

TURKEY'S NEW FOREIGN DIRECT INVESTMENT LAW

General

In 2003, Turkey introduced significant legislative reforms to improve the investment climate in Turkey in order to facilitate the flow of foreign direct investment and as an integral part of a broader national reform. New enactments include three pieces of legislative acts, which aim to eliminate bureaucratic red tape, introduce equal treatment to both domestic and foreign investors and protect foreign investors' rights in a fashion that match international standards. The first one of these legislations is the law on foreign direct investment; the second one is the law concerning company formation; and finally the implementing regulation on foreign direct investment law.

Elimination of Bureaucratic Red Tape

The new Foreign Direct Investment Law adopts a new approach to the registration of foreign investments and simplifies the bureaucratic procedures by way of eliminating certain foreign investment specific permissions. In addition, the Turkish Commercial Code was amended to introduce changes to simplify lengthy and complicated company formation process, which previously required more than 20 government agencies' authorizations. Following the amendments, company formation can be completed after notarization of the Articles of Association, depositing 0.1% of initial share capital to the Consumer Protection Fund and 0.04% to Competition Board; and registration with the relevant Commercial Registry Office.

New implementing regulation on foreign direct investment law issued on 20 August 2003 further sets forth simplified rules for the implementation of the legislation. Pursuant to the new Regulation, the Undersecretariat of Treasury's General Directorate of Foreign Investment ("**GDFI**") only asks for annual filings from foreign capital companies relating to their commercial activities, share capital changes and share transfers for information purposes. However, the GDFI still continues to be the permitting authority relating to the establishment of liaison offices.

Equal Treatment to Foreign and Domestic Investors

The new Foreign Direct Investment Law as it introduces the "*equality principle*" for domestic and foreign companies. Accordingly, all companies established with foreign capital and under the rules

of the Turkish Commercial Code are regarded as local Turkish companies, and therefore entitled to and benefit from the same rights and exemptions that are granted to domestic companies engaged in the same field of activity.

As the reflection of such equality principle, the foreign investors are no longer required to obtain an initial permit from the GDFI. In addition, there is no longer US\$50,000 minimum capital requirement for foreign shareholders to establish or participate in a capital company in Turkey. Moreover, the new Law allows foreign investors to freely transfer profits, dividends and the sale and liquidation proceeds as well as payments received in relation to licence, know-how, technical assistance, management or franchise arrangements. Another recent amendment related to Land Law emphasizes the equal treatment principle and grants same rights to foreign companies to own or use land as domestic businesses in Turkey. However, “reciprocity” will be sought for foreign investors.

Accepting International Standards for Definitions of “foreign investor”

Pursuant to the former foreign direct investment legislation, only foreign nationals and foreign legal entities were regarded as foreign investors. The New Direct Investment Law has broadened the definition of “foreign investor” to include Turkish nationals resident abroad and international organizations.

The definition of “foreign direct investment” has also been broadened to include all possible types of assets such as monetary capital in the form of convertible currency, company securities excluding government bonds, machinery and equipment, intellectual property rights imported abroad and profits, proceeds, receivables and other financial rights converted into capital by way of reinvestment in Turkey.