purchase of movable and immovable properties, all kinds of movable and immovable property lease contracts, including vehicle and financial leases, leasing contracts, employment contracts, service contracts, and independent contractor contracts.
- Except for certain cases determined by the relevant ministry, legal entities residing in Turkey and not having foreign currency incomes cannot obtain foreign currency loans in Turkey or from abroad.

11 Are there restrictions on foreign investment?

As a rule, there are no restrictions on foreign investment, and Turkey considers foreign and local investors equal.

As an exception to this rule, the rights of foreign natural persons and foreign legal persons with respect to acquisition of real property in Turkey could be restricted by a decision of the President.

Foreign natural or legal persons acquiring real property without any buildings should submit the project they will develop on the acquired real property to the approval of the relevant ministry. The relevant ministry will send the project to the land registry to be entered as a note in the land registry.

Foreign natural persons, foreign legal persons duly established under foreign laws and international organisations may hold real property subject to legal restrictions. Companies with foreign capital where foreign investors hold 50 per cent or more of the shares or may appoint or dismiss the majority of the persons who have the right to govern may acquire and use real property and restricted real rights in Turkey to carry out the activities contained in their articles of association.

12 Are there grants, incentives or tax reliefs for foreign investors or businesses?

Upon receipt of the necessary certification, incentives could include:

- customs duty exemption;
- exception for and refund of the value added tax (VAT);
- interest support on financing;
- contribution to the social security employer premium;
- support related to income withholding tax;
- reduction in corporate tax; and
- allocation of land.

13 What are the main taxes that apply to cross-border or foreign-owned business and investors?

There are two main income taxes: individual income and corporate income.

Natural persons' income is subject to an individual income tax rate that varies from 15 to 35 per cent.

Companies, cooperatives, public economic enterprises, economic enterprises owned by associations, foundations and joint ventures are subject to corporate income tax, which is levied on business profits as 22 per cent.

The generally applied tax on expenditures is VAT, which is generally applied at 1, 8 and 18 per cent.

Banking and insurance company transactions remain exempt from VAT, but are subject to a banking and insurance transaction tax, whose rate varies from 1 to 5 per cent.

No tax is levied on sales from foreign exchange transactions.

Stamp duty applies to a wide range of documents. It is levied as a percentage of the value of the document at rates ranging from 0.189 to 0.948 per cent or is set as a fixed amount for some documents.

Regulation

14 Which industry sectors are regulated or controlled by the government?

The main regulated sectors are banking or payment systems, e-commerce, tourism, agriculture, nourishment, medical or health, energy, transportation and retail.

15 Who are the key industry regulators, and what are their powers?

- The Ministry of Economy determines the main policies and targets concerning foreign trade in goods and services.
- The Ministry of Energy and Natural Resources regulates usage and consumption of natural resources.
- The Ministry of Agriculture and Forestry regulates agricultural and husbandry practices and determines policies on protection and development of forests and forestation.
- The Ministry of Customs and Trade generates, enforces and supervises the policies and practices promoting competition, entrepreneurship and economic growth in the realms of customs and trade.
- The Ministry of Treasury and Finance carries out implementation, monitoring and auditing of fiscal policy.
- The Ministry of Health plans, coordinates and cooperates with all relevant internal and external stakeholders to provide human-oriented sustainable healthcare services.
- The Ministry of Industry and Technology develops and implements policies, strategies, plans and programmes on science, industry and technology.
- The Ministry of Transport and Infrastructure provides and monitors transport, information and communications services for all users.

16 What are the other main enforcement authorities relevant to businesses?

These include the Revenue Administration, Competition Authority, Banking Regulation and Supervision Agency, High Council of Radio and Television, Capital Markets Board, Information and Communication Technologies Authority, Energy Market Regulatory Authority, the Public Procurement Authority and Personal Data Protection Authority.

17 On which areas have regulators particularly focused their recent enforcement activities?

The regulators have enacted the secondary legislation on Law on Protection of Personal Data (the DP Law).

Another significant focus relates to employment law. The Law on Labour Courts No. 7036 has finally come into force and its content intends to bring particular innovations on dispute resolution procedures for employment-related disputes.

The major difference provided by the law is the mandatory mediation procedure for employment disputes. Pursuant to the mandatory mediation procedure, it is now compulsory for parties of employment law based disputes to apply to the mediation before filing either re-employment lawsuits or compensation lawsuit arising out of employment agreements.

Another important action that the regulators have taken relates to restructuring financial debts. Accordingly, The Regulation on the Restructuring of Debts Owed to the Financial Sector has entered into force and aims to establish a general overview of the contractual restructuring of financial debts.

Other significant novelty is the requirement of mediation in commercial receivable actions. The Law on Commencement of Execution Proceedings in Monetary Receivables Arising from Subscription Agreements No. 7155 has come into force and amended some provisions of Turkish Commercial Code and Code of Mediation in Civil Disputes. With entry into force of The Law on Commencement of Execution Proceedings in Monetary Receivables Arising from Subscription Agreements, mediation has become a must in commercial receivable actions.

Capital Markets Board also focused on regulating crowdfunding. On 4 January 2019, CMB published the Draft Communiqué on Equity Crowdfunding No. III-35/A (Draft Communiqué). The Draft Communiqué addresses principles on (i) crowdfunding platforms, (ii) activities of crowdfunding platforms, (iii) subscription to crowdfunding platforms and the campaign process and (iv) areas for the use of the funds and venture capital firms. The Draft Communiqué requires crowdfunding platforms to apply to CMB for listing and comply with the specific requirements set forth by CMB.

Compliance

18 What are the principal bribery, corruption and money laundering concerns for businesses?

The Turkish Criminal Code prohibits the direct and indirect bribery and bribery of foreign officials, in addition to private commercial bribery for publicly traded joint-stock companies. It also contains provisions on laundering of proceeds of crime and leniency for real persons for certain corruption crimes including bribery and laundering of proceeds of crime. Corporations can be held liable through administrative fines and other measures.

19 What are the main data protection and privacy risks for businesses?

The DP Law sets forth the conditions for the processing of personal data. Guidelines, decrees, communiques and principle decisions have been published regarding implementation of the DP Law and the regulations pertaining to the DP Law (eg, the Regulation on the Data Controllers' Registry) entered into force. Regulation on the Data Controllers' Registry requires non-resident data controllers to register to the Data Controllers' Registry via a local representative, without defining any conditions or criteria that give rise to the obligation. Registration process and following processes regarding the registry (eg, notifications, assignments, updates, etc) are to be completed through the Data Controllers Registry Information System (VERBIS), which became functional on 1 October 2018. The regulator provided certain exemptions from the registration obligation based on number

of employees and yearly financial balance sum. Furthermore the regulator also provided the data controllers with grace periods for completing their registrations required under the DP Law.

The DP Law requires additional conditions for transfer of personal data outside Turkey without data subjects' explicit consent such as adequate level of protection in the destination country. However, these countries have not yet been determined by the regulator. Therefore data controllers that need to transfer personal data abroad need to seek alternative ways to transfer data in accordance with the law (eg, obtaining explicit consent or warranting adequate level of protection). In this regard, the regulator issued template written undertakings warranting adequate protection, which can be used for transfer of personal data outside Turkey without consent, to be authorised by the Data Protection Board. Standard contractual clauses, corporate rules or Privacy Shield type of legal means are not available for transfers of personal data outside Turkey. DP Law also states that where the interests of Turkey or the data subject will be seriously undermined, personal data may be transferred abroad with authorisation from the board. However, there is no guidance on the possible implementation of this provision.

20 What are the main anti-fraud and financial statements duties?

Companies shall prepare an income statement and financial statements that explain the relation of assets and liabilities in the beginning of the commercial activities and at the end of every operating period. The balance sheet and the income statement shall constitute the year-end financial statements.

Year-end financial statements shall be prepared in compliance with the Turkish accounting standards, be clear, and be prepared within such time as required by a regular course of enterprise operations.

Year-end financial statements shall be prepared in the Turkish language and in Turkish lira.

The board of directors of a joint stock company (that is controlled by another company) should prepare a dependency report, which explains the transactions conducted with its controlling company and other group companies, for each ordinary meeting of the general assembly. Within this report the controlled company should explain any loss it has incurred owing to transactions with, or under the instructions of, the controlling company.

21 What are the main competition rules companies must comply with?

The Turkish competition law regime deals with the following main concepts: (i) restrictive agreements, concerted practices and decisions, (ii) abuses of dominance, and (iii) merger control.

The regime prohibits:

- agreements between undertakings, decisions by trade associations and concerted practices which have (or may have) as their object or effect the prevention, restriction or distortion of competition;
- abuses by one or more undertakings, individually or through joint agreements or practices, of dominance in a market for goods or services within the whole or part of the country; or
- concentrations that create or strengthen a dominant position, thereby significantly lessen competition in a relevant market in Turkey. The competition regime authorises the Competition Board to regulate which mergers and acquisitions should be notified to gain validity.

22 Outline the corporate governance regime.

The corporate governance regime is set forth in the Turkish Commercial Code (TCC) and its secondary legislation. Companies may tailor their own governance rules as permitted by non-mandatory provisions of the TCC.

Companies whose shares are traded on the stock exchange must comply with the corporate governance principles that relate to shareholder relations, public disclosure and transparency, stakeholders and boards of directors within the scope of Corporate Governance Communiqué published by Capital Markets Board.

23 Can business entities incur criminal liability? What are the sanctions for businesses, related companies and their directors and officers for wrongdoing and compliance breaches?

According to the Criminal Code, entities cannot be held criminally liable. However, the following measures can be imposed on entities if the entity obtains an unjust benefit within the scope of the crimes explicitly mentioned in the Criminal Code: (i) invalidation of the licence granted by a public authority; (ii) seizure of the goods used in the commission of, or resulting from, a crime by the representatives of a legal entity; and (iii) seizure of pecuniary benefits arising from or provided for the commission of a crime. Administrative fines can be imposed on companies whose bodies or representatives commit the crimes listed in the Law on Misdemeanours (such as bribery, fraud, bid-rigging or money laundering).

In addition to the criminal sanctions that may be imposed upon the perpetrators (such as directors, managers, employees) of the crime committed, founders, members of the board of directors, managers and liquidators of the company can be held civilly liable to the company, its shareholders and its creditors.

Business operations

24 What types of business entity are most commonly used by foreign investors and why? What are the main requirements for their establishment and operation?

Among the different types of entities that can be formed, the limited liability company (LLC) and the joint-stock company (JSC) are the most common. A branch office of a foreign company can also be formed in Turkey.

JSCs are used by those who want to start large businesses. At least one shareholder and a minimum share capital of 50,000 lira are required for incorporation. The board of directors and general assembly are mandatory company bodies. Founders can be real persons or legal entities. A JSC is managed by its board. The board is composed of at least one director who could be a real person or a legal entity.

LLCs are used by those who want to start small and medium-sized businesses. At least one shareholder and a minimum share capital of 10,000 lira are required for incorporation. The board of directors and general assembly are mandatory company bodies. Founders can be real persons or legal entities. The company is managed by a board composed of at least one director who could be a real person or a legal entity, and at least one of the shareholders should be appointed as a director with unlimited authority to represent the company.

Branches of foreign companies may also engage in any commercial activities in Turkey within the scope of the activities and purpose of its headquarters. No specific minimum capital amount applies for branches. At least one of the branch representatives who resides in Turkey should be vested with full authority to represent the branch.

25 Describe the M&A market and the merger control regime. How easy is it to complete deals in your jurisdiction?

Despite challenging economic and political conditions in 2018, Turkish M&A market demonstrated a better performance in terms of deal volume compared to the previous two years. (<https://www2.deloitte.com/content/dam/Deloitte/tr/Documents/mergers-acquisitions/annual-turkish-ma-review-2018.pdf>).

The M&A market witnessed a total deal volume of US\$12 billion through 256 transactions.

The share of foreign investors in the total annual deal number was 29% with 74 transactions, similar to the 70 deals in 2017. However, in 2018, the foreign investors substantially contributed to the total deal volume (63% of the total annual deal value); this is the highest contribution since 2015. Similar to the previous years, internet & mobile services and technology made strong contributions to the deal activity together with the manufacturing, services, energy, financial services and food & beverage sectors. Financial services, logistics & transportation, manufacturing, media and food & beverage sectors were also the major contributors to the annual deal volume.

Pursuant to the Merger and Acquisition Insight Report of the Authority for 2018, the Board reviewed a total of 236 transactions in 2018. These transactions included 223 merger and acquisitions and 13 privatizations. Among these transactions, one concentration

concerning the air-conditioning sector was taken into Phase 2 review in 2018. The Board granted approval to all concentrations, only 3 of them are granted conditional approval. In 2018, 121 transactions notified to the Board were foreign-to-foreign transactions, which constitute more than half of the concentrations notified in 2018.

Communiqué No. 2010/4 lists the types of mergers and acquisitions that are subject to the Competition Board's review and approval. Concentrations that result in a permanent change of control are subject to the Competition Board's approval, provided that they exceed the applicable thresholds. Foreign-to-foreign transactions would also trigger a notification requirement if they exceed the turnover thresholds.

In practice, it is recommended that the filing be done at least 45 calendar days before the projected closing, except for high-risk concentrations or extremely complicated transaction structures that may require extensive discussions with the Competition Authority.

If following the notification, the transaction is found to be problematic under the applicable dominance test, it becomes a fully fledged Phase 2 investigation. Phase 2 takes about six months and if deemed necessary, may be extended only once, for an additional period of up to six months.

26 Outline the corporate insolvency regime. Is bankruptcy protection available for corporates?

Creditors who could not collect monetary receivables may prefer to commence bankruptcy proceedings. Bankruptcy lawsuits generally take more than one year.

The creditors may demand bankruptcy of a company by general bankruptcy, bankruptcy pertaining to commercial papers and bills, and direct bankruptcy.

A company can be terminated upon the decision of the Commercial Court of First Instance and go into liquidation.

If the company's financial situation seemed recoverable, bankruptcy might be postponed by the court at the request of managers, the board of directors or creditors. However, the postponement of bankruptcy has been abolished and the provisions regarding concordat has been amended with entry into force of the Law No. 7101 on the Amendments in Enforcement and Bankruptcy Law and Certain Laws. Temporary concordat term has been introduced with the said law. Accordingly, the temporary concordat term is in principle three months and this term may be extended for up to two months. In case it seems possible for concordat to be successful, the debtor is granted definite term for one year. Such definite term may be extended up to six months in case of particular cases. In other words, concordat process should be completed within 23 months at the latest.

Employment

27 How easy is it to enter into and terminate employment contracts?

Every individual eligible to work can enter into an employment contract. However, termination of employment should only be considered as a last resort.

Fixed-term employment agreements terminate automatically upon expiry. Furthermore, parties of definite-term employment agreement can terminate the agreement with a valid reason if the other party breaches the agreement (if the fixed-term employment agreement is terminated by the employer without any valid or rightful reason before its term expires, the employee is entitled to compensation for the damage caused).

An employer who employs at least 30 employees must present a valid reason (as listed under the Labour Law) for dismissal of an employee who has worked for at least six months at a workplace under an indefinite-term agreement. Indefinite-term employment agreement can be terminated by prior written notice. The employer may also terminate employment agreement immediately, by paying compensation in lieu of notice.

An employer is also required to request the employee's written defence before terminating employment agreement based on valid reasons.

Employers can immediately terminate an employment agreement based on one of the rightful reasons set forth under the Labour Law.

Employers' right to terminate an employment agreement based on rightful reasons must be exercised within six business days after the

employer becomes aware of the rightful reason or within one year of the rightful reason occurring. Notice periods are not applicable to terminations based on rightful reasons.

Employers and employees can also terminate employment by agreement. The validity of a mutual termination agreement relies on whether the relevant employee obtains a benefit. The employee's benefit could be identified by financial inducement to accept the mutual separation agreement.

28 What are the key rights of local employees?

Employees rights include:

- remuneration;
- severance payment;
- payment in lieu of notice;
- overtime payment;
- annual leave;
- weekend leave; and
- leave in general and public holidays.

29 What are the main restrictions on engaging foreign employees?

Foreigners intending to work in Turkey must obtain work permits. Employers who employ foreign employees must notify the Ministry of Labour and Social Security of the employment relation.

There are three types of work permits:

- definite duration;
- permanent; and
- independent.

The employers or the foreign employees who have an independent or permanent work permit and who do not fulfil their obligation to notify the ministry may be subject to a monetary fine.

30 What are the other key employment law factors that foreign counsel, investors and businesses should be aware of?

Turkey is governed as a social state, which entails the protection of employees and thus interpretation of circumstances in favour of the employee. This means employers should duly document and support each action taken against the employee.

Intellectual property

31 Describe the intellectual property environment. How effective is enforcement and what are the key current issues?

Principles as to intellectual property (IP) are mainly set forth under the Intellectual Property Rights Law, which mainly grants the following remedies for infringement of IP rights: (i) determination of the offence, (ii) prohibition of infringement and (iii) compensation claims. Many regional and international treaties on IP have also been adhered to by Turkey.

There is also a new legislation on Industrial Property that regulates many reforms and regulates trademarks, geographical indications, designs and patents in detail and in compliance with European Union regulations. Establishing a responsive system to substantially increase the number of applications for industrial property rights, harmonising the Turkish legislation with EU Law and abolishing the inconsistencies in the law are key objectives that led to the establishment of the Industrial Property Law.

The current key issues mainly revolve around the protection of recognisable brands and software, computer based intellectual properties as well as intellectual property right protection in scientific inventions.

Legal reform and policy

32 What are the key issues in legal reform, government policy and the economy?

After the change from the parliamentary system to an executive presidency in 2018 and the reforms made in the ministries, not much has changed in terms of government policy and economy.

As for legal reforms, the Law on the Amendment of Certain Laws for the Improvement of the Investment Environment No. 7099 (Law) was published in the Official Gazette on 10 March 2018 and introduced

certain amendments to various laws, including the Turkish Commercial Code No. 6102 (TCC), the Tax Procedural Law, the Law on Legal Fees and the Law on Movable Property Pledges in Commercial Actions and these changes aimed to enhance Turkey's investment environment by reducing the number of transactions required to set up a company, by supporting investors, and by lowering the expenses associated with the incorporation of joint stock and limited liability companies. These amendments to the Turkish Commercial Code aim to improve the investment environment in Turkey, boost the national economy, and reduce the costs of company incorporation and doing business in Turkey. The Law also introduces significant amendments regarding the liquidation and incorporation of companies and secondary legislation may be required in order to bring uniformity to the practice of Notaries Public and Trade Registries in Turkey.

33 Are there any significant legal developments ongoing or pending? What are their effects on the business environment?

The Presidential Decree on the Amendment of the Decree No. 32 on the Protection of the Value of the Turkish Lira (New Decree) has come into force on 12 September 2018 and introduces significant restrictions on the use of foreign currencies in inter alia employment agreements between Turkish residents. To elaborate the New Decree, the Communiqué No. 2018/32-52 on the Amendment of the Communiqué on Decree No. 32 on the Protection of the Value of the Turkish Lira (No. 2008/32-34) (Communiqué) came into force on 16 November 2018, which details the exceptions to the restrictions imposed by the New Decree. With the Communiqué, in principle, contract prices and other payment obligations in employment agreements, signed by and between Turkish residents, cannot be determined in a foreign currency or indexed to a foreign currency.

New Decree has mandated that contract prices that were denominated in a foreign currency in agreements that were executed prior to this shall be re-determined by the parties in Turkish currency within 30 days of the date on which article 4(g) of this Decree comes into force.

Therefore, the New Decree has not only introduced significant restrictions on the use of foreign currencies in employment agreements to be executed between Turkish residents in the future, but it has also imposed an obligation to revise contract prices and re-determine them in Turkish Lira for certain agreements that had already been executed before the announcement of the New Decree.

Resources and references

34 Please cite helpful references, for example sources of law, websites of major regulators and government agencies.

Presidency of the Republic of Turkey Investment Office – www.invest.gov.tr/en-US/Pages/Home.aspx
 Competition Authority – <https://www.rekabet.gov.tr/en>
 Ministry of Trade – <https://www.trade.gov.tr/>
 Ministry of Industry and Technology – <https://www.sanayi.gov.tr/index.html?lang=en>
 Ministry of Health – https://health.gov.tr/?_Dil=2
 Ministry of Agriculture and Forestry – <https://www.tarimorman.gov.tr/Sayfalar/EN/AnaSayfa.aspx>
 Ministry of Treasury and Finance – <https://en.hmb.gov.tr/>
 Ministry of Energy and Natural Resources – <https://www.enerji.gov.tr/en-US/Mainpage>
 Ministry of Transportation and Infrastructure – www.ubak.gov.tr/
 Capital Markets Board – www.cmb.gov.tr/
 Banking Regulation and Supervision Agency – <https://www.bddk.org.tr/Home>
 Energy Market Regulatory Authority – <https://www.epdk.org.tr/Home/En>
 High Council of Radio and Television – www.rtuk.gov.tr/en
 Information and Communication Technologies Authority – <https://www.btk.gov.tr/>
 Personal Data Protection Authority – www.kvkk.gov.tr/
 Revenue Administration – www.gib.gov.tr/en

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Mr Gürkaynak heads the competition law and regulatory department of ELIG Gürkaynak Attorneys-at-Law, which currently consists of 45 lawyers. He has unparalleled experience in Turkish competition law counselling issues with more than 20 years of competition law experience, starting with the establishment of the Turkish Competition Authority.

Mr Gürkaynak frequently speaks at conferences and symposia on competition law matters. He has published more than 150 articles in English and Turkish by various international and local publishers. Mr Gürkaynak also holds teaching positions at undergraduate and graduate levels at two universities, and gives lectures in other universities in Turkey.
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