



SCREENING CHAPTER 03
RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

**AGENDA ITEM III: RIGHT OF ESTABLISHMENT AND
FREEDOM TO PROVIDE SERVICES**

Country Session: The Republic of TURKEY
20 December 2005



AGENDA ITEM III/1: RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

RIGHT OF ESTABLISHMENT



GENERAL FRAMEWORK

- **Turkish Commercial Code (TCC) No. 6762**
- **Law No. 4875 on Foreign Direct Investments**
- **Law No. 5362 on Professional Organisations of Craftsmen and Tradesmen**
- **Law No. 1330 on Foreign Joint Stock Companies**
- **Turkish Code of Obligations No. 818**
- **Law No. 213 on Tax Procedure**
- **Law No. 488 on Stamp Duty**
- **Law No. 4857 on Labour**
- **Law No. 4958 on Social Insurance**
- **Law No. 4884, Amending Turkish Commercial Code, Tax Procedure Law, Stamp Duty Law, Labour Law and Social Insurance Law**
- **Law No. 5174 on Union of Chambers and Commodity Exchanges**



Businesses which can be established incorporated companies such as

- **Joint Stock Companies**
- **Limited Companies**
- **Commanded Companies**
- **Collective Companies**
- **Co-operative Associations**

Unincorporated companies such as

- **Joint-Venture**
- **Business Partnership**
- **Consortium**
- **Ordinary Partnership**



- **According to current Turkish legislation, there is no different treatment between national and foreign companies whether they come from EU or any third countries in terms of establishment of subsidiaries and establishment of branches of companies**
- **Law No. 4875 and Law No. 4884 are the latest legislation, regulating the legal positions of both foreign and domestic natural and legal persons who are pursuing economic activity in Turkey**



LAW No. 4875 ON FOREIGN DIRECT INVESTMENT

Freedom to Invest and Equal Treatment

- **Foreign investors are free to make foreign direct investments in Turkey**
- **Foreign investors shall be subject to equal treatment with domestic investors**



ACCORDING TO FOREIGN DIRECT INVESTMENT LAW

- **Companies established with foreign capital are regarded as local Turkish companies, and therefore entitled to and benefit from the same rights and exemptions that are granted to domestic companies engaged in the same field of activity**
- **Foreign investors are not required to obtain an additional permit or approval while setting up business in Turkey. There is only notification requirement**



LIAISON OFFICES

➤ Article 3. h) Liaison Offices

The Undersecretariat of Treasury is authorized to permit foreign companies established under the laws of foreign countries to open liaison offices, provided that they do not engage in commercial activities in Turkey

Applications for establishment and extension of liaison offices are to be finalized within 5 days following the application, provided that the necessary information / documents are complete and proper

However, this procedure is for registration purposes rather than permission since there is not any other legislation regulating liaison offices



- **According to the Law. No. 4884, company registration procedures have been simplified and a typical company registration process has been reduced in terms of procedures and duration**
- **With the streamlined procedures, now the registration and company establishment can be done in a day just by filling out a standard form without applying to several different authorities for necessary approvals**
- **The company establishment application documents should be submitted to Ministry of Industry and Trade (MIT) or local trade registration offices working under the chambers of commerce and/or industry existing in every city**



Procedures mentioned below should be followed both by domestic and foreign investors who are willing to establish a company in Turkey

- **Submitting the notarized articles of the association**
- **Depositing 0.04 % of the capital at the Central Bank or a State Bank**
- **Completing the Company Establishment Form and register with Trade Registry Offices**



COMPANY REGISTRATION

Prepare and notarize
Articles of Association

Deposit 0.04% of capital
of the company at the
Central Bank

Register the company at
Trade Registry Office

**Starting
Business**

All trading companies must be members of
the Chamber of Commerce within 1 month
after the registration with Trade Registry

Article of association of registered
companies is published in Trade
Registry Gazette automatically



Article 273 of the TCC, as revised by Article 2 of Law No. 4884, and article 5 of “Communiqué on the Establishment and Amendment Transactions of Basic Contracts of Joint-stock Companies and Limited Liability Companies” stipulate that establishment and amendments referring

- ***banks***
- ***private finance institutions***
- ***insurance companies***
- ***financial leasing companies***
- ***factoring companies***
- ***holding companies***
- ***companies operating foreign currency exchange offices***
- ***companies dealing in public warehousing***
- ***publicly held companies subject to the Capital Markets Law and companies that are founders and operators of free zones***

are subject to obtain permission from relevant public authorities

Other joint stock and limited companies should file their applications to the provincial trade offices where their headquarters are located



- **Relevant legislation regarding the branches of foreign companies is the Law No. 1330. Pursuant to this Law, branches of foreign companies in Turkey do not exist as separate legal entities, in other words, they remain as a part of the foreign legal entity**
- **However, they are taxed as non-resident companies**
- **The responsible institution for the registration of branches of foreign companies is registry offices in Chambers of Commerce**
- **Foreign companies can carry out their transactions about the registration process by a fully authorised representative who has to be resided in Turkey**



To set up business as craftsmen and tradesmen in Turkey, applications should be done to the below mentioned institutions for the necessary documents/certificates

- **Ministry of Finance (local tax offices)**
- **Ministry of National Education**
- **Ministry of Labour and Social Security**
- **Chamber of Tradesmen and Craftsmen**
- **Municipalities**



LAW No. 5362 ON PROFESSIONAL ORGANISATIONS OF CRAFTSMEN AND TRADESMEN

- **Membership to chambers of craftsmen and tradesmen is compulsory**

BASIC REQUIREMENTS FOR REGISTRY

- **Having a certificate showing whether the relevant person subject to tax liability or not**
- **Pursuing the craftsmen and tradesmen actively in Turkey**
- **Capable of using civil rights**
- **Not being a member of chambers within the framework of The Union of Chambers and Commodity Exchanges of Turkey (UC CET – TOBB)**



An established company or self-employed have to fulfill the following requirements in order to start bussiness

- **to get permission from relevant local authorities**
- **to have “licence to establish” and “certification to operate” issued by Ministry of Labour and Social Security (MoLSS)**
- **to have work permit (for foreigners)**
- **residence permit (for foreigners)**
- **registration to the chamber**
- **tax registration**



According to the By-law on Licence to Establish a Workplace, issued on 10.08.2005, it is obligatory for certain workplaces to obtain licence from relevant local authorities in order to start bussiness

- **Licensing procedures have been simplified**
- **There is no discrimination between foreign and domestic companies in licensing**
- **Licences are given on the basis of declaration of the applicant**



LICENCE AND CERTIFICATION FOR ESTABLISHING AND OPERATING A WORKPLACE

- **According to the Implementing By-law on Obtaining Licence to Establish a Workplace and Certification to Operate, issued on 17.12.2004, pursuant to Article 78 of the Labour Act No: 4857, it is obligatory for certain workplaces to obtain**
 - ✓ **licence to establish**
 - ✓ **certification to operate**



LICENCE AND CERTIFICATION FOR ESTABLISHING AND OPERATING A WORKPLACE

Workplaces that are obliged to obtain “licence to establish” and “certification to operate”

- **Workplaces in industrial sector with 10 or more workers**
- **Workplaces where dangerous chemical substances are produced, utilized or stored, regardless of the number of workers**
- **Construction and mining workplaces**
- **Fixed installations of stone quarries**



LICENCE AND CERTIFICATION FOR ESTABLISHING AND OPERATING A WORKPLACE

Documents necessary to submit to the Ministry of Labour and Social Security in order to obtain “licence to establish”

- **Written application to the Ministry**
- **Declaration containing information as to certain characteristics of the workplace**
- **Plan of site of the workplace**
- **Architectural project of the workplace**



LICENCE AND CERTIFICATION FOR ESTABLISHING AND OPERATING A WORKPLACE

Procedure necessary to obtain “certification to operate”

- **Written application to the competent regional office of the Ministry**



LICENCE AND CERTIFICATION FOR ESTABLISHING AND OPERATING A WORKPLACE

- Applications for obtaining “licence to establish” and “certification to operate” should be assessed and concluded within 30 days as from the date of application
- In cases where applications for “licence to establish” and “certification to operate” cannot be processed within this time limit, the employer in question shall be regarded to have obtained these documents and shall be entitled to operate the workplace



**AGENDA ITEM III/2: RIGHT OF ESTABLISHMENT AND
FREEDOM TO PROVIDE SERVICES**

FREEDOM TO PROVIDE SERVICES



Temporary service provision by third country companies in Turkey only requires work permit and residence permit (limited with the duration of the service) for the persons which are appointed for providing the service on behalf of the company on the territory of Turkey on a temporary basis.



**AGENDA ITEM III/3: RIGHT OF ESTABLISHMENT AND
FREEDOM TO PROVIDE SERVICES**

WORK PERMITS FOR FOREIGNERS



LEGISLATION

- **Law No. 4817 on the Work Permit for Foreigners (LWPF) implemented by Ministry of Labour and Social Security (MoLSS)**
- **By-Law on the Implementation of the Law**



LAW No. 4817 AIMS

- to prevent Turkey from being used as “transit pass” country by foreigners
- to provide flexibility to enable right of establishment and freedom to provide services for EU citizens subject to reciprocity



MAIN PRINCIPLE

- **Law No. 4817 regulates the work of foreigners in Turkey with a system of work permit and specifies the rules regarding the work permits**
- **A foreigner needs firstly to get work permit in order to work in Turkey**
- **This permission is valid only when the required working visa and residence permit are taken (Art. 12)**
- **In case of force majeure, the work permits may be given after starting to work, provided that information is given to the relevant authority before starting to work (Art. 4)**



SCOPE

- **Foreigners working as employed or self-employed basis in Turkey**
- **Foreign trainees**
- **Natural and legal persons that employ foreigners**



GENERAL PRINCIPLES FOR EXEMPTIONS (Article 2)

There is no need to get work permit for persons mentioned below

- **Those who have Turkish citizenship by birth and then renounce it by decision of the Council of Ministers (Law on Turkish Citizenship, Art. 29)**
- **Foreigners who are members of foreign press organizations and press correspondents**
- **Foreigners who are employed in certain public institutions**
- **Foreigners who are exempted from work permit taking into consideration the principles of reciprocity, international law and EU law**



SPECIFIC EXEMPTIONS (1)

By-law clarifies exemptions as follows

- **Foreigners who are exempted from work permit with the bilateral or multilateral agreements to which Turkey is a party**
- **Foreigners whose permanent residences are abroad and who will temporarily come to Turkey for a period of less than one month with the aim of scientific, cultural and artistic activities**
- **Foreigners who will 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**



SPECIFIC EXEMPTIONS (2)

- **Foreigners who come to Turkey for a period of less than six months to work in fairs and circus**
- **Foreigners who come to Turkey for a period limited to their education**
- **Foreigners who notify to relevant authorities to provide important services and contribution to Turkey in the fields of socio-cultural, technology and education for a period of less than three months**
- **Foreign students who intern in private or public institutions in the framework of student exchange programs in accordance with the principle of reciprocity for a period limited to their internship**



SPECIFIC EXEMPTIONS (3)

- **Foreigners who work in international organizations or in national and international projects carried out by consortium or in accordance with the bilateral or multilateral agreements to which Turkey is a party**
- **Foreign tour operator representatives who come to Turkey for a period of less than six months within a year**
- **Foreign football players, other sportsmen and trainers whose demands are approved by Turkish Football Federation or General Directorate of Youth and Sport**



APPLICATION FOR WORK PERMIT

- **Applications can be made in Turkey or from abroad**
- **All applications must be made in written**
- **Forms in the by-law must be filled in**
- **The foreigners, who have been issued work permit, are obliged to apply for visa**



WORK PERMIT TYPES

- **Work permit for a definite period of time**
- **Work permit for an indefinite period of time**
- **Work permit for self-employed**
- **Exceptions**



WORK PERMIT FOR A DEFINITE PERIOD OF TIME

- **Maximum one year**
- **Based on specific conditions can be extended up to six years**



WORK PERMIT FOR AN INDEFINITE PERIOD OF TIME

- **May be given to the foreigners who have uninterruptedly and legally resided in Turkey for at least eight years or who have legally worked for six years**



WORK PERMIT FOR SELF-EMPLOYED

May be given to foreigners provided that

- **They have resided in Turkey legally and uninterruptedly for at least five years**
- **Their work creates value added in terms of economic development and has positive effect on employment**



EXCEPTIONS

- **Unless otherwise provided in the bilateral or multi-lateral agreements to which Turkey is a party, more flexible work permits may be given irrespective of the durations provided in the Law**
- **Citizens of EU member states, their spouses and children**
- **Key personnel**
- **Foreigners who are accepted as a refugee or nomad**



APPLICATION DOCUMENTS

- Documents requested from foreigner
- Documents requested from the employer of foreigner



DOCUMENTS REQUESTED FROM FOREIGNER

- **Written request for work permit**
- **Application form for foreign staff**
- **Copy of passport approved by notary and translated into Turkish**
- **Copy of degree approved by notary and translated into Turkish**
- **Residence licence for at least 6 months for the applications done in Turkey**
- **Standard CV Form**



DOCUMENTS REQUESTED FROM THE INSTITUTION THAT WILL EMPLOY FOREIGNER STAFF

- **Written request for work permit**
- **Balance sheet and income statement**
- **If the institution has foreign capital, current capital and partnership structure of the institution**



ISSUING WORK PERMIT

- **The MoLSS examines and responds to the application in max. 90 days. The duration is 15 days for certain direct foreign investments**
- **Including professional qualifications, views of related public institutions and organisations and professional organisations are taken**
- **Related authorities send their views to the MoLSS in max. 30 days**



EXAMINATION OF WORK PERMIT REQUIREMENTS

While examining the applications for work permit and permit extension, the MoLSS takes into consideration

- **duration of residence and work permit of foreigner**
- **duration of service contract and work**
- **situation in the labour market**
- **developments in working life**
- **sectoral, geographical and economic conjuncture changes on employment**



RESTRICTION OF WORK PERMIT

- **Although the possibility of restriction of work permits (which is a measure against the risk of being abused as a transit country) exists in the legislation, this measure has never been applied to date**



REJECTION OF REQUEST FOR WORK PERMIT

- **The situation in the labour market and developments in the working life and sectoral and economic conjuncture change regarding employment are not appropriate to give work permit**
- **A person in the country with the same qualifications can be found in a period of four weeks to perform the job which is applied for**
- **The foreigner does not have a valid residence permit**
- **The foreigner, whose permission request for a workplace, enterprise or profession is rejected, re-requests permission in one year from the date of his/her request for the same workplace, enterprise or the same profession,**
- **National security and public order, security, interest, morality and health**



LEGAL REMEDIES

In accordance with the provisions of Notification Law

- **Objection to the MoLSS *within thirty days* from the date of notification**
- ***Administrative courts***



ADMINISTRATIVE CAPACITY

- **Ministry of Labour and Social Security, General Directorate of Labour/ Department of Work Permit of Foreigners**
- **1 Head of Department**
- **7 Branch manager**
- **70 staff**
 - ✓ <http://www.yabancalismaizni.gov.tr>
 - ✓ <http://www.workpermit.gov.tr>