

A. INTRODUCTION TO TURKISH LAW

Turkey is a civil law country, legislation of which is mainly based on countries that of Continental Europe. Turkey adopted Swiss Civil Code and Code of Obligations almost verbatim, which contain the law of persons, family law, succession, property, contracts, torts and unjust enrichment in 1926. The Turkish Code of Execution and Bankruptcy was adopted in 1929 based on the Swiss Federal Code of 1889. It was replaced in 1965 by a new Code to satisfy the changing requirements of Turkish economic and commercial life. Not only in the field of private law but also in the sphere of public law, western codes were received. The Criminal Code was adopted in 1926 based on the Italian Criminal Code of 1889. Although it has been amended several times in order to adopt it to the conditions of the country, its essence has been preserved. Codes of administrative law were mainly adopted from France as a result of French influence on administrative system of Turkey.

In the hierarchy of the enacted laws, the Turkish constitution occupies the first place, followed by codes and statutes. International treaties, which Turkey is a party, become enforceable after being approved by the Turkish Grand National Assembly. The constitutionality of treaties cannot be challenged and provisions of a treaty prevails in case of a conflict between a treaty and a statute.

B. INVESTMENT LEGAL FRAMEWORK

SECTION 1 – CHOOSING THE RIGHT VEHICLE TO INVEST

General

Capital companies are the most common form of business entities in Turkey utilized by both local and foreign investors. Investors may choose to participate into an already existing capital company or establish a new one.

Under Turkish law, both joint stock corporations (“AS”) and limited liability companies (“LS”) are capital companies, as opposed to so-called “*personal companies*”. The liability of shareholders is limited to the share capital subscribed to in the capital company. In both AS and LS, fields of activity, operations, and other corporate matters are governed by their articles of association within the framework set out in the Turkish Commercial Code (the “TCC”).

From a practical point of view, AS are legal entities most appropriate for large operations, including in particular, corporate joint ventures, and the legal framework on corporate governance of AS are better developed and more flexible. On the other hand, LS are generally used for projects and investments in smaller scale.

Alternative to directly establishing or participating in a capital company, investors may choose to invest in Turkey through a branch office or a liaison office. Branch offices are not considered as separate legal entities and are closely associated with their parent companies in respect of internal management. However, a branch office will have

autonomy in terms of accounting matters and carrying out commercial transactions and will be subject to corporate tax. Liaison offices, on the other hand, are the right tools for ‘non-commercial activities’ such as research and services.

Capital Companies

The main document governing a capital company is its Articles of Association (“**Articles**”). By law, among others, the Articles must contain information on the trade name, scope of activities, founders, capital structure, duration (if any), board of directors/managers, general assembly, distribution of dividends, reserves to be set aside and restrictions and procedures for share transfers. Under Turkish law, shareholders’ agreement is not considered to be a document governing and binding on the company. It is rather deemed as a separate piece of documentary evidencing the contractual relationship between its parties and entitling them to contractual remedies or recourse in case of breach.

Shares of capital companies can be in bearer or registered form. However, shares of certain companies like banks, insurance companies and brokerage houses, are required to be in registered form. Holders of registered shares are registered at the company’s share ledger and transfer of registered shares is completed after the new shareholder is registered with the ledger. The company has the right to refuse to register a transfer for reasons specified in the articles or without stating any reason, if so specified in the articles. In such case, the purchaser does not acquire full ownership status of the shares and is prevented from exercising his management rights, such as the right to vote, until the registration is completed.

(i) Joint Stock Corporations (AS)

AS can be established for an indefinite period with at least five real person or legal entity shareholders, and an initial capital of at least 50 billion TL. Under Turkish law, certain activities such as banking or insurance can only be carried out by companies established as an AS. In addition, only AS may offer its shares to public, and trade its shares at the stock exchange.

The capital of an AS is divided into shares, each being separate and conferring equal rights in proportion to their nominal value, except in case of special privileges. Shares are freely transferable, however certain transfer restrictions may be set forth in the Articles. Share transfer in AS is effected through endorsement and delivery of the share certificate or provisional share certificate, as the case may be. Furthermore, once a share subscribed is paid in full, the holder of that share may not be expelled.

(ii) Limited Liability Companies (LS)

LS needs to have an initial capitalization of 5 billion Turkish Liras and its can have 2 to 50 shareholders. Duration of LS is limited to maximum 99 years.

A shareholder of LS has a partnership share calculated in accordance with

the nominal value of capital subscribed to. In certain cases, the total share of each shareholder is regarded as one equity share, regardless of nominal value. Transfer of shares is subject to major restrictions in LS (such as approval by other shareholders representing 75% of the share capital) and may be altogether restricted. Subject to the conditions prescribed in the TCC and any conditions provided for in the Articles, it is possible to expel a shareholder, and a shareholder may also request from a court the dissolution of LS subject to certain conditions. As shares of LS is not represented by share certificates, share transfers are effected through registration of an executed and notarised sale and purchase agreement with the competent trade registry together with a shareholders' decision approving such share transfer.

Although liability of the shareholders is limited to the amount of share capital owned in the company, and the shareholders are not personally liable for any debt or other liability of the company, shareholders of LS may be held liable for the public debts of the company, such as tax liabilities. Despite the restriction on the companies for acquiring their own shares, if LS ends up acquiring the shares of one of its shareholders against its receivables, then the shareholders are jointly liable for the payment of the un-paid portion of the newly acquired shares by the company.

Turkish Branch Office of a Non-Turkish Company

Branch offices have autonomous capital and accounting to carry out commercial transactions with third parties, although they are closely associated with the parent company in respect of internal management. This means that rights, debts, profits and losses of the branch offices are assumed by the parent company. A branch office can only engage in activities of its parent company. It cannot provide goods and services or engage in any commercial activities that are not specified in the parent company's articles of association. Although there is no legal capital requirement for branch offices, it is required that the incorporating company maintains a capital sufficient to run the branch office in practice.

A branch office shall use the same corporate name as that of the parent company by indicating that it is a branch office and also contain the location of the head office and the branch office. A fully authorized commercial representative (branch office manager) residing in Turkey needs to be appointed in order to run day-to-day business of the branch office.

Turkish Liaison Office of a Non-Turkish Company

Under Turkish law, a liaison office cannot deal with any commercial or cash generating activities. It can only conduct 'non-commercial activities' such as market research, customer services, gathering information, carry out advertising and promotional activities in Turkey and contact with the customers or suppliers of the parent company. A liaison office cannot repatriate funds except for termination or liquidation proceeds of the liaison

office.

Foreign companies are allowed to establish liaison offices in Turkey subject to the permission of the Foreign Investment General Directorate of the Undersecretariat of Treasury. The amount of capital invested must be in-proportion to the proposed expenditures of the liaison office.

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SECTION 2 - GOVERNANCE ISSUES

Corporate Governance Rules and Principles

The primary sources of corporate governance regulations are embedded in the TCC and regulations of the Capital Markets Board (the “**CMB**”) and the Istanbul Stock Exchange (the “**ISE**”). Special corporate rulings are also applicable to certain sector companies, such as banks and insurance agents.

In July 2003, the CMB issued corporate governance principles (the “**CMB Principles**”) with an aim to heighten the corporate governance standards of Turkish companies, particularly public ones. The principles were modeled after the OECD Corporate Governance principles of 1999 and take into account other worldwide generally accepted or suggested corporate governance standards with a view to increasing corporate accountability, transparency, fairness and integrity.

The CMB Principles were developed on the basis of a code of best practice rather than firm legal rules. Unlike the mandatory legislation, the CMB Principles are not binding and, therefore, applied by companies on a voluntary basis. However, some of the principles of the CMB are already given mandatory force by being included in the CMB legislation such as disclosure requirements, using of IFRS and formation of audit committee for public companies. The CMB, however, has created a “comply or explain” process, requiring reasons for non-compliance, in the absence of adherence by listed companies to the CMB Principles. The CMB Principles are divided into four sections, namely the shareholders, disclosure and transparency, other stakeholders such as employees, suppliers, customers and creditors, and board of directors.

In order to promote application of corporate governance principles, the CMB is planning to form a separate index of ISE, which will be comprised of public companies complying with the corporate governance standards at a certain level assessment of which is to be made by corporate governance rating companies yet to be incorporated.

The Board of Directors / Managers

(i) Board of Directors (AS)

A one tier Board (“**Board**”) represents AS in its dealings with third parties and is ultimately responsible for managing the company’s business. The Board must be comprised of at least three directors with a maximum duration of three years, which may be extended at the end of the term. There are no nationality considerations or mandatory employee representations. If so provided in the Articles, most powers and duties of the Board may be vested in managing directors and some powers assigned to other executives.

Board members can only be elected amongst real person shareholders or representatives of legal entity shareholders.

There are no special skill requirements for members of the Board, however, they are required to perform their responsibilities with diligence, care, foresight and good faith. Also, being bankrupt, lacking minimum legal qualifications, or being convicted of forgery, embezzlement, theft or fraud are listed among reasons for losing membership to the Board. In addition, special laws regulating activities of certain types of AS engaged in banking, insurance or other financial activities require additional skills from the Board members such as experience in the relevant field.

(ii) Managers (LS)

Managers are authorized to perform any and all activities falling under the scope of the LS with the exceptions of those reserved for shareholders resolution through the Articles and the TCC. Managers carry out the business and activities of a company, and manage the company in good faith and aim to promote the best interests of the company. They are required to participate in all activities regarding the management of the company unless their task is restricted to certain transactions.

Managers can be shareholders or non-shareholders, real persons or legal entities. In the latter case, a representative of the legal entity shall be registered as manager. Managers will be expected the skill and knowledge required for such position.

General Assembly of Shareholders

The shareholders of an AS exercise their control over company affairs through general assembly meetings, which may be held ordinarily (annual general meeting) or extraordinarily. Annual general meeting must be convened within three months after the end of the company’s fiscal year to resolve on matters such as annual reports of the Board and the company's internal auditors, balance sheet and P/L statements of the preceding financial year and allocation and distribution of profits. Further, the Board is released from the liability of the actions taken by them in the preceding financial year. In addition to the annual ordinary general meeting, the shareholders can also convene extraordinarily as necessary.

Except for cases subject to a qualified quorum under the TCC or the Articles, the meeting quorum for any general assembly meeting is at least one fourth of the share capital. In practical terms, unless otherwise is provided for in the Articles, a 51 percent majority would effectively control management, appointment of auditors, dividend declaration, etc. The majority, of course, cannot violate minority rights. Shareholders may personally attend and vote in the general meetings or be represented through proxy. Voting through electronic means such as facsimile, e-mail or internet/intranet is not possible.

As in AS, general meetings of shareholders is the highest decision making body of an LS and are responsible for resolving on certain issues as mentioned above. The difference between the two types of companies is that in LS, the shareholders resolutions may be passed in writing without actually convening provided that the number of shareholders is less than 20. Unless otherwise is stipulated under the Articles or in TCC, the ordinary decision-making quorum is majority of the paid-in share capital of the LS.

Auditors

(i) Statutory Auditors

Pursuant to the TCC, AS must have one to five auditors appointed for a maximum term of three years. The auditors are appointed and dismissed by the shareholders at the annual general meetings. The internal auditors audit the company's accounts on behalf of the shareholders and ensure that they comply with the applicable laws and the company's Articles. The LS is only required to have a statutory auditor if it has more than 20 shareholders.

(i) Audit Committee

The CMB rules require that public companies, which are established in the form of AS, form an "audit committee" comprised of at least two non-executive directors of the Board. The audit committee will have a number of specific responsibilities including reviewing the accounting systems of the company and ensuring efficiency of internal control procedures. The audit committee will also have a specific duty to discuss with the management and independent auditors the annual and interim financial statements to ensure the accuracy and completeness of the information provided to public. In addition, audit committees are required to scrutinize and monitor the appointment and work of auditing firms. The audit committee is required to meet at least four times a year and submit the minutes of such meeting to the Board.

(iii) Independent External Auditors

In addition to the statutory auditors and audit committee, as per the CMB rules, the public companies are required to appoint an independent audit firm certified by the Capital Markets Board and have their year-end and half year results independently audited. The independent auditors can be

appointed by the Board, and subject to the approval of the audit committee, for a maximum term of five years, and a two-years interval needs to pass before the same independent audit firm can be reappointed.

In order to avoid potential conflicts of interests, independent auditing firms and their employees are prohibited from providing specific types of consulting services to their audit clients, such as, internal auditing services, keeping company books and accounting services. Furthermore, any consultancy company in which an independent audit firm has a controlling stake in capital or management control cannot provide services to the clients of the controlling auditing firm.

Although the requirement to appoint external audit firms are not applicable to non-public companies, in practice, large companies especially with foreign equity or companies intending to go to public choose to appoint external auditors on a private basis for auditing and corporate governance reasons.

Minority and Preferential Rights

(i) Minority Rights

Under the TCC, shareholders of AS representing at least 10 percent of the share capital (5 percent in public companies) is deemed as forming a “minority” and enjoy certain degree of protection. Minority shareholders, among others, are entitled to (i) invite shareholders to an extraordinary general assembly meeting, (ii) add an item to the agenda of a general meeting, (iii) refuse to release the founders, directors or auditors from liabilities, (iv) postpone deliberations on the balance sheet at the general meeting and (v) request for the suing directors and auditors.

(ii) Preferential Rights

Preferential rights, if so provided for in the Articles, may be granted to certain classes of shares. In most cases, preferential rights take the form of multiple voting rights, appointment of a certain number of directors or auditors, pre-determined dividend rate or seniority in the allocations of proceeds when the company is liquidated.

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SECTION 3 – EMPLOYMENT

General

Under Turkish Law, it is possible to enter into employment contracts both for definite and indefinite durations. Contracts with a term of one year or more have to be in written form. Trial periods up to two months in case of individual contracts (and four months in case of collective contracts) may be agreed upon provided that the employee is paid for his work during such period.

The maximum hours an employee can work in a week is 45 hours. Overtime work is permitted provided that the employee's consent is obtained and the Regional Labor Directorate of the Ministry of Labor and Social Security is notified in advance. The overtime request should occur as a result of a solid reason such as specifics of work or increase of production in a workplace. Overtime work cannot exceed 270 hours in a year. An overtime-working employee is entitled to receive 150% of his normal hourly working salary, if the overtime work exceeds 45 hours in a week. The overtime salary would be 125% of the normal hourly salary if the normal working hours plus overtime work are below 45 hours a week.

An employee, who has completed one year in the same workplace, including the trial period, is entitled to annual paid vacation. The minimum period of vacation varies between 14 to 26 business days depending on the years of employment. An employment contract may provide for longer vacation periods.

Social Security and Pension Funds

All employees must be covered by the social security system and pay social security contributions. According to the provisions of the Social Insurance Law, workers employed automatically become insured under the coverage of the said Law. The rights and liabilities of the insured workers as well as their employers start as of the date of employment. The right and liability to become insured cannot be renounced.

In addition to the social security system, employee may participate to a private pension fund established by pension companies. The employer may also participate in the fund on behalf of the employee at its sole discretion. The pension fund system, which was recently introduced to the Turkish labor environment, aims to enable the individuals to make a safe saving to be used in their elderly years. Such savings may be claimed either as a retirement salary or a lump-sum payment. However, this law does not totally provide for an alternative to the existing social security system.

Equal Treatment Principle

Under Labor Law, discriminations based on language, race, sex, political view, philosophical belief, religion and similar reasons are forbidden. Moreover, employers are prohibited from directly or indirectly making any discrimination or paying lower salary

based on sex or pregnancy for the same or equal works, except for the biological or other obligatory reasons relating to the nature of work.

In addition, the employers are prohibited from applying different conditions to full time and part-time employees or employees working with definite or indefinite term contracts, except for the existence of material reasons. Any employer who breaches the principle of equal treatment shall be required to pay a compensation in an amount corresponding to the employer's four months salary.

Remunerations

Employees are entitled to receive a salary in cash in return for work. As a general rule, employees' salaries are to be deposited to a bank account in Turkish Liras at least once a month. It is, however, possible for the employee and the employer to agree on the remuneration in a foreign currency and the payment thereof in such currency. The parties to the employment contract are free to determine the amount of salary provided that such salary shall not be below the minimum wage applicable as determined by the Minimum Wage Determination Committee.

In addition to the salary, fringe benefits cost employers about 30-40% of blue-collar worker's gross wages and 25-30% of white collar salaries. The most common fringe benefits are meals, transportation, and yearly bonuses of two or four month's salaries. In addition, cash benefits payable in the event of births, marriage, etc. and heating and clothing allowances are provided through collective bargaining agreements.

Termination

(i) Termination Based on Just Causes

An employee and the employer have the right to terminate the employment contract at any time based on just causes stated in the Labor Law such as health reasons, unethical or mala fide behaviors or force majeure events. In case of termination for just causes, the termination has an immediate effect and accordingly in case of contracts with an indefinite period, the terminating party does not have to wait throughout the notice-period to actually end the contract and the other party will not be entitled to claim notice payment.

(ii) Termination without Cause

Employers employing less than 30 employees at their workplaces or employees wishing to terminate an indefinite term employment contract, without a just cause, may do so by serving a termination notice to the other party. Following the notification, the employment contract continues to be in force for a certain period of time, i.e. notice period, ranging between 2 to 8 weeks depending on the years worked. However, longer notice-periods can be determined in the employment contract. It is also possible to terminate an indefinite term employment contract immediately giving a

payment in lieu of notice. The amount of this payment will be the actual salary of the employee for the relevant notice period.

On the contrary, contracts with definite terms may be terminated without a just cause with immediate effect provided that the indemnifications and other relevant payments are made.

(iii) Termination Based on Valid Reason (Indefinite Contracts)

For terminations other than ones based on just causes, employers who employ 30 or more employees at their workplaces are obliged to specify a “valid reason” for terminating indefinite term contracts. This valid reason needs to be related to (i) the productivity or manners of the worker, or (ii) the work, business, and workplace. Union membership, being an employee representative, race, color, sex, marital status, family responsibilities, pregnancy, religion, political view, national extraction or social origin do not count as valid reason, as most of these are discriminatory basis.

An employee has a right to file a lawsuit against the employer, if he believes that the termination lacks any valid reason and demand for re-employment by the same employer. If the court holds in favor of the employee, the employer has an alternating right between re-employing the employee or paying a compensation equal to at least 4 months and maximum 8 months of the employee’s salary, as determined by the court.

Employment of Foreigners in Turkey

The Ministry of Labor and Social Security may permit the employment of administrative and technical foreign personnel in Turkey provided that such personnel have sufficient administrative and technical knowledge for the relevant position. In order to be able to work and reside in Turkey, all non-residents must first obtain a work permit from the Ministry of Labor and Social Security and parallel with this permit, a work visa from the relevant Turkish Embassy located in foreign country and a residence permit from the Ministry of Internal Affairs.

However, foreigners visiting Turkey and remaining in the pay rolls of the foreign company abroad do not need to apply for residence or work permits provided that their stay in Turkey is temporary.

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SECTION 4 – INVESTMENT INCENTIVES

Investment Allowances

Investment allowances may be granted whereby investment costs are deducted from taxable income thus reducing corporate tax to be paid. The rate of investment allowances may be 40 % of the investment for all the regions in Turkey. The importation of the machinery and equipment (excluding raw materials, intermediate and operating products) listed within the context of an investment incentive certificate may be exempted from Customs Tax, the Mass Housing Fund and Value Added Tax (“VAT”). However, used machinery or equipment produced in Turkey cannot benefit from this allowance.

Export Incentives

- (i) **VAT Exemption:** In order to encourage exportation of goods and/or services from Turkey to abroad, the Turkish Government provides certain VAT Exemptions. In order to benefit from such VAT exemption, the use of and benefiting from goods or services must be outside Turkey.
- (ii) **Turkish Eximbank Credits:** Türk Eximbank is a fully state-owned bank acting as the Turkish government’s major export incentive instrument in Turkey’s sustainable export strategy. As Turkey’s official export credit agency, Türk Eximbank has been mandated to support foreign trade and Turkish contractors/investors operating overseas. Türk Eximbank supports exporters, export-oriented manufacturers and overseas investors with short, medium and long-term cash and non-cash credit programs. Moreover, export receivables are discounted in order to promote sales on deferred payment conditions and to increase export trade volume.
- (iii) **Other State Incentives:** In addition to the above, certain state incentives may be granted to the investors that will export goods and/or services to abroad, such as employment aid, aid for attendance to foreign expo fairs, research and development activities, aid on the expenses borne by environmental matters, aid for the promotion of Turkish trademarks abroad.
- (iv) **Re-export Regime:** Although not considered as a direct export incentive, the “re-export regime” also includes certain incentives for the exporters in Turkey. Accordingly, the importation of products, which are imported for the purpose of manufacturing a new product in Turkey and then exporting the new product to abroad, is exempted from certain import taxes. In order to benefit from the incentives available under re-export regime, the “re-export permission certificate” must be obtained from the

Undersecretariat of Foreign Trade.

SECTION 5 - COMPETITION

Purpose and Scope

The *object* of the Competition Law is to prohibit agreements, decisions and practices that prevent, distort or restrict competition in goods and services markets and to prevent the abuse of dominant position. The legislation applies to all kinds of goods and services markets and outlaws price fixing, market allocation and other agreements among enterprises aimed at restricting competition. Mergers and acquisitions aimed to create or strengthen a dominant position and thus harmful to the competitive structure of a free market economy are also prohibited. Turkey's competition law is aligned with the principles of Articles 81 and 82 (formerly Articles 85 and 86) of the EC Treaty and the EC Merger Regulation.

The Competition Law prohibits three kinds of practices, which are presumed to be distorting competition: (i) agreements, decisions of associations, or concerted practices restricting competition; (ii) abuse of dominant position; and (iii) mergers and acquisitions aimed at creating or strengthening a dominant position and have the effect of significantly restricting competition.

Enforcement Authority

The Turkish Competition Board is an autonomous authority and has administrative and financial independence. It is independent in carrying out its tasks to ensure the enforcement of the Competition Law and to provide an effective functioning competition in the markets for goods and services. It carries out investigations, evaluates requests for exemptions, monitors the market, assesses mergers and acquisitions, submits views to the Ministry of Industry and Commerce, keeps up with legislation and policy decisions of other countries, publishes annual reports on its activities and performs other tasks stipulated in the Competition Law.

The Competition Board is empowered to commence investigation for any violation of the Competition Law either on its own initiative or following a request by the Ministry of Industry and Commerce. Besides, any individual or legal entity having a legitimate interest may file a complaint with the Competition Board.

Notifications to the Competition Board

Agreements, concerted practices and decisions falling within the scope of Article 4 of the Competition Law must be notified to the Competition Board within one month of their execution. An agreement, which has not been notified to the Competition Board, will not benefit from an exemption, which would otherwise have applied. The Competition Board may withdraw exemption or negative clearance decisions where there has been a change in circumstances or where the conditions imposed have not been fulfilled.

Mergers and acquisitions, which fall within the scope of Article 7 of the Competition Law, must be communicated to the Competition Board. After a preliminary inspection, the Competition Board will either clear the merger or acquisition or submit it to a full inspection. Where a full inspection has been started, the Competition Board will notify

the parties and the merger or acquisition will be suspended until the final decision. If having received notification regarding a merger or acquisition the Competition Board fails to take any action at the end of 30 days following the date of notification, such merger or acquisition will become legally valid and effective.

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SECTION 6 - INTELLECTUAL PROPERTY LAW

Trademarks

The owner of a trademark does not need to apply to registration proceedings to technically own exclusive rights to the trademark. The actual use of the trademark will automatically grant exclusive rights to the owner. However, the owner of the registered trademark will be in a considerably more advantageous position in respect of protection and will benefit favorable outcomes of the registration. These, include, among others (i) evidence to owner's exclusive rights of which burden of proof of contrary vests in the opposing party (ii) notice to those conducting trademark searches (iii) facilities in obtaining fast and effective precautionary injunctions from courts (iv) priority right in international registration applications filed within 6 months following national application.

Once registered, the trademark will be protected for a period of 10 years beginning from the filing date of the application and registration may be renewed for an unlimited periods of successive 10 years. The rights conferred by a registered trademark shall prevail against third parties from the date of publication of the trademark registration. Under Turkish trademark protection system, the person who, without the consent of proprietor of the trademark, produces, sells, distributes, puts to commercial use or, imports for these purposes or keeps in possession for these purposes, the products under the trademark shall be liable to remedy the illegality and to compensate the damages caused.

The trademark registration in another country does not give automatic protection for the same trademark in Turkey. In order to benefit from trademark protection in Turkey, the trademark needs to be registered with the Turkish Patent Institute (the "TPI"). However, according to 6 *bis* of the Paris Convention, well-known trademarks constitute exemptions to this rule.

Geographical signs (Designation of origin)

Geographical signs are those signs indicating the origin of a product possessing a specific quality, reputation or other characteristics attributable to that place, area, region or country of origin. The following items are not recognized as geographical signs: (i) generic names and signs of products, (ii) plant species, animal races or similar names which are likely to mislead the public as to the true origin of the products, (iii) signs against public order and general principles of morality and (iv) signs and names which are not protected or their period of protection has expired or which are not used in countries that are parties to the Paris Convention.

Real person or legal entities manufacturing a product, consumer associations and public enterprises related with the product or the geographical region are entitled to apply to the TPI to get protection. Decree on Protection of Geographic Signs sets out provisions regarding remedies to the infringements. However, no action may be taken against parties who have been continuously using the geographic signs in good faith for a minimum period of 10 years prior to signing of Agreement Establishing the World Trade

Organization of 15 April 1994.

Industrial Designs

All new and distinct design features may be protected. Designs registered with the TPI will benefit 5 years protection period from the date of filing and the term of protection is renewable for periods of 5 years, up to a total term of 25 years. On the other hand, designs that are not registered with the TPI will be protected under the Law on Intellectual Protection of Artistic Works and/or Turkish Commercial Code.

Patents

Any invention which is novel, surpass the State-of-the-Art and applicable in industry are protected by patents in Turkey. Pursuant to Turkish Law, the patents could either be granted with or without substantive examination upon the applicant's preference. Patents granted with substantive examination are protected for a non-extendible period of 20 years from the date of filing the application, while those granted without substantive examination are protected for a non-extendible period of 7 years. Once these periods expire, the patents become public domain and may be used by anyone without getting permission of the patent holder.

Utility models

Different from patents, protection of utility models does not need to surpass the State-of-the-Art. Protection is granted to inventions that are novel and applicable in industry. The holder of a utility model benefits from the same protection conferred to the patent holder. However, the protection period is limited for a non-extendible period of 10 years.

Protection of Intellectual and Artistic Works

Computer programs, scientific and literary works, musical works and all types of musical compositions with or without words, artistic works of aesthetic, cinematographic works will benefit copyright protection. Such protection grants the authors' economic rights (rights of adaptation, reproduction, distribution, presentation and broadcasting) and moral rights (right to communicate the work to public, rights on their intellectual and artistic works, authority to indicate the name, prohibition against modifying a work).

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SECTION 7 - ENVIRONMENTAL ISSUES

Main Principles

The main principles provided for the protection and development of the environment under Turkish law are as follows:

1. The protection and development of the environment is among the duties of individuals and legal entities;
2. Authorities deciding on the projects regarding the usage of lands and the resources should focus on both the protection and development of the environment and the development of the country;
3. The best method and technology for the protection of the environment and the prevention of the environmental problems should be chosen;
4. Polluters shall meet all the expenses related to the prevention and limitation of pollution. However, if the polluter proves that it has taken all the precautions to protect the environment, it shall then be released from any liability.

Environmental Impact Assessment Report

Each entity planning to engage in activities listed in the Environmental Impact Assessment (“EIA”) Regulation is required to obtain an EIA Report from the Ministry of Environment (“MOE”). All other consents, approvals and permissions required for activities of the companies may be granted only after obtaining the EIA Report. A project must commence within 4 years after obtaining an EIA approval from the MOU.

Liability

Non-compliance with environmental laws and regulations may result in (i) partial or wholly suspension or termination of facilities creating environmental pollution; (ii) levy monetary penalties; or (iii) require non-complying entities to bear the cost of related remediation programs. In addition to the above, the newly enacted Criminal Code brings imprisonment sanctions for polluting the environment, which will become effective as of 12 October 2006. Accordingly, persons who intentionally pollute the environment may be subject to 6 months to 2 years imprisonment and pollution based on negligence may result in imprisonment between 2 months to 1 year provided that the pollution leaves a permanent damage. In addition, a person or entity may be liable to third parties who incur damages as a result of activities of such person or entity, which are harmful to the environment. Such persons or entities shall be responsible to third parties for damages regardless of their fault.

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SECTION 8 - DISPUTE RESOLUTION

Court Structure

The courts in Turkey are mainly separated into three divisions, which are civil, criminal and administrative courts. These courts are further divided into first instance courts, circuit courts of appeal and supreme courts.

- (i) **First Instance Courts:** The first instance courts of civil jurisdiction are the Civil Courts of First Instance (*Asliye Hukuk Mahkemeleri*) and Magistrate Courts (*Sulh Mahkemeleri*). The Civil Court of First Instance is the basic trial court with general jurisdiction covering everything not specifically assigned to other tribunals. Magistrate Courts are established to hear certain cases the amount of which does not exceed 5 billion Turkish Liras, eviction cases and claims of support. Some civil matters involving commercial transactions are heard in Commercial Courts. There are also civil courts of special jurisdiction such as courts for land registration, family courts, labor courts, courts of consumers and courts of intellectual property.

The first instance courts of criminal jurisdiction are the Magistrate Courts, Courts of General Criminal Jurisdiction and Aggravated Felony Courts. The special criminal courts can be listed as traffic courts and juvenile courts. The first instance courts of administrative jurisdiction are regional administrative courts of first instance, administrative courts and tax courts.

- (ii) **Circuit Courts of Appeal:** A new law no.5235, which will enter into force on 1 April 2005, has recently provided the establishment of a new type of court, namely circuit court of appeal, in order to decrease the heavy caseload of Supreme Court of Appeals and increase the speed at first instance level. Once the law enters into force, circuit courts of appeal will handle appeals against the decisions rendered by first instance courts and hear the compensation cases against the judges of such courts. Decisions of the circuit courts of appeal, which relates to cases with a maximum amount of 5 billion Turkish Liras shall be final decisions, not subject to further appeal.

- (iii) **Supreme Courts:** The supreme courts are namely the Supreme Court of Appeals (Yargıtay), the Council of State (Danıştay), the Military Court of Appeal, the High Military Administrative Court, Court of Conflict and Constitutional Court.

Supreme Court of Appeals is the high court for both civil and criminal matters. Decisions of the Supreme Court of Appeals are not binding upon inferior courts. However, decisions of the General Assembly of the Supreme Courts of Appeals are binding and sets a precedent.

The Council of State settles administrative conflicts, expresses

opinions on draft laws submitted by the Council of Ministers, examines draft regulations and concession contracts, acts as the court of appeal in administrative cases and discharges other duties prescribed by the law. The Court of Conflict is empowered to give final judgments on disputes between courts of justice and administrative and military courts concerning their jurisdiction. Finally, the Constitutional Court, designed to exercise judicial control over the constitutionality of laws, rather than granting such power to the general courts as in the United States.

Litigation Process

The rules of civil procedure and criminal procedure are basically similar. However, the civil procedure is distinguished from criminal procedure that in civil matters the public interest is not so paramount as in criminal matters.

In order to start an action, the plaintiff must file a petition, which contains some preliminary information on the case, such as names of the parties and type of action and also statement of facts, the claim, and a summary of the legal basis or the law relied upon. The defendant may dispute the facts stated by the plaintiff, may assume new facts and may also reply with a counter-claim in his petition. A foreigner filing a lawsuit before a Turkish Court has to deposit a security unless the principle of reciprocity advises otherwise.

Under Turkish law, the general rule on the burden of proof rests with the claimant, unless otherwise stated by law. There are different types of proof instruments. Some of them, such as deeds are binding on the judges and others such as testimony of witnesses, oath, and expert evidence are to the discretion of the judge.

After submission of all evidences and final petitions of the parties, the judge proceeds to study the file and then renders its final decision. Each party may appeal the judgment of the first instance court within a certain period prescribed by law after service of the judgment. A final judgment cannot be re-tried. The plaintiff cannot file for the same claim again. This is called the *res judicata* effect of a judgment.

Arbitration

- (i) **Domestic Arbitration:** Arbitration taking place in Turkey and not having any foreign element is governed by the provisions of Turkish Civil Procedural Law (TCPL). In a domestic arbitration parties may choose international procedural rules such as the Rules of Arbitration of the International Chamber of Commerce (ICC), except for the mandatory rules of the TCPL.

Pursuant to TCPL, parties may provide for the resolution of their disputes under a separate arbitration agreement or by including an arbitration clause in their main agreement. Parties may freely determine the method of appointing arbitrators. In a domestic arbitration, the language of the proceedings is required to be Turkish, as well as the award itself. Additionally, only Turkish lawyers are permitted to represent the parties in a domestic arbitration.

After the arbitration procedure is completed, the arbitrators submit the award to the competent court, which serves the award on each party. The award may be appealed within fifteen days following such service. Following the elapse of the appeal period and certification by the competent court, the award becomes final and enforceable.

- (ii) **International Arbitration:** The procedural rules regarding international arbitration is set forth under the International Arbitration Law (IAL). Accordingly, the disputes which involve a ‘foreign element’ and for which the place of arbitration is determined as Turkey are subject to IAL. In case that the provisions of IAL are chosen by the parties, the arbitrators or the arbitral tribunal, IAL also applies. IAL provides the situations demonstrating the existence of foreign element in a dispute such as foreign permanent residence or business place of the parties, foreign capital etc. and states also that the arbitration regarding a dispute having a foreign element shall be considered as international arbitration.

Pursuant to the IAL, parties are free to determine the number of arbitrators. Foreign real persons or legal entities may represent parties at the proceedings. Arbitration proceedings shall be held in Turkish or in any other official language of any state recognized by the Republic of Turkey.

Unless otherwise agreed by the parties, the arbitrator or the arbitral tribunal decide within 1 year from the selection date of the sole arbitrator, or date of the first hearing minutes of the arbitral tribunal as the case may be. The time limit for rendering the award may be extended by mutual agreement of the parties or upon request of the parties by the court of first instance.

An annulment suit may be filed against the arbitral awards before the competent court of first instance. Filing of an annulment suit shall cease the enforcement of the arbitral award. The decisions rendered at the end of the annulment suit may also be appealed. Once the decision regarding the rejection of the annulment claim is finalized, the court of first instance shall give the enforceability certificate upon the request of any party.

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