



SCREENING CHAPTER 2 FREEDOM OF MOVEMENT FOR WORKERS

AGENDA ITEM 1: ACCESS TO LABOUR MARKET

**Country Session: The Republic of TURKEY
18 September 2006**



OUTLINE

- LEGISLATION
- INTERNATIONAL INSTRUMENTS
- WORK PERMIT SYSTEM FOR FOREIGNERS
 - Work Permit for Foreigners (Ministry of Labour and Social Security- MoLSS)
 - Visa for the Aim of Working (Ministry of Foreign Affairs)
 - Residence Permit (Ministry of Interior Affairs)
 - Institutional Capacity
- RESTRICTIONS
- OTHER RIGHTS AND FREEDOMS
- SUPPLEMENTARY PENSION RIGHTS



LEGISLATION



- The Constitution
- Law on the Work Permit for Foreigners (LWPF), No. 4817
- Law on Residence and Travel for Foreigners, No. 5683
- Passport Law, No. 5682
- Labour Law, No. 4857
- Law on Turkish Employment Organisation, No. 4904
- Social Security Institution Law, No. 5502
- Law on Social Insurance and General Health Insurance, No. 5510
- Law on Foreign Direct Investment, No. 4875
- Trade Unions Law, No. 2821
- Law on Collective Labour Agreement, Strike and Lock-out, No. 2822



INTERNATIONAL INSTRUMENTS



- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- ILO Convention Discrimination (Employment and Occupation), No.111
- ILO Convention on Equal Remuneration, No.100
- ILO Convention on Equality of Treatment on Social Security, No.118
- Council of European Convention for the Protection of Human Rights and Fundamental Freedoms
- European Social Charter
- European Convention on Establishment
- European Convention on Medical Aid
- The European Convention on the Legal Status of Migrant Workers
- European Agreement on regulations for movement of persons in Member States of Council of Europe



(cont.)

- Ankara Agreement (1963)
- Additional Protocol (1970)
- EC-Turkey Association Council Decisions (1/76, 1/80, 3/80)



WORK PERMIT SYSTEM FOR FOREIGNERS



GENERAL PRINCIPLE

- Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free. (Art. 48 of the Constitution)
- Everyone has the right and duty to work. (Art.49 of the Constitution)



PROCESS

- Any foreigner who wishes to work as employed or self-employed in Turkey has to get:
 - **Work permit** from the MoLSS
 - **Visa for the aim of working** from Turkish Representative Offices abroad
 - **Residence permit** for the aim of working from relevant security authorities



WORK PERMIT FOR FOREIGNERS

AIM:

To establish a system of work permit for foreigners in Turkey and specify the rules regarding the work permit. (LWPF, Art. 1)



WORK PERMIT FOR FOREIGNERS

SCOPE:

- Foreigners working on an employed or self-employed basis
- Foreigners having on the job training
- Natural and legal persons employing foreigners



WORK PERMIT FOR FOREIGNERS

FOREIGNERS OUTSIDE THE SCOPE (LWPF, Art.2)

Foreigners below are not subject to this Law:

- 1- Foreigners who renounce Turkish citizenship gained by birth with the renounce permit decision of the Council of Ministers,
- 2- Foreigners exempted from work permit, taking into consideration the principles of reciprocity, international and EU law,
- 3- Foreigners given work permit or employed on the basis of the authority stemmed from legislation issued by the ministries, public institutions and bodies (Prime Ministry, Ministry of Defence, Ministry of Health, Undersecretariat of Foreign Trade, Council of Higher Education).



WORK PERMIT FOR FOREIGNERS

(cont.)

4-Foreigners who are members of foreign press organizations and press correspondents working in accordance with Press Law

- *Draft Law amending LWPF, which is presently on the agenda of Turkish Grand National Assembly, excludes **all foreigners having press cards** from the scope of the Law.*



WORK PERMIT FOR FOREIGNERS

EXEMPTIONS

Foreigners below are subject to Law but do not need to get work permit (Implementing Regulation, Art. 55)

- 1- Foreigners who are exempted from work permit with bilateral or multilateral agreements to which Turkey is a party,
- 2- Foreigners whose permanent residences are abroad and who temporarily come to Turkey for a period of less than one month with the aim of scientific, cultural and artistic activities,
- 3- Foreigners who temporarily come to Turkey for a period of less than three months with the aim of training regarding the use of goods and services exported to or imported from Turkey,



WORK PERMIT FOR FOREIGNERS

(cont.)

- 4- Foreigners who come to Turkey for a period of less than six months to work in fairs and circuses,
- 5- Foreigners who come to Turkish universities, public institutions and organizations in order to increase their information and gain experience for a period limited with their education,
- 6- Foreigners who come to Turkey for a period of less than three months and notified by the relevant authorities as being capable of providing important services and contribution to Turkey in socio-cultural, technological and educational fields,
- 7- Foreign students who work as trainees in private or public institutions in the framework of student exchange programmes in accordance with the principle of reciprocity for a period limited to their traineeship,



WORK PERMIT FOR FOREIGNERS

(cont.)

8- Foreigners who work in international organizations or in national and international projects implemented by consortium or in accordance with the bilateral or multilateral agreements to which Turkey is a party,

- *By the Draft Law amending LWPF; foreigners who work in the projects implemented by Undersecretariat of Defence Industries and in national and international projects implemented by consortiums in accordance with bilateral or multilateral agreements to which Turkey is a party or foreigners who work outside the scope of vocational services in international institutions are excluded from the scope of the Law.*

9- Foreign tour operator representatives who come to Turkey for a period of less than six months within one year,

10- Foreign football players, other sportsmen and trainers whose applications are approved by Turkish Football Federation or General Directorate of Youth and Sport.



WORK PERMIT FOR FOREIGNERS

APPLICATION PROCEDURE

- Applications can be made in Turkey (to MoLSS) and from abroad (to Turkish Representative Offices) in written.
- Foreigners who have residence permit in Turkey for 6 months at least and their employers can apply to MoLSS directly before this period is finished.
- Forms in the annex of the Implementing Regulation should be filled in.
- Following the issuance of their work permit, foreigners are obliged to apply for visa for the aim of working, within 90 days at the latest, in order to enter Turkey.
- Foreigners should apply for the residence permit within 30 days at the latest from the date they entered Turkey.



WORK PERMIT FOR FOREIGNERS

APPLICATION DOCUMENTS

1- Documents required from foreigners:

- Petition for work permit,
- Application form,
- Copy of passport and its Turkish translation approved by notary public,
- Copy of diploma and its Turkish translation approved by notary public,
- Residence permit for at least 6 months for the applications made in Turkey,
- Standard CV Form.



WORK PERMIT FOR FOREIGNERS

(cont.)

2- Documents required from the employer:

- Petition for work permit,
- Balance sheet and profit/loss table for the last year approved by the tax authority,
- List of native and foreigner staff working for the institution,
- If the institution has foreign capital, Turkish Trade Registry Gazette or a copy of it approved by the institution indicating the last capital and partnership structure of the institution,
- Additional documents can be required for certain sectors.

WORK PERMIT FOR FOREIGNERS

ISSUANCE OF WORK PERMIT

- MoLSS evaluates and responds to the application in 90 days at the latest. This period is **15 days** for foreign direct investments.
 - *By the Draft Law amending LWPF, the period of 90 days for responding applications is reduced to **45 days**.*
- During evaluation process, related public institutions and professional organizations submit their opinions including those regarding professional qualifications to the MoLSS within 30 days.
- No opinion is received from related authorities about professional qualifications for key personnel who will be employed in a position not requiring professional training in foreign direct investments meeting certain criteria.



WORK PERMIT FOR FOREIGNERS

EVALUATION OF WORK PERMIT APPLICATIONS

- While evaluating the applications for work permit and extension of the permit, these are taken into consideration:
 - Duration of residence and work permit of foreigner
 - Duration of service contract and work
 - Labour market situation
 - Developments in work life
 - Sectoral, geographic and economic conditions



WORK PERMIT FOR FOREIGNERS

TYPES OF WORK PERMIT

- Work permit for a definite period
- Work permit for an indefinite period
- Work permit for self-employed
- Exceptional work permit



WORK PERMIT FOR FOREIGNERS

WORK PERMIT FOR A DEFINITE PERIOD

- Valid for max. 1 year for a certain workplace and profession.
- After working legally for 1 year, duration of the work permit may be extended up to 3 years, for the same workplace and profession.
- After working legally for 3 years, duration of the work permit may be extended up to 6 years, for the same profession and any employer of his/her choice.
- MoLSS is entitled to expand or restrict the geographical validity area of the work permit with definite period.

Annual leaves, absences due to industrial accident and professional diseases, and periods in which maternity and temporary incapacity allowances and unemployment insurance allocation are received are treated as periods of legal employment.



WORK PERMIT FOR FOREIGNERS

WORK PERMIT FOR A DEFINITE PERIOD - SPOUSE AND CHILDREN

- The spouse and children of foreigners who come to Turkey for working may be granted a work permit provided that they have resided with the foreigner legally for at least 5 years uninterruptedly.
 - *By the Draft Law amending LWPF, this provision is repealed and it becomes possible for the spouse and their children to have work permit for a definite period without meeting the condition of residing 5 years with the foreigner.*



WORK PERMIT FOR FOREIGNERS

WORK PERMIT FOR AN INDEFINITE PERIOD

This type of work permit may be given to foreigners provided that:

- They have uninterruptedly and legally resided for at least 8 years, or
- They have worked legally for at least 6 years.

WORK PERMIT FOR FOREIGNERS

WORK PERMIT FOR SELF-EMPLOYED

This type of work permit may be given to foreigners provided that:

- They have resided in Turkey legally and uninterruptedly for at least 5 years
- Their work creates value added in terms of economic development and has positive effects on employment
 - *By the Draft Law amending LWPF , the condition of residing 5 years legally and uninterruptedly is not applied to the self-employed foreigners who employs 10 local workers.*



WORK PERMIT FOR FOREIGNERS

EXCEPTIONAL WORK PERMIT

Work permits may be given irrespective of the durations laid down in the Law provided that:

- Unless otherwise provided in the bilateral or multilateral agreements to which Turkey is a party,
- There is no incompatibility with the legislation on professional services,
- Opinions are received from related authorities.



WORK PERMIT FOR FOREIGNERS

FOREIGNERS GIVEN EXCEPTIONAL WORK PERMIT

- Foreigners who are married a Turkish citizen,
- Foreigners who settled in Turkey and their children (who are married a Turkish citizen and settled in Turkey at least 3 years after their marriage was dissolved),
- Foreigners who renounced Turkish citizenship,
- Foreigners who came to Turkey before reaching majority and completed their education in Turkey,



WORK PERMIT FOR FOREIGNERS

(cont.)

- Foreigners accepted as a refugee or nomad,
- Foreigners who have temporarily come to Turkey for a short period of time with the aim of scientific, cultural (exceeding 1 month) and sports activities (exceeding 4 months),
- Foreigners having the position of key personnel,
- Foreigners working at embassies, consulates and at the representations of the international establishments, and their spouses and children.



WORK PERMIT FOR FOREIGNERS

EXCEPTIONAL WORK PERMIT: EU Citizens and Their Family Members

- EU citizens benefit from more favourable rules derived from documents of Association Law subject to reciprocity.
- Articles 6 and 7 of the Association Council Decision No. 1/80, which contain more advantageous rules for access to the labour market are applied to EU citizens.
- Work permit may be given to EU citizens and their spouses and children who are not EU citizens, irrespective of the durations laid down in the LWPF.
- The condition of residing for at least 5 years legally and uninterruptedly for family members laid down in Article 5 of the LWPF is not applied to the family members who have the right to reside with the EU citizen entering the labour market of Turkey.



WORK PERMIT FOR FOREIGNERS

EXCEPTIONAL WORK PERMIT: EU Citizens and Their Family Members **(For a Definite Period of Time)**

Any EU worker who entered the labour market of Turkey has the right:

- to renew his work permit for the same employer, if a job is available after working legally for 1 year,
- to apply job vacancies in the same occupation and to the employer chosen by himself/herself or other occupation recorded in the employment offices after working legally for 3 years,
- to enjoy free access to any paid employment of his/her choice, after working legally for 4 years.



WORK PERMIT FOR FOREIGNERS

EXCEPTIONAL WORK PERMIT: EU Citizens and Their Family Members (For an Indefinite Period of Time)

- The condition of residing uninterruptedly and legally for at least 8 years or legally working for 6 years for obtaining work permit for an indefinite period of time is not applied to EU citizens and their third country national (TCN) family members.



WORK PERMIT FOR FOREIGNERS

EXCEPTIONAL WORK PERMIT: EU Citizens and Their Family Members (For Self-employed)

- The condition of residing legally and uninterruptedly for at least 5 years for obtaining work permit for self-employed is not applied to EU citizens and their TCN family members.



WORK PERMIT FOR FOREIGNERS

REJECTION OF THE APPLICATION FOR WORK PERMIT

Application for work permit may be rejected:

- If the situation of the labour market and developments in working life and sectoral and economic conjuncture changes regarding employment are not appropriate,
- If a Turkish national with the same qualifications for the same job is found in 4 weeks,



WORK PERMIT FOR FOREIGNERS

(cont.)

- If the foreigner does not have a valid residence permit,
- If the foreigner, whose permit request for a workplace or profession is rejected, he/she cannot apply for work permit for the same workplace or profession in 1 year from the date of his/her latest application,
- If employment of the foreigner poses a threat to the public security, public order, public morality and public health.



WORK PERMIT FOR FOREIGNERS

(cont.)

By the Draft Law amending LWPF, these cases are also added as rejection reasons:

- *The application for work permit is made by false and deceptive information and documents,*
- *Obligations regarding social security are not fulfilled.*



WORK PERMIT FOR FOREIGNERS

CANCELLATION OF WORK PERMIT

- Working contrary to the restrictions regarding duration, sector, profession, economic activity and geographical or administrative area restrictions,
- Breaching prohibitions related to professions or crafts in which foreigners are not entitled to work,
- Finding out subsequently that the foreigner or his/her employer has given false or deceptive information in application documents,
- Working contrary to national legislation,
- Existence of any of the grounds for rejection of application for work permit.



WORK PERMIT FOR FOREIGNERS

LEGAL REMEDIES

- The parties concerned may object to the decision of the MoLSS within 30 days from the date of notification.
- Administrative courts may be applied to in case the objection is rejected by the MoLSS.



WORK PERMIT FOR FOREIGNERS

NOTIFICATION

- Foreigners working as self-employed must notify this to the MoLSS within 15 days at the latest from the date they start to work and from the date they stop working,
- Employers employing foreigners must notify this to the MoLSS within 15 days at the latest from the date the foreigner starts to work and in any case the employment contract ends.



WORK PERMIT FOR FOREIGNERS

INSPECTION AND SANCTION

- The foreigners and employers within the scope of LWPF are inspected by MoLSS inspectors.
- Employers employing foreigners without work permit are imposed an administrative fine of 3.922 New Turkish Lira (appr. € 2.000) for each foreigner.
- Foreigners working without a work permit are imposed an administrative fine of 783 New Turkish Lira (appr. € 400).



WORK PERMIT FOR FOREIGNERS

ADMINISTRATIVE CAPACITY

- MoLSS, General Directorate of Labour, Department of Work Permit for Foreigners
 - 1 Head of Department,
 - 7 Units (General Coordination, Tourism, Education, Health, Foreign Investment, SMEs and Aviation),
 - 80 Personnel in total.
 - <http://www.workpermit.gov.tr>



VISA FOR THE AIM OF WORKING

PROCESS

- Application for visa for the aim of working is made to the Turkish embassy or consulate in the country where the foreigner resides.
- Within the framework of LFWP, the process of work permit for foreigner begins on the date of application for visa.
- In case work permit is issued to foreigner, the MoLSS informs the Ministry of Foreign Affairs.
- Turkish embassy or consulate gives visa for the aim of working and notifies the foreigner about the requirement to apply to the provincial police department to get residence permit.



RESIDENCE PERMIT FOR THE AIM OF WORKING

PROCESS

- Approval by the MoLSS of work permits has to be communicated to the Governor's Office in the province where the foreigner worker's workplace is located and for self-employed foreigners it has to be communicated to the Governor's Office in the province where the self-employed foreigner resides.
- Foreigners have to get residence permit from security authorities within 30 days at the latest following the date they entered the country and in any case before beginning to work.



RESIDENCE PERMIT FOR THE AIM OF WORKING

CONDITIONS

Residence permit is given by the Governor's Office to the foreigners meeting the following conditions:

- To obtain visa for the aim of working from Turkish representative offices,
- To stay in Turkey within periods foreseen in the legislation,
- To work in the workplace declared,
- To be registered to relevant professional association, if he/she is to pursue a profession,
- To be given by the authorities a document certifying the positive outcome of the security investigation.



RESTRICTIONS



RESTRICTIONS ON WORKING OF FOREIGNERS

- Fundamental rights and freedoms can be restricted for foreigners by the Law in accordance with international Law (Art. 16 of the Constitution).
- This principle for restriction is also applicable to the right and freedom to work.



GENERAL GROUNDS FOR RESTRICTIONS

- Public Security,
- Public Health,
- Public Order,
- Public Interest.



RESTRICTIONS FOR WORKING OF FOREIGNERS

The Professions Requiring Turkish Citizenship:

- Lawyer
- Security and Safeguarding Staff
- Customs Broker
- Customs Counsellor Assistant
- Stock Exchange Broker
- Professional Tourist Guide
- Responsible Manager of Travel Agency
- Public Notary
- Founder of a Trade Union
- Independent Accountant, Financial Advisor, Certified Public Accountant
- Captain and Seamen
- Board Member of Cooperative Society



RESTRICTIONS FOR WORKING OF FOREIGNERS

(cont.)

- Nurse
- Doctor
- Dentist
- Midwife
- Carer in Hospital
- Pharmacist
- Responsible Manager in Private Hospital
- Veterinary



OTHER RIGHTS AND FREEDOMS



SOCIAL RIGHTS AND FREEDOM OF FOREIGNERS

1. COLLECTIVE AGREEMENT, STRIKE AND LOCK-OUT

No restriction.

2. TO FOUND AND TO BE MEMBER OF A TRADE UNION

- Turkish citizenship condition exists for being founder of a trade union and being elected for compulsory bodies except from general board.
- There is no restriction in terms of membership of a trade union.

3. RIGHT TO LEAVE AND REST

No restriction.



(cont.)

4. BENEFIT FROM HEALTH SERVICES

No restriction.

5. SOCIAL SECURITY RIGHTS

- **Social Assistance:** No restriction.
- **Social Insurance:** No restriction.
 - *Unemployment Insurance:* Reciprocity principle exists. Unemployment insurance is benefited by foreign workers having the nationality of the states which concluded social security conventions with Turkey and applying unemployment insurance to Turkish workers.



SUPPLEMENTARY PENSION RIGHTS



PENSIONS SYSTEM

Overview

First Pillar:

Social Security Institutions

Second Pillar:

- Systems based on Mandatory Participation
- Systems based on Voluntary Participation

Third Pillar:

Personal Private Pension System



Second Pillar-Type Pension Schemes

- In Turkey, there is no formal system for regulation and supervision of the operations of schemes regarding second pillar.
- However, there are several second-pillar type pension schemes regulated by specific laws.

Second Pillar-Type Pension Schemes

Based on Mandatory Participation

➤ **OYAK (Military Personnel Assistance and Pension Fund)**

- Operates Under OYAK Law No. 205
- Main benefits provided: Pension, Disability, Life, Mortgage Loans
- Number of participants: 227,296 as of year-end of 2005
- Total Fund of Members: € 2,580 million as of year-end of 2005

➤ **Amele Birligi (Union of Employees of the State-owned Coal Mining Enterprise)**

- Operates Under Law No. 151 and By-Law on Amele Birligi
- Main benefits: Temporary Disability Payments, Lump-sum Payment on Retirement and Health Care for Their Dependants
- Number of participants: 10,943 as of August, 2006
- Total Assets: appr. € 332 million as of year-end of 2005

Second Pillar-Type Pension Schemes

Based on Voluntary Participation

“Vakıf” and “Sandık” (Foundations/ Provident Funds)

- Third pillar-type funds that provide either defined benefit (DB), defined contribution (DC) or combination of DB/DC pensions on a voluntary basis,
- Main Benefits Provided: Pension, Life, Health Insurance,
- Assumed number of foundations/provident funds providing pension benefits to their members \approx 250-300,
- Lack of adequate statistical data about the activities, number of participants and amount of accumulated funds.

Third Pillar: Personal Private Pensions

- Law No. 4632 on Individual Pensions Saving and Investment System

Main Characteristics of Personal Private Pensions:

- Supplementary to the existing state pension schemes,
- Voluntary participation,
- Defined Contribution Based-Individual Accounts,
- Fully Funded,
- Tax Incentives (EET)-up to certain statutory limits,
- Employer can contribute to the employee's individual account,
- No benefit or return guarantees,
- No biometrical risk coverage,
- Segregated fund assets kept by Takasbank (ISE Custodian and Settlement Bank) or another custodian approved by the Capital Markets Board.



Recent Developments

- A proposal for the amendment of Law No. 4632 brought before Turkish Grand National Assembly.
- The legal framework for the imposition of vesting schedules for the employer contributions in the group pension plans.
- Grant the participants in the second pillar-type voluntary pension schemes (i.e. “foundations/provident funds”) the right to transfer their pension accumulations to the personal private pension system.



THANK YOU FOR YOUR ATTENTION