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Foreign Investment Laws in the Republic of Turkey: A Model for Reform*

Eric Schneider** and Alev Bilgen***

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I. INTRODUCTION

Turkey's laws regulating foreign investment were radically altered during its last two Five Year Plans. The purpose behind these changes was to move away from a policy of import substitution and centralized control, effected by strict customs barriers and bureaucratic regulations which discouraged foreign investment.¹ Historically, the prior policies of public enterprise and government planning were based on a suspicion of foreign investment dating from the founding of the Republic and were, in part, a reaction to centuries of quasi-colonial status imposed upon the Ottoman Empire by European powers.² On January 24, 1980, the Turkish government announced that it had taken various measures to liberalize the economy and encourage foreign investment. At the center of this change was a policy which favored private investment over governmental, free trade over protectionism, and foreign investment over economic nationalism.³ One purpose of this paper is to describe and analyze those changes in legislation relevant to lawyers representing foreigners interested in investing in Turkey.

1. *Reforms Keep Growth Intact*, 1 ECONOMY, TURKEY, Dec. 1988, at 34 [hereinafter *Reforms*]. "The first plan covered the period 1963-1967 and there have been successive five year plans and annual programs." The sixth Five Year Plan, which is due to run from 1990 to 1994, continues to emphasize free competition and the private sector. ISTANBUL CHAMBER OF COMMERCE, PUB. NO. 1990-34, 1990 ECONOMIC REPORT 11 [hereinafter ISTANBUL CHAMBER 1990 REPORT]; *Marketing in Turkey*, OVERSEAS BUSINESS REP., Apr. 1989, at 41 [hereinafter *Marketing*] ("Until 1980 Turkey's domestic industry was to a large extent protected from import competition. Foreign manufacturers licensed their technology in order to gain entry into the Turkish market.").

2. D.A. Rostow, *Turkey's Liberal Revolution*, MIDDLE E. REV., Spring 1988, at 5, 6 ("Atatürk had been concerned, above all, to overcome the countries earlier quasi-colonial status, symbolized by the 'capitulations' (trade privileges for foreigners) which European powers had imposed upon the Ottoman Empire over the centuries. Atatürk had espoused the policy of etatism, or public enterprise and government economic planning, then prevalent in depression-ridden Europe.").

3. U.S. DEP'T OF COMMERCE, INT'L MARKETING INFORMATION SERIES, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: TURKEY 3 (Aug. 1988); *Investment and BOT Projects*, 6 MIDDLE E. EXECUTIVE REP., June 1988, at 21; *Marketing*, *supra* note 1, at 42. Other major changes included: the establishment of the Inter-ministerial Economic Coordination and Money and Credit Committee, the abolition of restrictions on foreign ownership of business, reduction of import barriers, and a liberalization of the foreign exchange regime, with a 33% devaluation of the Turkish Lira (TL).

A second purpose of this paper is to examine, in economic terms, how well the Turkish experiment has worked. The policies of public ownership, protectionism, and economic nationalism found in Turkey prior to 1980 were similar to those held by most developing and east bloc nations until the withdrawal of the Soviet Union from Eastern Europe and their perceived failure in developing countries.⁴ Now lawmakers in many countries are being asked to structure reforms which will promote economic growth. Because the Turkish economic reform process has lasted a decade, it represents a working model of the type of legislation which nations similarly situated might adopt.

II. PRIVATIZATION

The earliest attempt to privatize Turkey's inefficient state enterprises occurred in 1950 when the Democratic Party came to power.⁵ Because the weakness of the private sector and the inadequacy of private savings prevented that and succeeding governments from success, prior to 1980 the State Planning Organization (SPO), which is in the Prime Ministry, continued to maintain strict control over all projects and investments, emphasizing government ownership of major industries.⁶ This resulted in a less than 50% private-sector share of total fixed investment and a low rate of foreign investment.⁷ State Economic Enterprises (SEEs), responsible since the early 1940s for the establishment of Turkey's industrial base, have remained dominant,

4. On the desire for reform in the east block countries, see Gary Regenstein, *IMF May Demand Reform Targets in Eastern Europe*, Reuter Canadian Financial Report, May 14, 1990, available in LEXIS, Nexis Library, Canrpt File; John Dornberg, *Poland's Chancy Big Bang*, 1990 INSTITUTIONAL INVESTOR, Feb. 1990, at 111. An example of a developing country in reform is Zambia. See *Zambia; Diversified Economic Growth; Encouraging Foreign Investment*, 1991 INSTITUTIONAL INVESTOR, Feb. 1991, at S8. Mexico is another example. See *Mexican Industry; Attracting Foreign*, 1990 INSTITUTIONAL INVESTOR, June 1990, at S8.

5. ISTANBUL CHAMBER 1990 REPORT, *supra* note 1, at 64.

6. *Marketing*, *supra* note 1, at 42. In 1980, the public sector consisted of 4,600 units owned by government entities. See INVESTMENT ENVIRONMENT IN TURKEY: PRIVATIZATION 2 (DEIK 1990).

7. UNION OF THE CHAMBERS OF COMMERCE, INDUSTRY, MARITIME TRADE AND COMMODITY EXCHANGES OF TURKEY, ECONOMIC REPORT 26-55 (1988); THE TURKISH ECONOMY '88 108 (TÜSIAD 1988).

accounting for more than 44% of total fixed investment and employing over 700,000 workers engaged in the manufacture of basic metals, tobacco, petroleum products, textiles, and paper products.⁸

Perhaps the most dramatic change to occur in the early 1980s was the implementation of a policy aimed at limiting governmental commercial activity and opening public sector activity to foreign and local private capital. In 1983, Law No. 2929 distinguished between establishments operating according to commercial principals and those oriented toward public service. SEEs were to operate along commercial lines while Public Economic Enterprises (PEEs) were to produce and market necessities and state monopoly goods and services. Decree No. 233 in 1984 made clear that SEEs are to operate on principles of productivity and profitability, while PEEs are to work on the basis of productivity. In 1984, the government also commissioned a master plan aimed at the privatization of SEEs to make the economy more efficient.⁹ Under this program, when the decision is made to privatize a company, the Public Participation Administration (PPA) decides, according to the characteristics of the enterprise, the best method of privatization. They might award management contracts, or assign leases to private sector companies, or the shares of the enterprise may be transferred to the PPA to be made available to the public. By March 1991, three SEEs (Petkim, a national petrochemicals corporation; Sümerbank, a manufacturer of textiles, clothing, ceramics, and footwear; and Turkish Airlines) were transferred to PPA for privatization. In addition to these SEEs, fifteen subsidiaries, five banks, and the state shares of sixty four public

8. *Marketing*, *supra* note 1, at 13. 600,000 public-sector workers are in unions, while another 145,000 workers are barred from forming unions. A. Marcus, *Ratification of New Accords Welcomed, But More Needed*, *DATELINE*, Feb. 18, 1989, at 5.

9. Law No. 2983 Concerning the Acceleration of Public Investment (Feb. 29, 1984). The legal framework for privatization is provided by Law No. 3291, passed in June 1986, which vests authority for privatization of SEEs with the Council of Ministers. For subsidiaries of SEEs and projects jointly controlled by SEEs, the authority to decide rested with the High Planning Council under the chairmanship of the Prime Minister. In April 1990, under Decree No. 414, the Public Participation Administration is now vested with authority to privatize.

companies have been transferred to PPA for privatization.¹⁰ The first public offering by the PPA occurred in February 1988. It involved the sale of 22% of the shares of *TELETAŞ*, the 40% state-owned telecommunications company. The result of the sale is that the government now has 22% of the equity, Belgium's Bell Telephone (an ITT subsidiary) holds 39%, and private investors and state groups own 21%.¹¹ Three other companies privatized in 1988 were sold directly to foreign investors: *ANSAN*, a bottling concern, went to Coca Cola; *USAŞ*, an airport services group, went to Scandinavian Airline System; and five cement plants belonging to *ÇİTOSAN* were bought by a French company. However, recent court decisions have annulled the sale of *ÇİTOSAN* and *USAŞ*, calling into question the future of privatization in Turkey. As one commentator stated, "A recent instance of uncertainty is the privatization program, the aims of which are to spread the country's narrow savings base, modernize the state sector, raise revenues and attract large inflows of foreign currency. But in 1990 the program ran aground on residual sympathies for economic nationalism."¹²

The cases were brought before the Administrative Courts by opposition parties. The decision to set aside the sales was grounded on a finding that the 1954 Foreign Investment Law prohibits foreign capital in monopolies, and on a directive by the government in 1987, which ordered that state assets should be offered for sale to Turks or Turkish interests before foreigners. The Prime Ministry and the PPA have appealed the decisions to a higher court, and the President of Turkey, Turgut Ozal, has stated that the privatization program has not been damaged because, at the time of the sales in question, public participation in the Turkish stock market was minimal, forcing the block sale of the two SEEs to foreign

10. Foreign Investment Regulations and Application Forms 4 (FID 1991).

11. For criticism that the High Planning Council should play a greater role in privatization sales to foreigners, see *YPK to be Cautious on Future Sales of SEEs to Foreigners*, *DATLINE*, Feb. 18, 1989, at 4 [hereinafter *Foreigners*]; Ash & King, *Privatization Debut*, *EUROMONEY*, May 1988, at 30; see Keller, *The 'Sleeping Bourse' Wakes Up*, *EUROMONEY*, Nov. 1989, at 107.

12. John McCarthy, Managing Director of Contract & Trade Finance Ltd., Address Before the American Friends of Turkey, in Washington, D.C. (Feb. 1991).

companies. He further stated that, "There are no restrictions about the way State companies may be sold. Due to the rapid development of the Turkish stock market, conditions are very favorable for us to offer shares to the public."¹³

The PPA is continuing its efforts to privatize and has offered the shares of three groups of state-owned companies on the Istanbul Stock Exchange and hoped to raise two billion Turkish Lira (TL) from privatization in 1991.¹⁴ There has even been an attempt to reduce the governmental monopoly on tobacco products. On May 2, 1991, a decree was implemented allowing private companies, which produce a minimum of two thousand tons per annum of tobacco products in Turkey, to import and distribute their own brand with no limitations.¹⁵

Despite setbacks, Turkey's privatization program is viewed as a success in increasing private sector investment.¹⁶ From 1984 to 1987, private sector investment rose from 7.4 billion TL to 11.1 billion TL, while public sector investment rose from 10.4 billion TL to 13.3 billion TL. The annual rate of increase for private investment went from 8.2% in 1985 to 18.6% in 1987. However, a general economic stagnation in 1988 manifested itself with a real decline in the annual increase rate. By 1989, the rate of increase in private investment fell to 2.7%. This decrease was accompanied by a decline in public sector investment which went from 13.3 billion TL in 1987, to 11.5 billion TL in 1988, to 10.3 billion TL in 1989. This represents a 14.1% decrease in real, public-sector investments in 1988 and a 10.2% decrease in 1989.¹⁷ In 1988, 48.3% of fixed capital investment was undertaken by the public sector and 51.7%

13. See *Nationalization and Privatization*, BUS. INT'L, June 1, 1991; *An Interview with President Turgut Ozal*, 1990 INSTITUTIONAL INVESTOR, Sept. 1990, at S1.

14. Foreign Investment Regulation and Application Forms 6 (FID 1991).

15. Decree No. 91/1755 of May 2, 1991; *Cigarette Monopoly Ends; Production in Turkey Open to Foreign Companies*, 1 MIDE. MARKETS, May 13, 1991, at 5. As a result of this change, Philip Morris and R.J. Reynolds are building cigarette manufacturing plants in Turkey. 1 MIDE. MARKETS, Aug. 12, 1991, at 5; N.Y. TIMES, Jan. 7, 1992, § D, at 4.

16. THE TURKISH ECONOMY 1989, 95 (TÜSIAD 1989); see *id.* at 175 (showing the 1990 through 1994 five-year plan targets).

17. ISTANBUL CHAMBER 1990 REPORT, *supra* note 1, at 41.

by the private sector.¹⁸ In 1989, the public-sector share of fixed capital investment declined to 44.5%, while the private sector increased to 55.5%.¹⁹ Despite these shifts, the Consolidated Yearly Budget shows that transfers to SEEs rose from 446 billion TL in 1987, to approximately 1,253 billion TL in 1988.²⁰ These losses "accounted for no less than 4.5% of the overall high 8.5% ratio of the public-sector borrowing requirement to gross national product in 1990."²¹

III. ENCOURAGEMENT OF FOREIGN INVESTMENT

Turkey has more clearly been successful with its program to encourage foreign investment. The net flow of foreign capital from 1980 to 1990 was almost thirteen times greater than in the previous twenty-eight years.²² From 1954 to 1979, only U.S. \$228 million worth of direct foreign investment entered Turkey. From the date of the reforms of 1980 to 1983, investment authorizations of \$705 million were granted. This was in part due to a newly granted right to convert unsecured commercial debts and foreign currency accounts into investment capital. The net result for those four years was a currency inflow of \$254 million. It is obvious that not all authorizations of investment materialize. By the end of 1989, foreign capital investments in Turkey totalled approximately \$2.3 billion. By December 1991, a total of \$7.9 billion worth of investment projects had been permitted since 1980 while real inflows were \$3.5 billion with approximately \$649 million repatriated. Less than half the permits awarded to foreign

18. UNION OF THE CHAMBERS OF COMMERCE, INDUSTRY, MARITIME TRADE AND COMMODITY EXCHANGES OF TURKEY, ECONOMIC REPORT 18 (1989).

19. ISTANBUL CHAMBER 1990 REPORT, *supra* note 1, at 47.

20. ISTANBUL CHAMBER OF COMMERCE, PUB. NO. 1990-20, STATISTICAL ABSTRACT, TURKISH ECONOMY 34 (1989).

21. *Turkiye*, INT'L HERALD TRIB., June 18, 1991, at 15.

22. *Foreign Investment in Turkey Nearly Doubles in First Half of 1989*, Xinhua General Overseas News Service, July 10, 1989. "[F]oreign investment for the first four months of 1990 totalled \$396.4 million—up 20% on the same period last year." *Soviets Make the Running in Turkish Joint Ventures*, FIN. TIMES, June 28, 1990. For the first four months of 1991 foreign investment rose again to \$456 million and in May of 1991 there was an additional \$251 million in foreign investment. Monthly Report (FID, May 1991).

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investment projects since 1980 have been realized.²³ Nevertheless, the remarkable increase in foreign investment is in large part due to the efforts of the Foreign Investment Directorate (FID) of the State Planning Organization (SPO). At the center of the reforms instituted on January 24, 1980 was the establishment of the FID which was intended to centralize and simplify the foreign investment application process.²⁴

A. Laws Regulating Foreign Investment in Nonpetroleum Manufacturing and Service

Presently, the basic laws regulating nonpetroleum foreign investment in manufacturing are: The Law on the Encouragement of Foreign Investment No. 6224 [hereinafter Law No. 6224], enacted in January 1954,²⁵ which sets forth implementing regulations and defines foreign capital assets; the Framework Decree on Foreign Capital No. 86/10353 dated February 12, 1986,²⁶ as amended by Decree No. 90/473, dated May 13, 1990, which establishes procedures to obtain permission for foreign investment; the Circular Regarding Foreign Capital Movements, No. 84/1 of April 1, 1984;²⁷ and Communique No. 1, dated May 25, 1986,²⁸ as modified by the Communiqués dated March 5, 1988 and June 13, 1988.²⁹

Investment in services is mostly regulated by Decree No. 30 of July 1984,³⁰ as amended on February 4, 1988,³¹ and

23. ISTANBUL CHAMBER 1990 REPORT, *supra* note 1, at 111; Clelia Oziel, *Turkey Aims to Boost Foreign Capital Inflows*, Reuters Money Report, Dec. 18, 1991, available in LEXIS, Nexis Library, Monrpt File.

24. Framework Decree on Foreign Capital, No. 8/168 (Jan. 1980). This decree derived its legal authority from a provision of Law No. 6224, enacted in 1954, and is regarded as an implementing decree of that law. Decree No. 8/168 has since been repealed, and is superseded by Framework Decree on Foreign Capital, Supplement to Decree No. 86/10353 (Feb. 12, 1986).

25. FOREIGN TRADE AND INVESTMENT MEASURES 1 (IGEME Apr. 1988) [hereinafter MEASURES] (translating Law on the Encouragement of Foreign Investment, Law No. 6224 (Jan. 1954)).

26. *Id.* at 6.

27. *Id.* at 9.

28. *Id.* at 16.

29. See *id.* at 22; *Foreign*, *supra* note 11, at 41 (English translation).

30. MEASURES, *supra* note 25, at 24.

Communique No. 88-309/12 of July 20, 1988, which further authorized foreign investment partnerships and funds to invest in Turkish securities and to remit all capital, dividends, interest, and profits.³² This communique, which restricted foreign access to the equities market and to mutual funds, was superseded and clarified on August 11, 1989 by Decree No. 32, which removed all remaining restrictions on foreign institutional and individual investment in equities and other securities on the Istanbul Stock Exchange.³³ The opening of the service sector in 1984 brought with it a shift in foreign investment. Manufacturing's share of foreign investment fell from 56.7% in 1985 to 50.3% by 1990, while the services sector, including commerce, tourism, banking, and insurance, went from 40% to 46.5% in the same period.³⁴

All nonpetroleum foreign investments must be applied for and approved by the FID.³⁵ A recent modification of Communique No. 1³⁶ gives the FID additional responsibility for the approval of management contracts and the investment of blocked accounts of foreign companies in foreign capital shares in Turkey. In addition to processing foreign investment applications, the FID also advises and assists foreign investors and reviews and approves licenses, as well as royalty and management contracts.³⁷ There is presently no limitation on the amount of the foreign investment, the assigning of management and technical staff, or the equity participation of foreigners. Indeed, foreign firms may hold 100% equity unless the foreign investment is in a joint venture with a state-owned

31. *Id.* at 41.

32. *A Sound Business Environment*, 1 *ECONOMY, TURKEY*, Dec. 1988, at 55 [hereinafter *Business*].

33. Keller, *The 'Sleeping Bourse' Wakes Up*, *EUROMONEY*, Nov. 1989, at 107; see *New Rules for Foreign Investors*, *EUROMONEY*, Nov. 1989, at 113 (translating Decree No. 32, art. 15); see also *The Joys of South-East Europe*, *ECONOMIST*, Feb. 10, 1990, at 75 (regarding the \$104 million Turkish Fund and the \$55 million Mediterranean Fund quoted on the New York Stock Exchange).

34. *ISTANBUL CHAMBER 1990 REPORT*, *supra* note 1, at 112.

35. Framework Decree on Foreign Capital, No. 86/10353, art. 3 (Feb. 12, 1986); *MEASURES*, *supra* note 25, at 7.

36. *MEASURES*, *supra* note 25, at 22.

37. *Id.* at 18; Communique No. 1, art. 6, as modified on Mar. 18, 1988; see *MEASURES*, *supra* note 25, at 22.

company.³⁸ Foreign companies can enter such joint ventures and have a controlling share, but the share of the state-owned company must be at least 15%.³⁹ The FID has power to approve foreign investment up to \$150 million. The approval of investments over this amount must be submitted to the SPO for preliminary evaluation, and then to the Council of Ministers for approval.⁴⁰

Other areas of potential foreign investment are regulated by separate laws and governmental organizations. These are: banking, tourism,⁴¹ leasing, mining, insurance, and petroleum.

B. Investment in the Tourism Industry

Under the Law for the Encouragement of Tourism Investment, No. 2634, dated March 15, 1982, a foreign investor must obtain investment approval from the FID and the Ministry of Tourism.⁴² As a practical matter, an investor is advised to submit a proposal to the Ministry of Tourism for study and suggestions. After the decision is made to invest, application is made to the FID for preliminary authorization. When this is granted the entity must be formed in Turkey under the Turkish Commercial Code. This usually involves the incorporation and registration of a joint stock company. This completed, application is made to the Ministry of Tourism for an investment license. Finally, after the license is granted the investor can apply to the FID for an incentives certificate.⁴³ The Law has detailed requirements for hotels, motels, camping, restaurants, yachts, and other tourist facilities; and it

38. *Marketing*, *supra* note 1, at 42-43.

39. *Foreign Investment in Turkey*, 11 MIDDLE E. EXECUTIVE REP., Aug. 1, 1988, at 11.

40. Framework Decree on Foreign Capital, No. 86/10353, art. 4(b) (Feb. 12, 1986); MEASURES, *supra* note 25, at 6 (amended by Decree No. 90/473 (May 13, 1990)).

41. Turkey had over 4.17 million tourists in 1988 and over 4.6 million in 1989. *Tourism Enjoys a Record '88*, TURKISH DAILY NEWS, Feb 9, 1989, at 2.

42. MEASURES, *supra* note 25, at 107; *see id.* at 108 (translating Tourism Encouragement Law, No. 2634, art. 5a). On March 18, 1989, the Culture and Tourism Ministries were separated. *Restructuring the Ministries*, NEWS SPOT, TURKISH DIGEST, Mar. 10, 1989, at 1.

43. ISTANBUL CHAMBER OF COMMERCE, PUB. NO. 1989-32, LEGAL FRAME OF TURKISH TOURISM INCENTIVES 33-42 (1989).

empowers the Ministry to inspect facilities and levy fines and cancel certificates.⁴⁴

C. Investment in the Leasing Industry

Leasing has been seen as an answer to the problems created by the unavailability of medium-term credit on a free market basis. The potential for leasing in Turkey, both to private and government concerns, has been estimated at over \$600 million per year.⁴⁵ In June 1985, Turkey passed a Financial Leasing Law which was meant to cover all aspects of leasing.⁴⁶ The Law had little effect for the first year because it included a number of restrictions including a 20% withholding tax on cross-border transactions and a minimum four year contract term. These restrictions have been, in part, removed. The withholding tax has been reduced to 5% and the four year maturity rule has been changed for goods which have a depreciation period of less than four years.⁴⁷ Other limitations remain including the requirements that Financial Rental Companies can be formed only as joint stock companies, and that the minimum paid-in capital for Turkish companies is one billion TL. Branch operations of foreign companies must have paid-in capital of no less than \$2 million. The rental receivables of the lessor from one customer may not exceed 25% of the equity unless an exception is made, in which case it may go up to 40% or 75%.⁴⁸ This requirement has been criticized as limiting investors to small-scale leasing and it is thought that these obstacles will slowly be removed.⁴⁹

44. See MEASURES, *supra* note 25, at 115-16 (translating Law No. 6224, arts. 30-36).

45. Metin Munir, *Turkey 10; Market Has Great Potential*, FIN. TIMES, May 20, 1987, § Survey, available in LEXIS, Nexis Library, Fintme File.

46. See *Financial Leasing Law*, 9 MIDDLE E. EXECUTIVE REP., TURKEY, Jan. 1986, § B, at 24 [hereinafter *Leasing*] (translating the Law).

47. Munir, *supra* note 45.

48. *Leasing*, *supra* note 46, at 24.

49. Munir, *supra* note 45.

D. Investment in the Mining Industry

Investment in mining is regulated by Law No. 3213 of June 1984 and Law No. 6224 which controls the financial aspects of foreign investment. Under these laws foreign investors must obtain permission from the Energy and Natural Resources Ministry and the FID.⁵⁰ Foreign firms are, as in the past, allowed to explore and develop most mineral resources, but the Mining Law protects license applicants from subsequent applicants, so that it may be necessary to purchase prior applicants rights or to set up a joint venture with them.⁵¹ After much legislative debate about whether there should be restrictions on private and foreign investment in the mining of certain minerals, the decision was reached to allow unrestricted investment in all minerals but Boron. To protect Turkey's dominant market position in Boron, private sector firms producing Boron or its derivatives must sell their output to Etibank, a state enterprise, for marketing to the ultimate consumer. For all mining, a royalty of 5% of a mine's pretax profits is to be paid to the Treasury for mineral rights, and a second 5% is to be paid to Etibank's Mining Fund established for research, development, infrastructure, and export financing. If there are no other applicants for an exploration license, the government may issue one after a fifteen-day waiting period.⁵²

E. Investment in the Insurance Industry

Foreign investors need both FID permission and a Treasury permit to form an insurance company or a branch in Turkey.⁵³ Turkey's first Insurance Law, No. 7397, passed in 1959, was amended on June 11, 1987 by Law No. 3579. Law No. 7397 as

50. *Marketing*, *supra* note 1, at 43. Further implementing regulations were passed on August 22, 1985.

51. DOING BUSINESS IN TURKEY 60 (1990) [hereinafter DOING BUSINESS].

52. *The New Mining Law: Outlook For Foreign Participation*, MIDDLE E. EXECUTIVE REP., Nov. 1985, at 9.

53. *New Legislation Affecting Capital Markets, Insurance and Investment Incentives*, 12 MIDDLE E. EXECUTIVE REP., Feb. 1989, at 8 [hereinafter *New Legislation*].

amended raised the minimum paid-in capital of an insurance company to one billion TL, and requires that "foreign insurance companies forming branches or joint stock companies in Turkey must be joint stock companies or the equivalent in their domicile."⁵⁴ The amendments also provided for the issuance of regulations which were published on June 21, 1988 and August 21, 1988.⁵⁵ The regulations require more reporting, reserves, and government control over the quality of service than the previous law, and the government hopes that the "potential for growth in the relatively under-insured Turkish market together with the new regulations will encourage major new entrants into the market."⁵⁶ It has been stated that entering the insurance business in Turkey is difficult because of fixed premium rates which are low when compared with recovery rates.⁵⁷ Since October of 1989, companies have been allowed to vary premiums by 10% on each side of a fixed price, but it still can take over a year to get approval of a new policy idea. A recent requirement that an insurance company have a minimum five billion TL capitalization "drove a few foreign companies away, but others have flocked to join a market of 55 million Turks who currently spend less than five dollars a year insuring themselves."⁵⁸ The Treasury is presently drawing up new regulations which are intended to make for a more efficient industry through pricing competition.⁵⁹

54. *Id.*

55. Regulations Concerning Principles of Formation Operation of Insurance and Reinsurance Companies (June 21, 1988); Regulation Regarding Insurance and Reinsurance Intermediaries (Aug. 21, 1988).

56. *New Legislation*, *supra* note 53, at 8.

57. Jim Bodgener, *Turkish Banking and Industry 8; Wide Reforms are Planned-Insurance Sector*, FIN. TIMES, Dec. 6, 1989, § Survey, at VIII.

58. Hugh Pope, *Billion-Dollar Boom Expected in Turkish Insurance*, Reuter Library Report, Sept. 27, 1989, available in LEXIS, Nexis Library, Lbyrpt File.

59. Bodgener, *supra* note 57, at VIII.

F. Investment in the Petroleum Industry

Most petroleum activities are governed by Petroleum Laws No. 6326 and No. 2808,⁶⁰ administered by the General Directorate of Petroleum Affairs (GDPA), an agency of the Ministry of Energy and Natural Resources.⁶¹ "Petroleum operation" is defined by the law as exploration, discovery, development, production, and refining, as well as storage, transportation, and sale of crude oil or petroleum products.⁶² It does not include the sale, storage, and transportation required for the sale of petroleum products to consumers directly or through distribution organizations.⁶³ "Petroleum production," also regulated by this law, is defined as operations conducted to produce petroleum products, and "Petroleum product" is "any finished or semi-finished hydrocarbons derived from petroleum by condensation, chemical treatment, refining or other means and processes."⁶⁴ It is clear that refining of petroleum or the manufacturing of natural gas or liquified petroleum gases is regulated by the Petroleum Law. Other activities, such as the blending of lubricants and their distribution and sale directly to consumers, would not be regulated by the Petroleum Law, but rather by Law No. 6224 if conducted by a foreign investor.

The provisions of the Petroleum Law apply equally to local and foreign investors.⁶⁵ The GDPA is responsible for awarding exploration licenses and production leases unless they are in strategic areas such as the continental shelf and border areas, in

60. Law No. 6326 (Mar. 8, 1954), as amended by Law No. 6556 (1955), Law No. 6987 (1957), Law No. 1702 (1973), Law No. 2808 (Mar. 20, 1983) (incorporating Decree Nos. 8/178, 8/190, 8/1039, 8/1071 (Jan. to July 1980)); see *DOING BUSINESS*, *supra* note 51, at 60; *Foreign Investment in Turkey*, 11 MIDDLE E. EXECUTIVE REP., Aug. 1, 1988, at 11.

61. *Id.*

62. Law No. 6326, ch. 2, § 3(8)(a) (Mar. 8, 1954) (as amended) (Turk Argus Ajansi trans.).

63. § 3(8)(a).

64. See § 7 (defining "Production," as "the production of petroleum from a field including handling and preliminary treatment of petroleum produced until it is conveyed into tanks, to a pipe line or to a refinery located in or in the vicinity of the petroleum field"); see also § 3(2) (defining "Petroleum Product").

65. *Foreign Investment in Turkey*, 11 MIDDLE E. EXECUTIVE REP., Aug. 11, 1988, at 11.

which case the Council of Ministers also reviews the application.⁶⁶ It may also issue permits (which do not include exploration or geological investigation) and certificates for refining and transportation by pipeline.⁶⁷ Each of these permissions is considered a separate enterprise needing separate application and approval.⁶⁸ This, along with the fact that the Petroleum Law and Regulations which govern taxation of Petroleum Rights Holders will result in a Petroleum Rights Holder who conducts other business in Turkey having to allocate and separate capital, establish independent accounts and maintain separate records, and file separate returns for his petroleum operations. In addition, the Petroleum Law does not allow two or more Petroleum Rights Holders to consolidate their losses and profits, even if they are all incurred from petroleum operations conducted under the Petroleum Law.⁶⁹ For example, an exploration company cannot offset its losses with profits of a refining company because they are conducting petroleum operations under different permissions as separate Petroleum Rights Holders. Also, before getting a certificate to operate a refinery in Turkey, the investor must get an exploration license and must discover and produce, in Turkey, enough crude oil to operate the refinery.⁷⁰ If oil is discovered in a licensed area, it must be produced. 35% of oil discovered on land and 45% of oil discovered offshore after January 1, 1980, may be exported, and the foreign exchange earned can be used to repatriate profits from the lessee's Turkish petroleum operations.⁷¹

Foreign investors interested in oil exploration can establish a wholly owned subsidiary, a joint venture with a Turkish company

66. *Id.*

67. Under Petroleum Law, No. 2808, dated March 20, 1982, a petroleum concession license grants to its holder the exclusive right to conduct exploratory or development drilling and to produce oil in a maximum area of 50,000 hectares. One applicant is entitled to a maximum of eight licenses in any one of Turkey's eighteen Petroleum districts. *See* arts. 50-53. A license has a term of four years which can be extended an additional two or four years. When a discovery is made, a license can be extended another three years from date of discovery in order to define the field. Production leases of 25,000 hectares have a term of 20 years, renewable in two ten-year increments. *See* art. 65.

68. Art. 61.

69. Art. 95/2.

70. *Marketing, supra* note 1, at 44.

71. *Id.*

or, as the government prefers, a joint venture with the state-owned Turkish Petroleum Corporation holding 49% of equity.

IV. REPATRIATION OF INVESTMENT

There are presently no limitations on the repatriation of profits, capital gains, or royalties, and the procedure for transferring currency for the payment of foreign accounts payable has been simplified. In the past, it was potentially a criminal offense to possess foreign exchange in Turkey. Individuals are now allowed foreign exchange accounts, but companies may still be questioned by the tax authorities about the necessity of foreign expenditures for such things as advertising.⁷² Although the remittance of profits has always been guaranteed by Turkish law, before 1980 it was difficult to accomplish. A company would be required to put its Turkish Lira in the Central Bank and wait for the Central Bank to find the required foreign currency while the money lost value due to inflation. In 1980, companies were allowed to transfer profits through their own bank but could do so only after the company's annual meeting and only after its accounts had been approved by the tax office. Since February 1988, profits may be transferred immediately upon the decision by the company to distribute profits at its annual meeting. The company's bank may immediately make the transfer of funds but must subsequently submit the company's approved tax statement and tax accrual and payment slip.⁷³

Law No. 6224 also guarantees the remittance of the proceeds from the liquidation of an investment, "at reasonable prices."⁷⁴ Under Communiqué No. 1 of 1986, the proceeds from such sale "will be given a foreign exchange permit by the Central Bank---without delay."⁷⁵ A "reasonable price" is taken to mean the share price on the Stock Exchange or, if no stock is traded, a price set by the FID, usually based on past profits.⁷⁶

72. *Business*, *supra* note 32, at 56.

73. *Id.*

74. MEASURES, *supra* note 25, at 2 (translating Law No. 6224, art. 4(2)).

75. *Id.* at 20 (translating Communiqué No. 1, art. 9 (1986)).

76. *Id.*

Royalties can be quickly remitted by use of a foreign exchange permit which the Central Bank is required to grant whenever the company wants, rather than only annually.⁷⁷

In June 1991, Turkey further eased its already liberal foreign exchange regulations. Under the new regulations, foreign exchange credits secured from abroad which have maturities of over one year will require no prior Treasury approval. This should ease long term borrowing for Turkish banks. Banks are also allowed to sell unlimited amounts of hard currency to foreigners, ending a previous limit of \$5000. To assist Treasury keep track of capital movements, banks must inform Treasury of transfers abroad worth more than \$50,000, except for transactions involving trade or invisibles. Although gold imports will remain under the sole authority of the Central Bank, all controls on the export of gold have been lifted.⁷⁸

V. FORMS OF DOING BUSINESS

Under Law No. 6224, foreign investors may start a new enterprise, participate in a joint venture, purchase part of an existing business, or establish a branch or subsidiary or liaison office with no greater restriction than a Turkish national.⁷⁹

The form that a business activity may take in Turkey is regulated by the Turkish Commercial Code of 1956.⁸⁰ If a business has its actual, or statutory, "center of administration" in Turkey, legal disputes which arise are to be litigated under Turkish law and in Turkish courts unless there is an arbitration agreement

77. *Business*, *supra* note 32, at 56.

78. Kovaci, *Turkey Eases Trade Policy, Foreign Exchange Regulations*, 1 MIDE. MARKETS, Aug. 12, 1992, at 5.

79. *Marketing*, *supra* note 1, at 46.

80. Law No. 6762 of June 29, 1956, 9353 Official Gazette (July 9, 1956) [hereinafter COM. CODE]. The Turkish Commercial Code is much influenced by the Swiss Code of Obligations. See Hirsch, *Der Einfluss des Schweizerischen Rechts auf des Neue Turkische Handelsgesetzbuch*, 52 SCHWEIZERISCHE JURISTEN-ZEITUNG 325 (1956); T. Ansay, *New Legislation*, 6 *Am. J. Comp. L.*, 106 (1957); see also Hamson, *The Istanbul Conference of 1955*, 5 INT'L & COMP. L.Q. 22-39 (1956) (discussing the reception in Turkey of western legal systems and codes).

to the contrary.⁸¹ The six forms of business association, other than sole proprietorship, permitted by the Code are:⁸² General Partnerships (*Kollektif Şirket*),⁸³ Limited Partnerships (*Komandit Şirket*),⁸⁴ Corporations (*Anonim Şirket*),⁸⁵ Limited Liability Companies (*Limited Şirket*),⁸⁶ and Cooperative Associations (*Kooperatif Şirket*).⁸⁷

Sole proprietorship is not a common form used by foreign investors because it requires the foreign investor to arrive in Turkey within thirty days after registration of the firm, and he must appoint a legal representative when he leaves Turkey.⁸⁸ To establish a new business in Turkey, foreign investors generally use either the Corporation or the Limited Liability Company.⁸⁹ For conducting only marketing or services in Turkey the foreign investor can use an agency agreement or a Branch office. Each of these forms has unique characteristics which might make them preferable to the foreign investor.

A. *Anonim Şirket*

The *Anonim Şirket* has a trade name, and its capital is a determined amount which is divided into shares. It is liable for debts only in the amount of its assets, and the liability of its shareholders is limited to the value of their subscribed shares.⁹⁰

81. T. Ansay & E. Schneider, *The New Private International Law of Turkey*, 37 NETHERLANDS INT'L L. REV. 139 (1990); see *id.* at 153, 157 (translating Statute Regarding International Private Law and Procedure, Law No. 2675, arts. 8, 31 (1982); see also Ünal, *The New York Convention and the Recognition and Enforcement of Foreign Arbitral Awards in Turkish Law*, 2 J. INT'L ARB. 55 (1990).

82. F. Davis, Turkey's New Commercial Code 8 (unpublished report on file with U.S. Consulate, in Ankara, Turkey).

83. COM. CODE §§ 153-268.

84. §§ 475-484.

85. §§ 269-474.

86. §§ 503-555.

87. §§ 485-502. Cooperatives are regulated by Special Law No. 1163 (Apr. 24, 1969).

88. *Marketing*, *supra* note 1, at 46; see COM. CODE §§ 11-40 (providing the registration requirements).

89. *Marketing*, *supra* note 1, at 46.

90. Shares must have a minimum value of 500 TL which can be increased by increments of 100 TL. They may be issued to persons or bearers. Bearer shares may be issued only when entirely paid for. Preferred shares may be issued to give preferential treatment in distribution of dividends,

Unless otherwise regulated, the minimum capital is 500,000 TL.⁹¹ The *Anonim Şirket* is created with the permission of the Ministry of Industry and Commerce. To create the company, five founders who are shareholders must draw up and sign the Articles of Association which states the purpose of the company. They must undertake to provide at least the minimum capital, have their signatures authenticated by a Notary Public, and send these documents along with an application to the Ministry of Industry and Commerce. After the shares have been subscribed, and the minimum capital requirement has been deposited in a bank, a constitutive general meeting must be held in Turkey in order to permit the presence of a Commissioner of the Ministry.⁹² Once approved by the court, the company must be entered in the Trade Register of the Ministry of Industry and Commerce of the locality where it is situated and must announce its approval in the Trade Registration Gazette. Only after this final step does the *Anonim Şirket* acquire corporate existence.⁹³ The government does not have the right to attend yearly board of directors meetings. However, a representative of the local Chamber of Commerce and Industry does have the right to attend all shareholders meetings, which must be announced in the local newspaper two weeks in advance, and for which a permit must be obtained from the local mayor's office.⁹⁴

B. Limited Şirket

The *Limited Şirket* is founded under a trade name by two real persons or legal entities, Turkish or foreign, with a determined basic capital of not less than 10,000 TL⁹⁵ which is subscribed to

or assets, on dissolution. Shares may be changed from registered to bearer only when entirely paid up. The transfer of bearer shares is effective against third persons, and the company, by delivery. Registered shares are transferable, unless otherwise specified in the Articles of Association, and transfer is effective only when entered in the Register of Shares. COM. CODE §§ 399-419.

91. See *infra* note 112 (giving additional capital requirements for foreign investors).

92. COM. CODE § 297.

93. § 301.

94. § 368; see *Marketing*, *supra* note 1, at 46.

95. See *infra* note 113 (giving the minimum capital requirements for foreign investors).

by members who are not issued shares.⁹⁶ The liability of members is limited to their subscribed capital. There may not be less than two, nor more than fifty members, and their subscriptions may vary but may not be less than 500 TL.⁹⁷

The *Limited Şirket* is created by a process similar to the *Anonim Şirket*. The Articles of Incorporation with the notarized signatures of the founders and an application for permission are submitted to the Ministry of Industry and Commerce. When permission is obtained, the *Limited Şirket* is registered in the Trade Register where its main office is situated, and it announces its existence in the Trade Registry Gazette.⁹⁸

The *Anonim Şirket* and *Limited Şirket* are subject to government inspection and they both must appoint auditors, of which half, plus one, must be Turkish nationals.⁹⁹ They are both taxed similarly and are eligible for similar tax incentives and credits.¹⁰⁰ Resident companies are taxed on world wide income with credit given for foreign taxes paid. Nonresident companies are taxed on income earned in Turkey. Corporate profits are taxed at a base rate of 46% which is increased by three additional levies to an effective rate of 49.22%.¹⁰¹ There is no withholding tax on dividends unless they are derived from corporate profits which are exempt from tax. In this case, there is a 10% withholding tax whether the dividend is distributed or not. Since April 1988, private sector companies employing more than ten people must pay a 3% tax, and their employees must pay a 2% tax.¹⁰² There is no separate capital

96. COM. CODE §§ 503, 504, 506. Certificates of Ownership do not qualify as securities, but can be transferred. Unless the Articles of Association prescribe otherwise, members must pay, in cash, the nominal value of the capital subscribed by them. § 508.

97. §§ 504, 507, 532.

98. §§ 509-512.

99. §§ 347, 548.

100. *Business*, *supra* note 32, at 50.

101. The levies are as follows: 5% of corporate tax for Defense Industry Support Fund; 1% of corporate tax for Social Assistance and Solidarity Fund; 1% of corporate tax for Apprenticeship, Vocational and Technical Training, and Encouragement Fund; and 0.3% for the Pollution Prevention Fund. Joint Stock companies, with more than 100 stockholders, with shares registered on the stock exchange, and publicly traded, are taxed at a base rate of 40%. See ISTANBUL CHAMBER OF COMMERCE, PUB. NO. 1990-25, A SURVEY OF THE TURKISH TAX SYSTEM 19-20 (1990).

102. *Business*, *supra* note 32, at 50-51.

gains tax, and Turkey has treaties to avoid double taxation with a number of countries.¹⁰³

C. Agency

Principal-agent relationships are governed by chapter III, articles 116 to 134 of the Turkish Commercial Code.¹⁰⁴ The foreign investor or seller may sign an agency agreement with a legal entity or a person in Turkey for the import and distribution of products. This is a private contract and the amount of the commission is not regulated, but payment of the commission is carefully watched by the government. For example, commission rates must be shown on invoices, and the government prefers that commissions be deducted from invoices, before payment is made to the seller in the foreign country, in order to limit the loss of foreign currency. If the commission is to be paid to the agent after payment is made by a buyer to a foreign seller, the government strictly watches that the commission payment is repatriated after shipment of the goods.¹⁰⁵ A foreign seller can appoint only one agent for a particular line of products, and agents are not allowed to work for competing sellers in the same territory unless the sellers agree in writing.¹⁰⁶

Because payment to the principal is not made in Turkey, there is no tax levied on the foreign principal by Turkey. Under Turkish law, the taxpayer will be the agent or representative.¹⁰⁷

103. Turkey has treaties to avoid double taxation with France, the Netherlands, the U.K., Belgium, FRG, and Sweden, and negotiations are underway with Italy, Japan, Spain, and the United States.

104. An agency contract is broadly defined by the Turkish Code of Obligations, article 386, as any contract based on express, or implied agreement, whereby the agent agrees to carry out, under the terms of the agreement, the business or service with which he is entrusted. *See* T. ANSAY, *THE COMMERCIAL LAWS OF TURKEY* 23, 26-28 (1983) (defining the types of agency).

105. *Marketing*, *supra* note 1, at 22.

106. *Int'l Trade Rep. Export Reference Manual* (BNA) at 171:27 (Aug. 22, 1989).

107. *Id.*

D. Liaison Offices

Liaison offices can be established in Turkey only for the purpose of coordinating a business but cannot conduct commercial transactions.¹⁰⁸ They are not taxpayers under Turkish law.¹⁰⁹

E. Branch Offices

Any foreign company can establish a branch office in Turkey by applying for, and getting, permission from the FID, investing a minimum of \$50,000 capital, and registering in the Trade Register.¹¹⁰ A Turkish branch office cannot deduct a share of its parent company headquarter's expenses from taxable income. Branches may be defined by Turkish corporate tax law as limited taxpayers for noncommercial activities such as consulting or professional services. As limited taxpayers, they must withhold, and pay monthly, varying percentages (up to 25%) from their invoices or gross revenues. For commercial transactions such as the sale of goods, branches are treated as full taxpayers and taxed as corporations on a yearly basis at the corporate tax rate.¹¹¹

VI. PROCEDURE FOR FOREIGN INVESTMENT

Prior to establishing a business under the Turkish Commercial Code, a foreign investor must obtain permission to undertake the investment from the FID. Apart from meeting the Turkish Commercial Code requirements for the chosen form of business, the foreign investor must meet the requirements of Law No. 6224. The basic conditions for approval of a foreign investment are that it: (A) is useful for the economic development of the country; (B) is in a field of activity open to Turkish private enterprise; and (C) does not entail any monopoly or any special concession.¹¹²

108. Communiqué No. 1 of May 25, 1986, art. 5; MEASURES, *supra* note 25, at 16.

109. *Marketing*, *supra* note 1, at 22.

110. Communiqué No. 1, art. 12; MEASURES, *supra* note 25, at 16.

111. *Foreigners*, *supra* note 11, at 20-21.

112. Law No. 6224, art. 1; *see* MEASURES, *supra* note 25, at 1.

The foreign investment must be at least \$50,000. This means that each foreign partner or investor must invest a minimum of \$50,000. The minimum investment rule does not apply to Turkish partners.¹¹³

In applying to the FID, one must provide a description of the project with a feasibility study, detailed information about the investor and local partners, projected costs and the source of financing, and whether the project will benefit from customs exemptions or other incentives.¹¹⁴

VII. TREATIES AFFECTING FOREIGN INVESTMENT

A. Multilateral Treaties

Turkey is an associate member of the European Community and has been working toward full membership.¹¹⁵ It has recently signed the European Free Trade Agreement (EFTA) which will abolish customs on Turkish industrial exports to EFTA countries. Turkey is also a member of GATT, adheres to the OECD Code of Liberalization of Capital Movements, and in 1987 Turkey signed and ratified the Convention for the International Center for Settlement of Investment Disputes, and the Multinational Investment Guarantee Agency.¹¹⁶ With Iran and Pakistan, Turkey is a member of the Regional Cooperation for Development Organization, which studies regional integration, and is a signatory to the International Convention to Facilitate the Importation of

113. MEASURES, *supra* note 25, at 10 (translating Circular Regarding Foreign Capital Movements of Apr. 1, 1984, art. 2).

114. *Id.* at 14-15 (translating Circular Regarding Foreign Capital Movements, apps. I, II); see *Foreigners*, *supra* note 11, at 53-71 (providing the application forms which must be filed).

115. G. Günevenc, *Economic Improvements Still Needed but Full EC Membership Should be Granted by 1996*, DATELINE, Oct. 8, 1988, at 4; see 7 Int'l Trade Rep. (BNA) at 865 (June 13, 1990) ("The EC Commission June 7 approved a strategy for future relations with Turkey which could lead to the elimination of all bilateral tariffs and non-tariff barriers between the two countries by 1995. Currently, Turkish industrial goods enter the Community duty-free but farm and textile products are subject to stiff quotas. Community products exported to Turkey however have to pay high tariffs, Commission sources explain, so that any move towards an elimination of Community restrictions will have to follow similar efforts by the Turks.").

116. *Foreigners*, *supra* note 11, at 6; Foreign Investment Regulation 14 (FID 1992).

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Commercial Samples and Advertising Materials, and the T.I.R. Customs Convention.¹¹⁷

B. Bilateral Treaties

On October 18, 1988, the U.S. Senate gave its advise and consent to a bilateral investment treaty with Turkey conferring national and most-favored-nation treatment including unrestricted transfer of profits, dividends and royalties, exemptions from performance standards, and impartial international arbitration of investment disputes.¹¹⁸ Turkey has also signed bilateral investment agreements with West Germany, Belgium, Luxembourg, Bangladesh, Switzerland, Holland, the Netherlands, Japan, the United Kingdom and Northern Ireland, France, and Austria.¹¹⁹

C. Intellectual Property Agreements

As a member of the World Intellectual Property Organization (WIPO), Turkey guarantees nationals of other member states the same protection of patent rights as Turkish nationals.¹²⁰ Under the Turkish Patent Law of 1880 as amended,¹²¹ patents are granted for five, ten, or fifteen years. However, if an invention has been patented elsewhere and has not been in public use in Turkey, Turkey will grant protection only for the unexpired term of the foreign patent.¹²² Foreign patents are registered with local patent agents. Turkey is also a signatory to the European Patent Convention of 1973,¹²³ but its patent law has been criticized for not adequately protecting producers of agricultural chemicals,

117. Int'l Trade Rep. Export Reference Manual (BNA) at 171:19, :23, :56 (Aug. 22, 1990).

118. 134 CONG. REC. S16,940 (daily ed. Oct. 20, 1988).

119. See *Foreign Investment in Turkey*, 11 MIDDLE E. EXECUTIVE REP., Aug. 1, 1988 at 11.

120. Stephanie Nebhay, *Experts at Geneva Meeting Urge Tougher Counterfeiting Laws*, Reuter Library Report, Apr. 25, 1988, available in LEXIS, Nexis Library, Lbyrpt File.

121. Ottoman Decree No. 1296 of Mar. 10, 1880.

122. *Id.* arts. 5, 35.

123. European Patent Convention, Oct. 5, 1973, translated in K. HAERTEL, EUROPEAN PATENT CONVENTION (1980), reprinted in 78 PAT. & TRADEMARK REV. 31 (1980).

pharmaceuticals, and foodstuffs.¹²⁴ In order to meet the standards of other industrialized countries, Turkey is presently considering the adoption of a new patent law.¹²⁵

Turkey is a member of the Berne Convention for the Protection of Literary and Artistic Works,¹²⁶ but not the Universal Copyright Convention,¹²⁷ or the Geneva Phonograms Convention.¹²⁸ It does have its own Copyright Law,¹²⁹ enacted in 1951, which protects all dramatic, artistic, and literary work if the work is published in Turkey. In March 1987, a registration system for films, video cassettes, and sound recordings was instituted.¹³⁰ This law, which is separate from the Copyright law, should help meet the criticism that Turkey has allowed unauthorized copying and sales of books, motion pictures, sound recordings, and computer programs.¹³¹ It will not meet the criticism that Turkish law does not presently prohibit, as do the laws of most countries, the unauthorized propagation of a foreign company's proprietary hybrid seeds.¹³²

D. Taxation Treaties

Turkey has negotiated double taxation treaties with a number of countries, including the United States.¹³³ Although the tax

124. *Marketing*, *supra* note 1, at 47; Jim Bodgener, *Turkish Delight Over Fake Goods*, FIN. TIMES, Apr. 10, 1990, § I, at 6.

125. *Turkey-Europe Integration Requires Patent Law Changes*, TURKISH DAILY NEWS, July 13, 1988, at 5.

126. The Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 828 U.N.T.S. 221. The United States recently joined the Berne Convention which might give U.S. copyright holders better protection in Turkey. *See* Irvin Molotsky, *Senate Approves Joining Copyright Convention*, N.Y. TIMES, Oct. 21, 1988, § C, at 5.

127. Universal Copyright Convention, July 24, 1971, 25 U.S.T. 1314, T.I.A.S. No. 7868 (revised version 216 U.N.T.S. 132).

128. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication, Oct. 29, 1971, 26 U.S.T. 309, T.I.A.S. 7808.

129. Law No. 5846 (Nov. 1, 1951), as amended by Law No. 2936 (Nov. 1, 1983).

130. *New Law Might Spell Death to Video Piracy in Turkey*, Reuter North European Service, Feb. 7, 1987.

131. *Intellectual Property*, 7 Int'l Trade Rep. (BNA) at 300 (Feb. 28, 1990).

132. *Marketing*, *supra* note 1, at 48.

133. Turkish tax treaties generally follow the OECD model. *See 1990 Tax Analysts Tax Notes*, INT'L TAX NEWS, Apr. 2, 1990.

treaty with the United States was initialed in 1986,¹³⁴ it has yet to be ratified.¹³⁵

VIII. INVESTMENT INCENTIVES

Various incentives are granted to investments. Most incentives are directed at encouraging investment in certain less developed areas;¹³⁶ the amount of the incentive varying with its sector and territorial location.¹³⁷ To qualify for an incentive, a foreign investor must apply to the FID.¹³⁸ The minimum investment, to be eligible for an incentive certificate, is 250 million TL in a priority region, over 2.5 billion TL in other regions, or one billion TL in a Free Trade Zone.¹³⁹ For other projects, there are also minimum equity requirements depending on the type and locality of the investment.¹⁴⁰

The incentives available are: customs relief;¹⁴¹ exemption from taxes, duties, and charges on credits;¹⁴² "Resource Allocation Fund" credit grants;¹⁴³ investment allowances;

134. *U.S. Turkey Initial Draft Income Tax Accord, Officials Say*, Daily Rep. for Executives (BNA) at G-4 (Nov. 14, 1986).

135. Treasury Department Press Release on Status of Negotiations of Income Tax Treaties and Tax Information Exchange Agreements, Issued Aug. 30, 1990, Daily Rep. for Executives (BNA) at L1 (Aug. 31, 1990).

136. Decree No. 89/1485 (Oct. 24, 1989), Official Gazette (Nov. 3, 1989); Communiqué No. 90/2, Official Gazette (Nov. 4, 1989); see, *Foreigners*, *supra* note 11, at 19 (listing priority areas).

137. *New Legislation*, *supra* note 53, at 8.

138. *Id.*

139. This excludes customs taxes and duties on imports and operating capital. ISTANBUL CHAMBER OF COMMERCE, PUB. NO. 1990-15, ENCOURAGEMENT OF INVESTMENT 10 (1990). The incentive attaches to the investment and is transferrable with the investment.

140. See *id.* at 26 (quoting Communiqué No. 90/2, arts. 36, 37, 38, 44; Communiqué No. 9/5, art. 10).

141. As much as 100% for machinery and equipment needed for the investment, as well as relief from V.A.T., and customs on intermediate goods and raw materials. See *id.* at 14.

142. The exemption from corporate taxation varies between 30% to 100%, depending upon the location, amount invested, and the type of investment. *Id.* at 9.

143. This cash grant is provided by the Resource Allocation Support Fund established within the Turkish Central Bank, and is paid according to the type, and location of the project. For example, investments in first priority areas receive a 50% premium, investments in Organized Industrial Zones in first priority areas receive a 60% premium, and Educational services in any region receive a 50% premium. *Id.* at 20-22.

machinery and equipment leasing incentives;¹⁴⁴ exemption from building and construction taxes; and postponement of the Value Added Tax on imported capital goods.¹⁴⁵ There are also incentives available for ship and yacht building, and tourism investment.¹⁴⁶ Since April 1990, there are special incentives to encourage investment in the automotive industry.¹⁴⁷

A. Free Trade Zones

In 1985, the Free Trade Zone Law, No. 3218,¹⁴⁸ designated certain zones in which foreign and domestic merchandise is considered as being outside of Turkish customs territory. Such merchandise can enter Free Trade Zone warehouses without formal customs entry, payment of customs duties, wharf duties, import duties, or excise taxes, and free of all other Turkish taxes.¹⁴⁹ Turkish Free Zones are unique in that merchandise manufactured in a Free Zone can be sold in Turkey.¹⁵⁰

The basic infrastructure in these Zones is provided by the government, but they may be managed by foreign firms.¹⁵¹ Additional privileges include: reduced bureaucracy, no customs formalities or charges on import or export of investment materials, only a 0.5% fee on production inputs, exemption from export procedures on exports from Turkey of up to \$500 value, and no corporate tax on income, and no obligation to account in Turkish

144. Leases to be for more than four years, and not to include transfer of ownership to lessee. ISTANBUL CHAMBER OF COMMERCE, PUB. NO. 1990-15, ENCOURAGEMENT OF INVESTMENT 25-26 (1990).

145. *Id.* at 23.

146. *Id.* at 27-28, 37-38.

147. *Id.* at 29, 31; see John Murray Brown, *Turkish Finance and Industry 6; Car Makers Move Into Gear*, FIN. TIMES, Nov. 21, 1990, § Survey, at VI.

148. MEASURES, *supra* note 25, at 72.

149. *Id.* (translating Law No. 6224, arts. 6, 7).

150. Foreign Investment Regulations and Applications 25 (FID, Mar. 1991).

151. *Free Trade Zones Offer Incentives, Skilled Labor*, INT'L HERALD TRIBUNE, July 24, 1990, at 18. ESBAS, 97% owned by the U.S. company EAC Corp. of California, is managing the FTZ near Izmir, Turkey.

Lira.¹⁵² Free Trade Zones are in operation in Mersin, Antalya, Izmir, and Yumurtalik near Adana.¹⁵³

B. The Build-Operate-Transfer Plan

Foreign companies are able to participate as investors in large infrastructure projects¹⁵⁴ under the Build-Operate-Transfer (BOT) plan. The foreign investor uses its funds to build the project, thus saving the government valuable reserves,¹⁵⁵ and will then be allowed to operate the project for its economic life, from ten to twenty-five years, with the government guaranteeing to purchase its output. At the end of the agreed period, the project may be transferred to the government. These projects are coordinated by the FID which determines what projects will qualify.¹⁵⁶

The first proposed BOT project was a nuclear power plant in Akkuyu, near Mersin, by Kraftwerk Union of West Germany and Atomic Energy of Canada. This project failed to proceed due to financing, and risk sharing disagreements. While negotiations were underway on the nuclear plant, a BOT proposal for three imported coal fired power plants was bid upon by foreign consortia and, finally, after difficult negotiations and lack of financing, only one of the plant projects was awarded to a consortium of Japanese companies. Other projects initiated include the Ankara Metro, Istanbul Airport and World Trade Center, Birecik Hydroelectric Power Plant, and the Izmit Water Supply project.¹⁵⁷ The BOT has been criticized as making "less headway in Turkey than in other developing countries where it has been adopted."¹⁵⁸

152. Foreign Investment Regulations and Applications, arts. 8, 9 (FID, Mar. 1991).

153. *Marketing*, *supra* note 1, at 21; *see Turkey to Start Aegean Free Zone*, Xinhua General Overseas News Service (Jan. 8, 1990).

154. Even an American-style amusement park and ice rink has been approved under the BOT program. *American Style Amusement Center Open Now in Istanbul*, DATELINE, Feb. 18, 1989, at 5.

155. *Bigger Airport, New Trade Center Planned*, DATELINE, Feb. 18, 1989, at 4.

156. *Business*, *supra* note 32, at 58; *Marketing*, *supra* note 1, at 43; *see Foreigners*, *supra* note 11, at 4.

157. State Planning Organization, B.O.T. Model, Information on Projects Under Implementation (FID, May 1991).

158. *See John McCarthy Address*, *supra* note 12.

IX. CONCLUSION

The economic reforms described in this paper were designed to increase Gross National Product, eliminate a worsening balance of payments deficit, and decrease inflation.¹⁵⁹ They were successful in spurring an annual growth rate of 8.1% by 1986; the fastest rate in the OECD.¹⁶⁰ In 1989, the annual growth rate fell to 1.1%, and then rose again in 1990 to 10.2%.¹⁶¹ A slower growth rate of 3.5% to 4% was expected in 1991, in part because of an estimated loss from the Gulf Crisis of \$6.2 billion.¹⁶²

The Current Transactions part of Turkey's balance of payments in 1980, showed a deficit of \$806 million.¹⁶³ By 1988, this had been reversed to a \$1.6 billion surplus, causing great optimism.¹⁶⁴ In 1989, however, the surplus shrunk to below \$1 billion,¹⁶⁵ and by 1990 Current Transactions fell to a deficit of \$2.6 billion. In 1991, partly due to the Gulf Crisis, an even larger deficit was projected, causing some to argue for a return to protectionism.¹⁶⁶ Turkish foreign currency reserves, which reached a record \$12 billion in 1990, fell significantly during the Gulf Crisis but recovered to approximately \$12.8 billion by November 1991.¹⁶⁷

159. Foreign Investment Regulations and Application Forms 2 (FID, Mar. 1991).

160. Gur, Investment Climate Statement, Turkey 1 (American Embassy, in Ankara, Turkey, Sept. 1990).

161. ISTANBUL CHAMBER 1990 REPORT, *supra* note 1, at 16-20. MidEast Markets reported a 9.2% increase for 1990, the highest among OECD's 24 member countries. 1 MIDE. MARKETS, Aug. 26, 1991, at 7.

162. *Turkiye*, INT'L HERALD TRIBUNE, June 18, 1991, at 15 [hereinafter *Turkiye*].

163. ISTANBUL CHAMBER 1990 REPORT, *supra* note 1, at 120-21. Current Transactions includes all foreign transactions including imports, exports, interest payments, income from tourism, worker's remittances, and other services.

164. *Id.* at 120. It should be noted that Turkey continued to have a trade deficit of imports over exports during the period 1987 through 1990. The deficits were as follows: in 1987, \$3.2 billion; in 1988, \$1.7 billion; in 1989, \$4.2 billion; in 1990, \$3.9 billion. These deficits were partly offset by revenues from tourism, worker's remittances, and other services.

165. *Id.* at 120.

166. *Id.* at 120-21.

167. *Turkiye*, *supra* note 162; Oziel, *supra* note 23. "Turkey emerged relatively unscathed from the Gulf Crisis. External economic compensation totaling \$3.7 billion by the end of October has benefited the current account and kept the budget from getting much worse." *Prospects for Profits: Turkey Through 1993*, 1991 BUS. INT'L, Dec. 2, 1992 [hereinafter *Profits*].

Turkey's high inflation rate was a major target of its economic reform legislation and regulations. It was over 30% per annum before 1980 and, except for a brief period of easing in 1988, has continued to increase to approximately 66.8% in 1991.¹⁶⁸ It is difficult to assess what the rate of inflation would be but for the economic reforms. The primary cause of Turkey's worsening inflation is said to be a continued high rate of government spending on infrastructure projects.¹⁶⁹ High budget deficits cause government borrowing in the money market which drives up interest rates and acts as a damper on private investment.¹⁷⁰ The battle against inflation through privatization and encouragement of foreign investment will, of necessity, continue to be a top priority of the Turkish government.¹⁷¹ On October 20, 1991 the ruling Motherland Party (ANAP) was defeated. Suleyman Demirel has become the Prime Minister. His True Path Party (DYP) won 178 of 450 parliamentary seats; not enough to govern alone. It formed a coalition with the Social Democratic Populist Party (SHP).¹⁷² Although it was predicted that the Demirel government would call for an increased role for government in the country's economic and industrial affairs,¹⁷³ the Prime Minister, in a recent speech, said, "I can reiterate the Turkish government's dedication to free-market policies."¹⁷⁴ The new government has set as a priority the lowering of consumer price inflation to 42% in 1992,¹⁷⁵ and has been actively engaged in increased aid and commerce with the Republics of the former Soviet Union. They have recently signed

168. Oziel, *supra* note 23.

169. *An Interview with President Turgut Ozal*, *supra* note 13, at S1.

170. *Id.*; *Turkish Interest Rates Spiral to 31-Month High*, Reuter Money Report, Sept. 20, 1991, available in LEXIS, Nexis Library, Monrpt File. One-year deposit interest rates reached 75% and bankers estimate the cost of funds to corporate borrowers will soar above 100%.

171. *An Interview with President Turgut Ozal*, *supra* note 13, at S2.

172. *Profits*, *supra* note 167.

173. John Murray Brown, *Turkish Finance Investment & Industry; Promises of a Better Life*, FIN. TIMES, Dec. 17, 1991, § Survey, at 31.

174. *Remarks by Turkish Prime Minister Suleyam Demirel to American Turkish Freindship Council Convergence*, Federal News Service, Feb. 13, 1992 [hereinafter *Demirel Remarks*], available in LEXIS, Nexis Library, Fednew File.

175. Servet Yildirim, *Turkey Unveils Crucial Stabilisation Package*, Reuter Library Report, Jan. 18, 1992.

economic cooperation agreements with Azerbaijan, Kazakhstan, Kyrgyzstan, Turkmenistan, and Uzbekistan.¹⁷⁶

The success of Turkey's economic reforms may best be measured by the confidence indicated by the high rate of increase in foreign investment from 1980 to 1990. In 1991, Turkey experienced a slow down in foreign investment. Actual capital inflows went from \$800 million in 1990 to \$769 million in 1991.¹⁷⁷ This slowdown has been attributed to the Gulf Crisis and recent Turkish elections which ended the Motherland Party's eight-year rule.¹⁷⁸ In spite of this temporary setback, the Turkish model for economic reform adopted over the last ten years has proven to be effective, and continues to be an informative model for other nations embarking on a program of liberal economic reform.

176. *Demirel Remarks*, *supra* note 174.

177. *Turkiye*, *supra* note 162, at 15; *Foreign Investment in Turkey Falls Sharply*, Reuter Money Report, Nov. 19, 1991. But recent FID statistics show that actual inflows increased from \$550 million by August 1991 to \$769 million by the end of the year. There were \$1,909,000 in permits issued during 1991.

178. *Id.*