

FOREIGN INVESTMENT IN TURKEY





FOREIGN DIRECT INVESTMENTS IN TURKEY

Legal Framework for FDI in Turkey

Pro-business foreign investment policies have been introduced as a part of the liberalization of the Turkish economy. The foreign investment legislation provides a more secure environment for foreign capital by providing support from several bilateral and multilateral agreements and organizations, granting foreign capital the same rights and obligations as domestic capital, and guaranteeing the transfer of profits, fees and royalties and the repatriation of capital.

The foreign direct investment Law No. 4875, which has been in force since June 17, 2003, emphasizes the key elements of the liberal investment environment in Turkey, and represents a "legal guide" to international investors about their rights and obligations. Since all companies established in Turkey within the framework of the Turkish Commercial Code are considered Turkish companies, all duties and responsibilities are the same, regardless of the nature of the capital structure of the company.

Law No. 4875 provides:

- Freedom to invest by eliminating all former FDI-related screening, approval, share transfer and minimum capital requirements;
- Reassurance of existing guarantees in one transparent and stable document;
- Upgrading to accepted international standards for definitions of "foreign investor" and "foreign direct investment"; and
- A policy shift from ex-ante control to a promotion and facilitation approach with minimal ex-post monitoring.

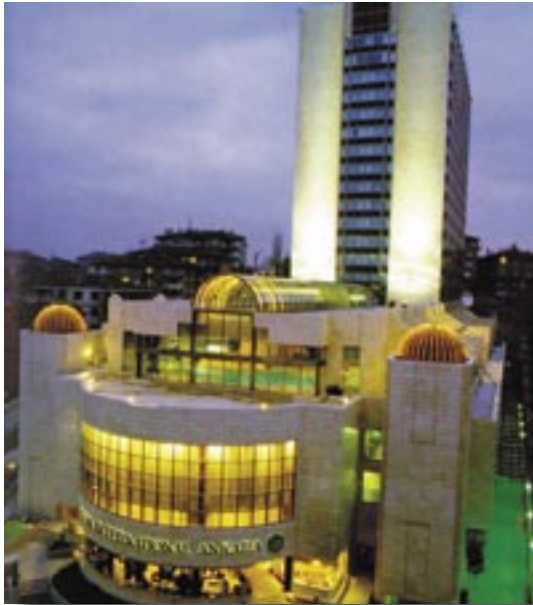
Turkey has been a party to several international organizations and bilateral and

multilateral agreements, which provide a more secure investment environment for foreign investors, such as:

- Turkey is a member of OECD, WTO, IMF, World Bank and organizations of the World Bank, including Multilateral Investment Guaranty Agency (MIGA).
- Turkey has signed Agreements on the Reciprocal Promotion and Protection of Investment with 80 countries, 64 of which are currently in force.
- Turkey has signed Agreements for the Avoidance of Double Taxation with 74 countries and 68 of these Agreements are currently in force.
- Turkey has been a party to OECD Codes of Capital Movements and Invisible Transactions and Agreements for the Avoidance of Double Taxation.
- Turkey has been a party to investment-related agreements on WTO platforms such as TRIMs (Trade Related Investment Measures) and TRIPs (Trade Related Intellectual Property Rights).

In 1999, the Grand National Assembly adopted a Constitutional amendment permitting national and international arbitration for certain disputes involving concession agreements for public services. In 2000, the related implementation laws allowing international arbitration in concession contracts involving administration and foreign investors were also adopted by the Parliament.

In addition, regulated markets for electricity and natural gas were introduced to address the shortcomings of the current centralized model. The telecommunications sector has also undergone changes, transforming the formerly monopolistic structure to a regulated and competitive sector. The High Council of Telecommunications was established in 2000 as a supervisory body for the telecommunication industry. The last step towards a full liberalization of the sector began on January 1, 2004 following the termination of the monopoly

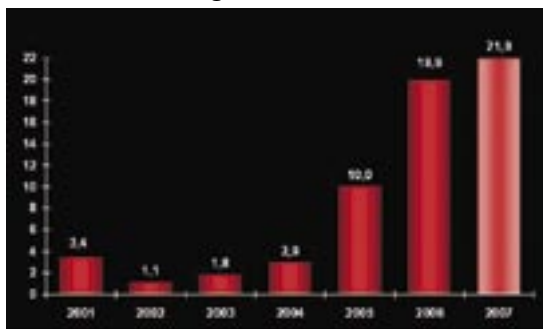


of Turk Telekom on voice telephony services and telecommunication infrastructure. Following full liberalization, the Telecommunication Authority granted the first licenses for territorial data transmission.

FDI Statistics

According to the balance of payment statistics published by the Central Bank of the Republic of Turkey, the capital inflow reached to USD 21.9 billion in 2007. In 2005 and 2006 total foreign direct investment (FDI) inflow was USD 10.0 billion and USD 19.9 billion respectively.

FDI Figures(billion US \$)



In line with the recovery of the main economic indicators and efforts to improve

investment environment, FDI inflows continued to rise in 2007. Net FDI inflows into Turkey totaled USD 21 864 million in 2007, implying an increase of 9.8 % compared to 2006.

As of 2007, there are 18 308 companies with foreign capital in Turkey. Out of these, 14 943 are of new company and branch establishment and 3 365 are of foreign capital participations into existing companies.

Investments in the services sector accounted for 73.4 % of total foreign direct investment for 2007, while manufacturing accounted for 21.9 % of such total.

In the year of 2007, 198 incentive certificates were issued for investments to be carried out by companies with foreign capital, and the estimated total value of these investments within these certificates amount to USD 5.4 billion, of which 49.1 % will be undertaken by foreign shareholders.

Within the manufacturing industries, the leading sectors are;

- Automotive and transportation equipment
- Food, beverage and tobacco industries
- Chemical and petroleum products
- Electrical machinery and electronics

Within services sector, the leading sectors are;

- Banking
- Trade & retail chain stores
- Telecommunications
- Tourism

Policy Reforms to Increase the FDI Inflows to Turkey

Strengthening private sector activity in the Turkish economy is an integral part of the Government's overall macroeconomic stabilization program. The aim of the program is to achieve a sustainable growth level with a vibrant private sector and a smaller but more effective public sector.



Key structural reforms in major markets such as agriculture, pensions, banking, telecommunications and energy, and accelerated privatisation program have been adopted, which will pave the way for a more dynamic private sector.

Turkey has one of the largest economies in the world and with GDP of over YTL 856 billion; it's the largest economy in Eastern Europe, the Balkans and the Middle East.

Well-known with its skilled and flexible workforce, large domestic market and sizeable nearby external markets, Turkey is located in the heart of a region with more than one billion population and almost one quarter of world output and offering investors a potential to reach that market potential.

Despite its competitive advantages and diverse market opportunities, FDI inflows had not lived up to the potential of an economy of that size until 2004. Recognizing the importance of this issue, the Government placed efforts for improving the investment environment at the top of the political agenda and initiated a comprehensive reform program in order to streamline all investment-related procedures. Within this context, a Reform Program has been launched and a Co-ordination Council for the Improvement of the Investment Environment (YOIKK) has been established. The mandate of the YOIKK is to make specific recommendations to the Council of Ministers who will take the required political decisions to remove the obstacles impeding the improvement of the investment climate.

The key reform areas were determined after a comprehensive study conducted by the Undersecretariat of Treasury of the Prime Ministry in cooperation with Foreign Investment Advisory Services, a joint service of the International Finance Corporation and The World Bank.

The Board assigned specialized technical committees to work on developing concrete proposals and strategies in order to overcome all main obstacles. Productive collaboration between the public and the private sector is the key in this process. To ensure that policy reforms truly reflect and address private sector concerns, intensive and direct involvement of companies and investors in this process is critical. Each technical committee therefore consists of private sector and government agencies' representatives.

Technical Committees are responsible for the following topics:

- Technical Committee I: Company Establishment
- Technical Committee II: Employment
- Technical Committee III: Sectoral Licenses
- Technical Committee IV: Location of Investment
- Technical Committee V: Taxes and Incentives
- Technical Committee VI: Foreign Trade and Customs
- Technical Committee VII: Intellectual Property Rights
- Technical Committee VIII: Promotion of Investment
- Technical Committee IX: Foreign Direct Investment Regulation
- Technical Committee X: Small and Medium Sized Enterprises
- Technical Committee XI: Corporate Governance
- Technical Committee XII: Research and Development

To increase efficiency of the YOIKK, a new Steering Committee was established in May 2005, involving high level executives of six Ministries

and governmental agencies and the four leading business associations which have seats on the YOIKK and Turkey Investment Advisory Council platforms.

The Steering Committee is made up of;

- The Undersecretary of the Treasury,
- Deputy Undersecretary of the Prime Ministry (Responsible for the Department of Administrative Development),
- Deputy Undersecretary of the State Planning Organization,
- Deputy Undersecretary of the Ministry of Finance,
- Deputy Undersecretary of the Ministry of Industry and Commerce,
- Deputy Undersecretary of Foreign Trade,
- Secretary General of TOBB,
- Secretary General of TÜSİAD,
- Secretary General of TİM,
- Secretary General of YASED.

The duties and responsibilities of the YOIKK Steering Committee are listed below:

- To determine the agendas of the YOIKK meetings,
- To follow up and coordinate the works of the YOIKK and Technical Committees,
- To establish Permanent Work Groups on issues lying outside the scope of the Technical Committees,
- To evaluate the reports prepared by Technical Committees and/or Permanent Work Groups and submit these to the YOIKK via the Secretariat.

This comprehensive reform program has begun to give its fruitful results recently. Some enacted laws as a direct result of the YOIKK process to-date include as follows;

- New FDI law that serves as a declaration to foreign investors of their rights and will enable a

shift from an “investment permission system” to an “investment monitoring system” in conformity with international best practices.

- Company Establishment Law enabling the establishment of a company in one day, by granting authority to Trade Registries. As a result, company association processes were reduced to 3 transactions from 19 transactions. The efforts are still continuing to eliminate the problems in company liquidation and to allow association of companies in electronic environment.

- Certain initiatives in mining, food, pharmaceuticals, chemicals and tourism sectors to simplify the legislation and bureaucratic procedures related to the sector licenses. Within this context, the Environmental Impact Assessment (EIA) process was shortened, the preliminary emission authorization was also cancelled for most of the investments upon issue of Regulation on Controlling Industrial Air Pollution.

- Regulation on “Opening a Business Place and Work Licence” reducing the required number of documents from 52 to 6 for licensing of sanitary business place and from 43 to 7 for licensing of non-sanitary business places.

- The legal arrangement of the General Directorate of Land Registry and Cadastre came into effect on January 7th, 2006¹. The legislation amends the Article 35 of the Land Registry Law No 2644 and pertains the purchase of real estate by foreigners.

- Regarding the sectoral licenses, the legal arrangement of the Undersecretariat of the State Planning Organization pertaining to the establishment of the Development Agencies, including the regulations on the establishment of “One Stop Shops (Investment Support Offices)” System related to sectoral permits at investment and commissioning stages came into force on February 8th, 2006². Consequently on July 6th, 2006

¹Law No 5444 on the Amendment of the Land Registry Law (Official Gazette 07.01.2006/26046)

²Law No 5449 Pertaining to the Establishment, Coordination and Duties of Development Agencies (Official Gazette 08.02.2006/ 26074)

Development Agencies in Adana (for the provinces of Adana and Mersin) and Izmir were established.

- The regulation of the Ministry of Industry and Trade pertaining to the definition of SMEs entered into force on May 18th, 2006³. This legislation containing a single, EU harmonized definition of SME, ensures the acceptance of a common definition by all establishments and institutions that have the terms SME, Medium Sized Enterprise, Small Sized Enterprise or Micro Enterprise in their charters or programs.

Furthermore, Turkey Investment Support and Promotion Agency (ISPAT)⁴ that will fulfill the effective promotion of investment climate of Turkey and the opportunities offered for the investors, was established on July 4th, 2006. The Agency charged with the duty of developing and applying the investment support and promotion strategies aimed at encouraging the international investors to invest in Turkey, needed for economic development.

On the other hand, another project, EU Twinning Project; "Towards Improving the Investment Climate in Turkey: Comments on the YOİKK Reform Process" has been implemented for the purpose of providing a momentum and new study topics to the YOİKK Reform Program. The Project has been started officially on the 14th of February, 2005 and was completed on September 30, 2006. At the end of the Project, an overall report was prepared and submitted to the YOİKK Technical Committees for the determination of further policy actions.

Furthermore, the YOİKK platform has resulted in successful policies in other areas such as recruitment of expatriates, sectoral licensing, customs and intellectual and industrial property rights. With respect to customs reform, the Undersecretariat of Customs has implemented a reform program to improve its administrative efficiency and effectiveness. The automated

customs system has been established at 99 % of all customs offices and has been further enhanced to assist customs in controlling the movement of goods. One of the goals of the customs reforms is to conform the customs regulations and procedures to those mandated by EU legislation and simplifying and harmonizing the forms, procedures and control techniques to conform to those recommended by the World Custom Organization. Necessary legislation to strengthen the capacity and infrastructure of the Turkish Patent Institute has been enacted, which seeks to ensure effective implementation of the regulation and protection of intellectual and industrial property rights.

On February 5th, 2007, the YOİKK action plan comprehending schedule for all representative institutions from the public and private sectors to finalize work of the each Technical Committee was publicly announced. Implementation of the action



plan will provide a performance measurement for each Technical Committee's work to improve the investment environment. The action plan was reviewed in line with the changing circumstances of the investment environment and renewed action plan was approved at the YOİKK meeting on January 30th, 2008.

One of the key issues in the reform agenda of the Government of Turkey is attributing

³ The Regulation Pertaining to the Definition, Characteristics and Classification of Small and Medium Size Enterprises (Official Gazette 18.11.2005/25997)

⁴ Law No 5523 on the Establishment of The Investment Support and Promotion Agency of Turkey (Official Gazette 04.07.2006/ 26218)

great importance to the role of collaboration between public and private sector. Therefore necessary platforms have been created where the representatives of public and private sectors come together to discuss and provide solutions on key issues facing Turkey's business climate. While Turkey has been achieving quite positive results in improving the environment for business by means of national platforms like the YOIKK, another structure has also been established with an international perspective, named Investment Advisory Council (IAC) for Turkey in 2004 with a view to raise the competitive position of Turkey in the world economy as an investment location. The Council, chaired by the Prime Minister, is composed of top level executives from twenty multinational corporations and presidents of four leading Turkish NGOs representing the private sector.

At the end of the inaugural meeting the Council members decided to convene once a year and highlighted a number of priority issues which they believed to be hindering the full blossoming of Turkey's potential and which they view it would be beneficial to concentrate upon until the next meeting. The YOIKK technical committees serve as the affiliated "working groups" of the IAC. The creation of the linkage between the two structures leverages and strengthens their respective institutional capacities. The IAC provides critical strategic direction and impetus to the YOIKK, while the YOIKK in turn provides implementation follow up to the IAC recommendations.

Some issues identified in the IAC meetings are being remitted to the YOIKK for further research, follow up and/or action. In line with the priorities set by the IAC, a discernible progress has been made in improving the investment environment.

The third and fourth meetings of the Investment Advisory Council were held on June 29, 2006 and on July 11th, 2007 in Istanbul, respectively. At the last two meetings, the IAC members

unanimously agreed that progress has been made in all fronts, and highlighted the most important accomplishments in the declaration of outcomes.

General Incentive Regime

The principal purpose of incentives is to eliminate inter-regional imbalances, facilitate a larger capital contribution by the public and support activities that have a positive effect on employment. Furthermore, attracting more domestic and foreign direct investment and advanced technology and improvement of international competitiveness are also aimed without breaching international obligations.

Incentives for investments to be realized in the priority and least developed regions simply aim to increase employment in these regions through tax exemptions and other financial incentives. The investment total must be above a certain amount for the investor to receive an Incentive Certificate. These amounts are:

- Minimum YTL 200 000, maximum YTL /2 000 000 for SME's investments,
- Minimum YTL 1 000 000 for the other investments,
- Minimum YTL 200 000 to be made through financial leasing companies.

Major Incentive Instruments

- *Exemption from customs duties and fund levies:* This incentive measure ensures that the imported machinery and equipment for investment purposes are exempted from customs duties and fund levies. Raw materials and intermediate goods cannot be imported under this provision.
- *Value Added Tax (VAT) exemption:* The VAT, payable for both imported and locally purchased machinery and equipment, is exempted under this incentive measure.
- *Interest Expenditure Support:* The investments to be made by SME's, the investments to be made in

priority regions⁵, R&D investments and environmental investments are the investment types which benefit from the interest support incentive. Of the interest rate or profit share of the credit (to be provided from the banks or participation banks) to be used in the finance of the investments aforementioned above, 5 points for the TL credits and 2 points for the foreign currency credits will be met by the budget sources for the first four year and the term of the credits has to be at least one year. The monetary value of the support is limited with YTL 1 000 000 for the investments in priority regions, YTL 200 000 for the investments realized by SME's, YTL 300 000 for R&D and environmental investments. Moreover, interest support is also available for the provision of operational materials to be needed by the R&D investments with the condition that it is approved by the Undersecretariat of Treasury.

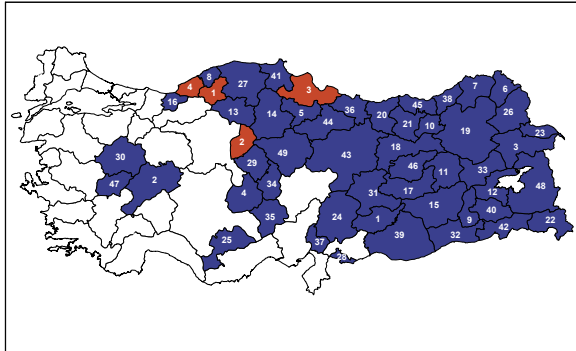
Incentives for the Least Developed Regions

According to the Law for the Encouragement

of Investments and Employment, No. 5084, dated February 6, 2004, and Law on Amendments of the Law No. 5084, No. 5350, dated May 12, 2005 additional incentives are granted to the investors that invest in the following provinces, which have per capita income equal to or less than USD 1 500 or the provinces with a minus index value on the socio-economic development ranking: Kırşehir, Sinop, Giresun, Amasya, Uşak, Malatya, Sivas, Tokat, Diyarbakır, Afyon, Bartın, Erzincan, Osmaniye, Düzce, Çankırı, Siirt, Gümüşhane, Ordu, Erzurum, Batman, Bayburt, Şanlıurfa, Mardin, Aksaray, Adıyaman, Kars, Van, Iğdır, Yozgat, Ardahan, Hakkari, Bingöl, Bitlis, Şırnak, Muş, Ağrı, Artvin, Çorum, Elazığ, Karaman, Kastamonu, Rize, Tunceli, Kahramanmaraş, Kilis, Kütahya, Nevşehir, Niğde and Trabzon.

Additional incentives granted in the aforementioned provinces are as follows:

- Incentive on withholding of income tax,
- Insurance premium incentive for employers,
- Energy support,
- Free land allocation.



Provinces where Free Land Lots are Provided in Organized Industrial Zones

| | |
|---|-----------|
| 1 | KARABÜK |
| 2 | KIRIKKALE |
| 3 | SAMSUN |
| 4 | ZONGULDAK |

Provinces where Free Land Lots are Provided in Organized Industrial Zones along with Tax, Insurance Premium and Energy Support

| | | | | | |
|----|------------|----|---------------|----|-----------|
| 1 | ADİYAMAN | 18 | ERZİNCAN | 35 | NİĞDE |
| 2 | AFYON | 19 | ERZURUM | 36 | ORDU |
| 3 | AĞRI | 20 | GİRESUN | 37 | OSMANIYE |
| 4 | AKSARAY | 21 | GÜMÜŞHANE | 38 | RİZE |
| 5 | AMASYA | 22 | HAKKARİ | 39 | ŞANLIURFA |
| 6 | ARDAHAN | 23 | İĞDIR | 40 | SIIRT |
| 7 | ARTVİN | 24 | KAHRAMANMARAŞ | 41 | SİNOP |
| 8 | BARTIN | 25 | KARAMAN | 42 | ŞIRNAK |
| 9 | BATMAN | 26 | KARS | 43 | SİVAS |
| 10 | BAYBURT | 27 | KASTAMONU | 44 | TOKAT |
| 11 | BİNGÖL | 28 | KİLİS | 45 | TRABZON |
| 12 | BITLİS | 29 | KİRŞEHİR | 46 | TUNCELİ |
| 13 | ÇANKIRI | 30 | KÜTAHYA | 47 | UŞAK |
| 14 | ÇORUM | 31 | MALATYA | 48 | VAN |
| 15 | DİYARBAKIR | 32 | MARDİN | 49 | YOZGAT |
| 16 | DÜZCE | 33 | MUŞ | | |
| 17 | ELAZIĞ | 34 | NEVŞEHİR | | |

⁵ Priority regions- 50 provinces determined by the Council of Ministers; Adıyaman, Ağrı, Aksaray, Amasya, Ardahan, Artvin, Batman, Bartın, Bayburt, Bingöl, Bitlis, Çanakkale (only the provinces of Bozcaada and Gökçeada) Çankırı, Çorum, Diyarbakır, Elazığ, Erzincan, Erzurum, Giresun, Gümüşhane, Hakkari, Iğdır, Kahramanmaraş, Karabük, Karaman, Kars, Kastamonu, Kırıkkale, Kırşehir, Kilis, Malatya, Mardin, Muş, Nevşehir, Niğde, Ordu, Osmaniye, Rize, Samsun, Şanlıurfa, Siirt, Sinop, Şırnak, Sivas, Tokat, Trabzon, Tunceli, Van, Yozgat and Zonguldak.