

THE FOREIGN  
INVESTMENT  
REGULATION  
REVIEW

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Editors

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# TURKEY

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## I OVERVIEW

The primary legislation governing foreign investment in Turkey is the Foreign Direct Investment Law No. 4875 (the FDI Law), which was enacted in 2003. This legislation serves as the foundational pillar for foreign investment, encompassing provisions relating to investment procedures, investor rights and dispute resolution and guarantees the principle of equal treatment.

The FDI Law changed the permission and approval system that had been applied to FDI into an information system. Under the FDI Law, foreign investors are required to make certain types of mandatory notifications (FDI notifications) to the General Directorate of Incentive Implementation and Foreign Investment. However, these notifications are required not for the purposes of obtaining a permission from the Directorate but rather for informative purposes. Therefore, the FDI Law does not stipulate a sanction in cases of failure to notify. Instead, its sole purpose is to serve as a tool for keeping track of FDI.

This simplified procedure for foreign investment was adopted to establish a much more investor-friendly environment. Foreign investors are permitted to make investments in Turkey unless otherwise stipulated in a few specific laws or international treaties, and they will be treated on an equal basis with Turkish investors.

The most prominent exception to this equal treatment principle is in terms of transactions involving certain real estate. Accordingly, under to the Military Forbidden Zones and Security Zones Law No. 2565, foreigners (alongside other limitations explained in greater detail under Section IV) may not acquire properties in military forbidden zones. In order to ensure screening in terms of this prohibition, the FDI regime embeds an automated review process (the real estate review process), which is triggered in cases where companies with foreign shareholdings acquire companies that hold real estate in Turkey.

Since the FDI Law was introduced in 2003, cumulative FDI inflows to Turkey have exceeded US\$251 billion. Through this 20-year period, the top four sectors receiving FDI inflows have been financial services (31.6 per cent), manufacturing industries (24.2 per cent), energy (10.6 per cent), and information and communication technologies (8.8 per cent).<sup>2</sup>

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2 <https://www.invest.gov.tr/en/whyturkey/pages/fdi-in-turkey.aspx>.

## II YEAR IN REVIEW

In 2022, FDI inflows amounted to US\$13 billion, outflows from direct investment made abroad were US\$5 billion and net inflows amounted to US\$8.1 billion, 17.4 per cent higher than 2021's level. Excluding real estate investments, net capital inflows from direct investments amounted to US\$1.8 billion.<sup>3</sup>

Turkey's FDI regime is based on the approach of providing an investor-friendly environment for foreign investors. Turkey has not wavered from this approach for more than 20 years. Therefore, it is anticipated that an investor-friendly approach will be maintained for the foreseeable future.

## III FOREIGN INVESTMENT REGIME

### i Policy

The main policies governing the FDI regime in Turkey are investment liberalisation and the principle of equal treatment, which means that it is permitted for foreign investors to make investments in Turkey on equal terms with Turkish investors.

As mentioned, the sole purpose of FDI notifications is to keep track of foreign investments in Turkey. Since an FDI notification itself does not trigger a review process, there is no standard used to screen foreign investments.

However, acquisitions by companies with foreign shareholdings owning real estate in Turkey may be an exception to these principles (the real estate review process). The real estate review process aims to determine whether any real estate is located in or near any military zones, military security zones, strategically important zones or special security zones.

### ii Laws and regulations

The FDI Law is the main legislation regulating foreign investment in Turkey. This legislation is supported by the Regulation on the Implementation of the Foreign Direct Investments Law (the Regulation). In addition to these main pillars of the Turkish FDI regime, there are special laws containing provisions on foreign investment. These special laws, whose relevant provisions will be explained in more detail under Section IV, in this regard are:

- a* the Regulation on Commercial Air Transport Operations (SHY- 6A);
- b* the Regulation on Airport Ground Handling Operations (SHY-22);
- c* the Law on the Establishment and Broadcasting Services of Radio and Television Institutions No. 6112;
- d* the Cabotage Law No. 815;
- e* the Military Forbidden Zones and Security Zones Law No. 2565;
- f* Law No. 6326 on Petroleum;
- g* Law No. 4737 on Industrial Zones;
- h* Law No. 2634 on Incentivizing Tourism; and
- i* Banking Law No. 5411.

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3 TEPAV, Direct Investment Bulletin 2022 IV, 2023.

The government body that oversees foreign investment is the General Directorate of Incentive Implementation and Foreign Investment (the Directorate). The Directorate is also responsible for the regulation and implementation of investment incentive measures. The Directorate operates under the Ministry of Industry and Technology.

In addition, the Investment Office of the Presidency of the Republic of Turkey has an important role for foreign investors. It is the official organisation that promotes the investment environment, provides assistance to investors and reports directly to the President of the Republic of Turkey. It works with a one-stop-shop approach and enables foreign investors to handle bureaucratic procedures more easily.

### **iii Scope**

It should be noted that an FDI notification does not trigger any review process but does trigger a notification obligation.

Under the FDI Law, for an investment to trigger an FDI notification obligation, the investment shall be deemed an FDI, which is defined under Article 2 of the FDI Law as follows:

- a* establishing a new company or branch of a foreign company by a foreign investor; and
- b* share acquisitions of a company established in Turkey (any percentage of shares acquired outside the stock exchange or 10 per cent or more of the shares or voting power of a company acquired via the stock exchange) by the use of, but not limited to, the following economic assets:
  - assets acquired from abroad by the foreign investor: (1) capital in cash in the form of convertible currency bought and sold by the Central Bank of the Republic of Turkey; (2) stocks and bonds of foreign companies (excluding government bonds); (3) machinery and equipment; and (4) industrial and intellectual property rights; and
  - assets acquired from Turkey by foreign investors: (1) reinvested earnings, revenues, financial claims or any other investment-related rights of financial value; and (2) commercial rights for the exploration and extraction of natural resources.

### **iv Voluntary screening**

For all transactions that fall under the regime, filing a notification is mandatory. While notification is mandatory, FDI notification does not trigger a review process, and the FDI Law and the Regulation do not stipulate a sanction in cases of failure to notify.

### **v Procedures**

The implementation regulation of the FDI Law stipulates the following types of FDI notification obligations:

- a* companies and branch offices subject to the provisions of the FDI Law shall submit to the Directorate via the online electronic incentive application and foreign investment information system (E-TUYS) information on:
  - their capital and operations by the end of May each year;
  - the payments made to their equity accounts within one month following the payment; and
  - share transfers made between current domestic or foreign shareholders or to any domestic or foreign investors outside the company within one month of the realisation of the share transfer; and

- b* if domestic companies become subject to the provisions of the FDI Law via (1) participation of a foreign investor in the company or (2) participation of a foreign investor in the company that is not already a shareholder of the company during the capital increase of the company, they shall submit the share transfer information within one month of the realisation of the share transfer.

Furthermore, since the only purpose of the notification is informative, approval from the Directorate is not needed as a result of the notification. The mere fact that the notification has been made is sufficient to fulfil the requirement. Therefore, an appeal procedure is not designated.

#### **vi Prohibition and mitigation**

As the FDI regime in Turkey is a system for providing information rather than a permission and approval system, the Directorate does not approve or reject the transaction when it receives the FDI notification.

### **IV SECTOR-SPECIFIC REQUIREMENTS**

#### **i Prohibited sectors**

Foreign investors are free to invest in all areas that are open for investment. In other words, there is no particularly prohibited sector for foreign investors.

#### **ii Restricted sectors**

##### ***Civil aviation***

SHY-6A and SHY-22 (for A and C type licences only) stipulate that the majority of the shares of the relevant company (i.e., above 50 per cent) must be held by, and the majority of the directors must be, Turkish citizens.

##### ***TV broadcasting***

The Law on the Establishment and Broadcasting Services of Radio and Television Institutions No. 6112 stipulates the following:

- a* the total direct foreign capital share in a media service provider shall not exceed 50 per cent of the paid-in capital;
- b* a foreign real or legal entity can directly become a shareholder of up to two media service providers; and
- c* if foreign real persons or legal entities hold shares in companies that are shareholders of media service providers and become indirect shareholder of the broadcasters, the chair, the deputy chair and the majority of the board of directors and the general director of the broadcasting companies must be Turkish citizens, and the majority of the votes in the general assemblies of broadcasting companies should belong to Turkish citizens or legal entities outside the scope of the FDI Law. In the main contracts of such corporations, the arrangements ensuring these provisions shall be stated clearly. Failure to fulfil this obligation could lead to the broadcasting licence being revoked by the Radio and Television Supreme Council.

**Maritime**

Cabotage Law No. 815 stipulates that foreign ships are not entitled to engage in trade activities or to transport goods or passengers between Turkish ports within the territorial waters of Turkey.

**Real estate**

The following restrictions and prohibitions on the acquisition of real estate in Turkey are in place:

*a* for real persons:

- under the Military Forbidden Zones and Security Zones Law No. 2565, foreigners may not acquire properties in military forbidden zones;
- a foreign real person may acquire properties and restricted real rights of up to 30 hectares maximum; and
- the total area of properties acquired by foreign real persons and independent and continuous limited real rights may not exceed 10 per cent of the surface area of the subject district of the private property; and

*b* for legal entities:

- via a Turkish legal entity: if a foreign shareholder acquires 50 per cent or more of the shares or the right to appoint or dismiss the majority of the members of the board of directors of a Turkish company with full local shareholding, the Ministry of Treasury and Finance will inform the General Directorate of Land Registry and Cadastre of such change, and, subsequently, such Directorate will advise the relevant governorship to evaluate whether the Turkish entity (now with foreign shareholding) can own real estate (immovables) in Turkey. If real estate is located in or near military zones or other security zones, the relevant governorship may request that the company provide additional documentation and may eventually require the company to sell such real estate. On the other hand, Turkish companies with foreign shareholdings of at least 50 per cent or a foreign shareholder that has the right to appoint or dismiss the majority of the members of the board of directors of a Turkish company are required to file an application in order to acquire real estate in Turkey (real estate notification) with the Provincial Directorate of Planning and Coordination (PDPC) at the local governor's office where the real estate is located and receive a prior written consent. Once granted a positive response from PDPC, they should then apply to the Land Registry Directorate; and
- real estate ownership directly by a foreign entity: companies with legal personality incorporated in accordance with laws of foreign countries can acquire real property or right *in rem* only according to the provisions of special laws (i.e., Law No. 6326 on Petroleum, Law No. 4737 on Industrial Zones and Law No. 2634 on Incentivizing Tourism). Any legal entity apart from companies established in other countries, such as foundations, organisations, associations or similar entities, cannot acquire real property or *in rem* rights.



## V TYPICAL TRANSACTIONAL STRUCTURES

As the FDI Law is based on the principle of equal treatment, foreign investors have the same rights and are therefore subject to the same obligations as local investors. Foreign investors are subject to the same regulations regarding business registration and share transfers as local investors. Any type of company stipulated by the Turkish Commercial Law may be established by foreign investors. These types of companies include corporate forms such as a joint-stock company or a limited liability company and non-corporate forms such as a general partnership, limited partnership or partnership limited by shares. A company may be established at a Trade Registry Directorate found in Chambers of Commerce, and the procedure is wrapped up in a single day.

However, it should be highlighted that asset purchase would bring additional review processes for foreign investors. As mentioned above, there are restrictions and prohibitions on the acquisition of real estate in Turkey by foreigners. Therefore, if the transactions involve an asset purchase that also entails an immovable, rules regarding real estate purchase should be taken into account.

## VI OTHER STRATEGIC CONSIDERATIONS

As the Turkish FDI regime is itself very open to foreign investors, sector-specific regulations described above and Turkish competition law are the issues to be considered.

Turkey's merger control regime is aligned with the European Union's regime in general. The following mergers and acquisitions will require authorisation from the Turkish Competition Authority under the current Turkish merger control regime:

- a* transactions where total Turkey turnover of transaction parties exceeds 750 million Turkish lira (approximately<sup>4</sup> €43.15 million or US\$45.28 million<sup>5</sup> for 2022) and where the Turkey turnover of at least two of the transaction parties separately exceeds 250 million lira (approximately €14.38 million or US\$15.09 million for 2022); and
- b* in acquisitions, assets or operations that are subject to the acquisition and in mergers, where Turkey turnover of at least one of the transaction parties exceeds 250 million lira and global turnover of at least one of the other transaction parties exceeds 3 billion lira (approximately €172.61 million or US\$181.15 million for 2022, if 2022 turnovers are available).

The aforementioned merger control regime also has an exception in terms of 'technology undertakings'. The technology undertaking provision that was introduced back in March 2022 stipulates an exception to certain thresholds to catch 'killer acquisitions'. According to the exception, the 250 million lira threshold that is mentioned under the two tests of the thresholds are not applicable in the acquisitions of technology undertakings that (1) are active, (2) have research and development activities in the Turkish geographical market or

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4 The euro figures are converted using the exchange rate of €1 equals 17.38 lira, based on the applicable Central Bank of the Republic of Turkey average buying rate for 2022.

5 The US dollar figures are converted using the exchange rate of US\$1 equals 16.56 lira, based on the applicable Central Bank of the Republic of Turkey average buying rate for 2022.

(3) provide services to customers in Turkey. Technology undertakings are defined as undertakings active in areas of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals and health technologies.

In addition, given that foreign investors are treated equally to Turkish investors, standard conditions and notification obligations applying to Turkish real persons or legal entities are also applicable for foreign investors. In the mining, petroleum and natural gas, heavy manufacturing industry, telecommunications, energy, tourism, retail, health industry, waste management and private security sectors, there are additional notification requirements.

However, only the procedures specifically designed for foreign investors are explained hereinafter.

### **i Banking**

Banking operations are overseen by the Banking Regulation and Supervision Agency (BRSA). Therefore, the establishment of a branch of a foreign bank in Turkey is also subject to BRSA's approval.

The BRSA's evaluation is dependent on certain requirements under Banking Law No. 5411 (the Banking Law) as follows:

- a* the bank's primary activities must not have been prohibited in the country where its headquarters are located;
- b* the supervisory authority in the country where the bank's headquarters are located should not have an unfavourable view of its operations in Turkey;
- c* the paid-in capital reserved for Turkey should not be less than the amount set out in the banking law;
- d* the members of the board of directors should have adequate professional experience to be able to satisfy the requirements laid down in corporate governance provisions and perform the planned activities;
- e* it must submit a programme of activities covered by the permission, the budgetary plan for the first three years and its structural organisation; and
- f* the group, including the bank, must have a transparent partnership structure.

A branch of a foreign bank is entitled to conduct all banking activities stated under the banking law and is treated the same as a Turkish bank licensed by the BRSA.

### **ii Insurance**

Insurance companies and reinsurance companies are required to obtain a licence from the Ministry of Treasury and Finance for each insurance branch in which they wish to operate. Foreign direct investors are additionally required to obtain a licence to open a branch in Turkey. The conditions for this licence are regulated by the Regulation on the Establishment and Operating Principles of Insurance Companies and Reassurance Companies.

## **VII OUTLOOK**

Since the current FDI Law entered into force, an investor-friendly approach is embraced. As with any country, one of the top priorities is to attract more foreign investment. The government's commitment to providing incentives demonstrates its determination to create a conducive environment for foreign investment. As a result, there are no foreseen changes in the current FDI regime in the near future.

<b>Turkey</b> <i>ACTECON</i>	
<b>What is the nature of the review?</b>	The foreign direct investment (FDI) notification itself does not trigger a review process.
<b>Is it mandatory to file/wait for approval before closing?</b>  <b>Are there sanctions for non-compliance?</b>	<ul style="list-style-type: none"> <li>• For all transactions that fall under the regime, filing is mandatory.</li> <li>• The FDI Law does not mandate any pre-notification process.</li> <li>• FDI notification does not trigger a review process and the FDI Law does not stipulate a sanction in cases of failure to notify.</li> </ul>
<b>What are the review periods?</b>	The FDI notification itself does not trigger a review process.
<b>Are there thresholds for notification/reviewability?</b>	<p>Under the FDI Law, for an investment to trigger an FDI notification obligation, the investment shall be deemed an FDI, which is defined as follows:</p> <ul style="list-style-type: none"> <li>• establishing a new company or branch of a foreign company by a foreign investor; and</li> <li>• share acquisitions of a company established in Turkey (any percentage of shares acquired outside the stock exchange or 10 per cent or more of the shares or voting power of a company acquired via the stock exchange).</li> </ul>
<b>Undertakings/commitments and other mitigation measures available to address concerns</b>	As the FDI regime in Turkey is an information system rather than a permission and approval system, the competent authority receiving the notification (the General Directorate of Incentive Implementation and Foreign Investment) does not approve or reject the transaction when it receives the FDI notification. Therefore, undertakings, commitments and other mitigation measures are not needed and are not available.
<b>Any other important considerations?</b>	<ul style="list-style-type: none"> <li>• Sector-specific requirements and notifications are the issues to be considered. In particular, there are sector-specific requirements in the civil aviation, television broadcasting, maritime, real estate, banking and insurance sectors. For completeness, Turkey has a functioning merger control regime.</li> <li>• If the transactions involve an asset purchase, rules regarding real estate purchases should be taken into account.</li> </ul>