

turkey

KARAKO

*Hukuk Bürosu / Law Firm
Nedim Karako & Partners*

Karako Law Office

Address:	Vefa Bey Sokak Ozlem Building No: 10/5 Gayrettepe 34349, Istanbul
Tel:	+90-212-347-7150
Fax:	+90-212-347-7083
Email:	karakolawoff@superonline.com
Web:	www.karako-law.com

Partners Profiles

NEDIM KARAKO lawyer, born in Istanbul in 1945 graduated in 1967 from the Istanbul University Law Faculty. After having completed his apprenticeship in 1968 and military service, started practicing law in 1970, as lawyer and legal counsel.

Member of: Istanbul Bar Association, International Association of Lawyers, International Association of Jewish lawyers and jurists.

SEHER BÜYÜKÖZMEN lawyer, born in Söke in 1968 graduated in 1991 from the Istanbul Marmara University Law Faculty and joined the Firm in 2000, member of the Istanbul Bar Association.

CEM KARAKO assistant lawyer, born in Istanbul in 1981 graduated in June 2004 from the Istanbul University Law Faculty and joined the firm in 2005.

Field of Activities

Specialists in International Business Law, International Contracts, Intellectual Property, Commercial and Civil Law, Foreign Investment, and joint ventures, Mergers, Company Law, Competition Law, Labor Law, Litigation, Arbitration and Mediation.

Languages

English, French, German, Turkish.

Firm Overview

Karako Law Office strives to offer a comprehensive range of legal services, ranging from Commercial and Civil Law, to International Business Law, Intellectual Property, Contracts and Foreign Investments, Mergers and Litigation, as well as Arbitration and Mediation.

turkey | corporate law

Regulations and Rules

Commercial activities and matters are governed by the Turkish Commercial Code (1956) and the Act of Debts (1926). The Act of Debts regulates contracts in general and every fundamental aspect such as formation, termination, annulment and invalidity etc. The Turkish Commercial Code is divided into 5 parts and regulates Traders, Companies, Legal Instruments, Insurance, Land Transport, Sea Transport etc. The law on Capital Markets No. 2499 regulates all transactions relating to capital markets and the Stock Exchange, how companies may be quoted on the Stock Exchange, the transfer of shares, etc.

Types of Companies

Under the Turkish Commercial Code and Code of Obligations there are 6 types of Companies which are: Collective Company, Limited Partnership Company, Joint Stock Company, Limited Company, Ordinary Partnership and Joint Venture.

In Collective Companies and Ordinary Partnerships, the members have unlimited liability for the debts of the Company and those companies are managed by the members.

In Limited Partnership Companies some partners have full, unlimited liability for the debts of the Company and some partners only liable to the extent of their capital investment. This type of company is managed by the unlimited partners.

Joint Ventures are a special union of companies coming together for a special project.

Joint Stock Companies (Société Anonyme) and Limited Companies (S.A.R.L.) are the most normal type of companies used in Turkey. Previously it was obligatory to have permission or approval of the Ministry of Commerce to establish such a company or to modify the By-Laws of those two types of company. In accordance with the harmonization of the legislation within the EU legal system this necessity has been abolished.

The Liabilities of Shareholders in the Company

As stated above in Ordinary Partnerships and Collective Companies the partners are fully liable without limit for the debts of the company.

In Joint Stock Companies and Limited Companies the liability of the shareholders is limited to their participation in the share capital. With the exception of public debts such as tax or social security payments, the shareholders have no liability for the debts of the company provided they have not given a personal guarantee. Once the capital contribution is paid shareholders have no liability for the debts of the company.

Share Capital

A Limited Company must have a minimum of 2 and a maximum of 50 members. The minimum share capital of the company must be 5.000 NTL. (\approx 2.500Euro) Under the Commercial Code the issue of share certificates by limited companies is prohibited.

A minimum of 5 shareholders are required to set up or maintain in good standing a Joint Stock Company. There is no upper limit for capital. The minimum amount of the share capital is 50.000 NTL. (\approx 25.000Euro) The capital can be in cash or in kind and it may consist of any measurable value like money, bonds, legal instruments, properties, intellectual property rights, real estate property, chattels, etc.

Shares Issued for a non-cash consideration cannot be transferred for two years from the incorporation of the Company. All banks and insurance companies must have the capital in cash.

The shares may be registered or may be issued in bearer form. Normally the shares are "Ordinary Shares" but in some cases "Preferred Shares" may be issued giving some special rights to the owner.

Corporate Governance

In order to set up a company it is necessary to draft "Articles of Association" (By-Laws) which set out the objects, trading title, work area, corporate purpose, shares, capital, rules and decision making organs of the company.

These By-Laws are to be legalized by a notary public. All companies must be registered at the Commercial Register.

Shareholders Meetings

The main governing body of a joint stock company is the General Meeting of shareholders.

Among the duties of the General Meeting, which meetings have a specific procedure and are attended by a representative from the Ministry of Industry are: to approve the budget and the yearly accounts, any changes in the Company's By-Laws, to elect and to dismiss the board directors, to decide company policy and resolve on the distribution of and increases in share capital.

Ordinary meetings take place once a year and extraordinary meetings whenever needed for particular decisions.

Shareholders holding at least 10% of the shares (5% in the case of companies listed on the stock exchange) have special Minority Rights giving power to ask for a special auditor or to postpone the General Meeting in order to study the accounts or to ask for the annulment of resolutions of the General Meeting.

In Limited Companies the Shareholders Board also must meet once a year as an ordinary meeting. Extraordinary meetings may be held whenever needed.

Among the powers of the Shareholders Board are: approval of the budget and the yearly accounts, amendments to the Company's By-Laws, election and dismissal of the Manager or managers, decisions about company policy and distribution of dividends, and how to increase the share capital. The presence of the representative from the Ministry of Industry and trade is not required.

Minimum Numbers of Board Meetings / Year

The General Meeting of shareholders in Joint Stock Companies and the Shareholders Board of Limited Companies must meet at least once a year within 3 months after the end of the accounting reference period for the approval of those accounts for that period resolving on dividends.

Changing the By-Laws

The company By-Laws must be modified in order to increase or reduce the share capital and change the corporate objects or any other item of the By-Laws. In Joint Stock Companies the General Meeting or in Limited Companies the Shareholders Board must meet in this respect and pass the necessary resolution if the necessary meeting and decision quorums are met. Those resolutions have to be registered with the Trade Registrar and published in the Trade Registration gazette.

Under the Act on Capital Markets, provided other necessary formalities have been fulfilled by the decision of the Board of Directors, capital increases can be implemented up to the amount of the registered capital in companies which have registered shares.

Transfers

A transfer of shares of a Limited Company must be executed before a Notary Public, approved by the Board of Shareholders and registered with the Trade Registrar and published in the Trade Registration Gazette.

In the case of Joint Stock Companies, bearer shares are transferred by delivery of share certificates but a resolution of the Board of Directors is required for registration of transfers of registered shares in the Register of Members. No registration with the trade Registrar or publication is required.

Decision Making Bodies

APPOINTMENT OF DIRECTORS

Limited Companies are managed and represented by all the shareholders. A board of directors does not exist in a limited company. By the decision of the Shareholders Board a Manager or Managers may be appointed among the shareholders or among non-shareholders for the management of the Company.

The Board of Directors which is the main managing body of the Joint Stock Company may be elected by the General Meeting for a maximum of 3 years.

The Board may appoint a Manager or managers and decide on their duties and responsibilities.

POWER OF DIRECTORS

The Directors and Managers have the right and duty to manage and represent the Company in the best way.

They are responsible for the good standing and management of the Company, to keep the accounts according to legal requirements, to call meetings of the General Meeting and decide on the agenda, the execution of the resolution of the General Meeting, and the preparation of the budget.

MINIMUM NUMBER OF INDEPENDENT DIRECTORS

In a Limited Company there is no minimum limit for Managers, one will suffice.

In a Joint Stock Company the minimum number of Directors required by Law is 3 elected by the shareholders. Non-shareholders can be elected to the Board of Directors provided they are elected on behalf of a corporate shareholder. There are no restrictions on the number of independent directors but it must be specified in the By-Laws of the Company.

TERM OF APPOINTMENT

The members of the Board may be elected for a maximum period of three years.

SCOPE OF DIRECTORS LIABILITIES

The managers of a Limited Company and the members of the Board in a Joint Stock Company are liable for negligence and willful misconduct and for any damage they cause to the company.

They are not allowed to compete with the company or have any participation in a competitive company, unless special permission is given by the General Assembly in this respect.

ANNUAL ACCOUNTS- FINANCIAL AND OPERATING RESULTS: DUTIES AND LIABILITIES

Unless special permission is obtained from the Ministry of Commerce under the Tax Laws, the annual fiscal period is a calendar year, starting on the 1st January and ending 31st December.

Specifically in companies with foreign investment and in order to consolidate the accounts of the Turkish company with the foreign main company accounts, different fiscal years may be accepted provided a permission in that respect has been obtained from the Ministry of Finance.

NECESSARY DOCUMENTS TIME LIMITS

A Balance Sheet and Profit and Loss Account must be prepared and submitted to the General Assembly in Joint Stock Companies or to the Board of Shareholders in a limited Company, within 3 months from the accounting reference date.

Within 3 months from the end of the fiscal year, the financial statements have to be approved by the General Meeting and the related Corporate Tax Return must be submitted to the Tax Authority within 4 months from year end.

AUTHENTICATION

Balance Sheets and Profit and Loss Accounts must be authenticated by sword Fiscal Councils.

PUBLISHING IN THE LEGAL GAZETTE

Provided the Company is not registered on the Stock Exchange there is no necessity to publish the financial reports in the Gazette.

Statutory Audit

SCOPE

Statutory auditors, who form the 3rd organ of a Joint Stock Company, are responsible to the General Assembly. The Auditors have the right and duty to supervise the Board Members and all the activities of the Company. Any irregularity has to be informed to the General Assembly.

There must be a minimum of 1 auditor and a maximum of 5. The majority of the auditors must have Turkish citizenship. Board members and close relatives are not allowed to be auditors at the same time.

No Auditor is needed in a Limited Company, provided the number of shareholders is not more than 20.

COMPETENCE

No special qualification is required by law to be elected as Statutory Auditor. However most of the foreign investment companies in addition to a Statutory Auditor have External Auditors chosen from among the best known international audit companies.

PROCEDURE

The Statutory Auditor or Auditors are elected by the General Assembly of the Joint Stock Company or by the Board of Shareholders of a Limited Company having more than 20 shareholders.

Quoted Companies

Companies quoted on the Stock Exchange are regulated by The Law on Capital Markets (CML) which was enacted in 1981. The Capital Market Board which is empowered by this Act has the right and duty of regulating and supervising the securities markets in Turkey. Its object is to develop the capital market instruments and organize the markets.

The Board is authorized to publish regulations regarding the Capital Markets, to initiate lawsuits against the Board of Directors decisions of quoted companies or request the bankruptcy of the companies or personal bankruptcies of the shareholders who hold more than 10% of the share capital. Pursuant to the CML, the Board can take all the measures in order to audit these companies.

Three Stock Exchanges are operating in Turkey. The Istanbul Stock Exchange and The Istanbul Gold Exchange are the two exchanges in Istanbul. In addition, an Option Stock Exchange is operating in Izmir.

The companies which have more than 250 shareholders are subject to CML. A minimum 25 % of the share capital must be quoted in companies with a share capital up to 10.000.000 NTL (\approx 5.000.000 Euro) This percentage diminishes to 15% in companies with share capital between 10.000.000 NTL (\approx 5.000.000 Euro) and 50.000.000 NTL (\approx 25.000.000 Euro) For the companies with share capital of more than 50.000.000 NTL (\approx 25.000.000 Euro) a minimum 5% is sufficient for the quotation.

According to the Law, the shares of the quoted companies must be registered by the Board of the Capital Market Institution and all other relevant formalities must be fulfilled.

The minority which is defined by the Turkish Commercial Code as 10% of the share holders and had special power to supervise the majority is described as a representation of 5% of the share holders under the CML.

Renewal of the Articles of Association can be done with approval of the Board of the Capital Market Institution. Only the Board of Directors' decisions is sufficient to reduce or increase the capital in companies who operates with a registered share capital system. Issuing shares without voting rights is allowed.

Furthermore, the Board of the Capital Market institution may audit the companies against insider trading which is subject to imprisonment and substantial monetary fines.

turkey | tax law

CORPORATE TAX LAW

General Notes

According to the "Corporate Tax Law" No: 5422, dated 03.06.1949, Joint Stock Companies, Limited Liability Companies, Cooperatives, Public and Economic Institutions, Economic Enterprise of Foundations and Associations, and Joint Ventures are subject to the Corporate Income Tax.

Turkey has signed along with other with many countries bilateral or multilateral treaties for the avoidance of double taxation. In such cases taxes paid in one signatory country may be deducted from the taxes to be paid in the other signatory country.

Significant Developments

Since 1949 the law has been modified many times in order to meet the different requirements and latest technology and improvements in the financial economic transactions. New modifications are under review study in order to promote the local and foreigner investors.

Taxes on Corporate Income

The Corporate Income Tax rate is 33% of the profits for the year 2004 and 30% of the profits for the year 2005, after deduction of all the expenses and depreciations.

However after the closing of the accounts, every each three months companies subject to the corporate income tax have to submit a Provisoryional Corporate Income Tax return for their three-month transactions and pay and advance tax of 25% on that profit, subject to adjustment be adjusted in the next three month or yearly return.

Corporate Residence

The registered Head Office of the company is also accepted as the Corporate Residence and from a Corporate Income Tax point of view they have to be registered with to the Tax Authority of that District and submit give their tax returns to that authority.

Other Taxes

In Turkey there is a Corporate Income Tax is levied for companies and Income Tax for individuals.

In addition to that, there are different taxes for different purposes. Those various taxes are:

VALUE ADDED TAX (VAT)

Although the general rate is 18 %, it is increased to 23 % for some special items considered accepted as "luxury items", and decreased to 8 or 1 or 0 % for other in some items such as like books, food etc. and is taken over added to the invoice value of the goods sold or services given.

SPECIAL CONSUMER TAX

This tax is applicable only once time for some special articles mentioned in the Law, such as like, petroleum products, vehicles, tobacco, wine and some alcoholic drink, caviar, some cosmetics etc.

REAL ESTATE PROPERTY TAX

Real Estate Property Tax, is a tax payable to the municipalities based on the value of the building or the land.

VEHICLE TAX

The Vehicle Tax is a tax paid by the owner of the land, sea or and air transport vehicles owner according the tariff in that respect.

HERITAGE AND TRANSITION TAX, ETC.

The Heritage and Transaction Tax is paid by the beneficiary receiver of an heritage or donation. The percentage varies defers according to the value of the transferred wealth and the relationship closeness between the transferor and the transferee.

STAMP DUTY

Most contracts and many documents such as like receipts, undertakings or , tax returns, are subject to stamp duty according to a tariff determined and published by the Government.

DUTIES

Some documents like notarial papers, passports, licenses, or services such as like issuing court proceedings a court case are subject to duties according to a tariff determined and published by the Government.

Branch Income

For Corporate Income Tax purposes, all Branches Incomes are is incorporated and consolidated within the Main Company accounts.

Income Determination

All types kind of Commercial and Industrial incomes together with all types kind of Agricultural incomes, Capital and Royalty Gains, Real Estate Property incomes, Rents, Interests, Dividends, Intellectual Property gains and all other types any kind of income generates constitute the total income of the company.

Inventory Valuation

After many years of a having a high level of inflation, it has been accepted with the last modification the possibility of an Inventory Valuation according to a ratio determined by the Ministry of Finance which is calculated according the to actual inflation.

Capital Gains

In general all capital gains are taxable, provided however that some are subject to withholding tax (such as like interest on bank deposits), some are exempt from tax, or some are subject to taxation after a certain limit. This limit subject is being very specific and modified from time to time, w. We refrain to from entering in details on this and a Fiscal Adviser must be consulted when needed.

Intercompany Domestic Dividends

Intercompany dividends are transferred from the parent Company to the Shareholder Company with the "before tax" amount and the paid Corporate Tax in the parent Company is deducted from the Shareholder Company as advance paid tax.

Foreign Income

No differential is made according to whether the profit generated is either local or foreign difference where the profit is generated, local or foreign and all incomes are merged and consolidated in the accounts of the Company, provided h. However if the foreign incomes comes from a country with which Turkey has a bilateral tax treaty for the avoidance of double taxation, the taxes paid in the other country are deductible from the taxes to be paid in Turkey.

Deductions

All expenses made for the activity of the company like rent, salaries, wages, vehicle expenses, bank commissions and interests are deductible from the gross profit. In addition to that, depreciation and taxes due to be paid for the activity , such as like vehicle tax or Real Estate Tax due paid for the vehicles or buildings belonging to the company, are deductible from the gross profit.

DEPRECIATION AND DEPLETION

Depreciation is accepted on for items over a certain value which can not be right treated directly as expenses. Depreciation can be calculated done on a straight-line or reducing system over a term based on the useful life of the depreciated item.

NET OPERATING LOSSES

Previous 5 year operating losses can be deducted from the yearly profit.

TAXES

Taxes to be paid for the continuation of the activity such as like vehicle tax of the company vehicles or Real Estate tax of the buildings and lands belonging to the company, are deductible from the gross income. Tax penalties or default interest are not deductible.

Group Taxation

There is no group taxation even in Holdings company or Joint Ventures structures. Each company is taxed separately.

Tax Incentives (Including Special Tax Regimes)

Tax incentives are given for some fields of investments or for investments made in some regions that the government wants to support. and to give effort.

Withholding Taxes

According to the Article 94 of the Individual Income Law, which is also applied to the companies payments, also, Public, Administrative and Commercial Institutions, Companies, Joint Ventures, Associations or Cooperatives, Foundations, Economic Enterprises of Foundations, Individual Traders, Agriculturalist, Liberal Professionals are obliged to make a withholding tax of the payments mentioned in that article, and to pay this withholding tax to the Tax Authority.

The earnings subject to withholding tax are:; all types kind of wages, payments to liberal professionals, payments of rents, payments to foreign resident companies or institutions, payment for professional or commercial leases, payment of some dividends, payment of interest on bank deposits or obligations, etc.

In general, the withholding tax percentage is 25 % but the government has the right to decrease this up to zero for different types of payments. According to this provision a long list has been published with different percentages for different types kind of activities and this list is changed from time to time according to the economic needs.

Turkey, having signed many treaties with many countries in order to avoid the double taxation, in case of to be is obliged to make a withholding to a foreign person or company, and as different percentages of withholding taxes have been accepted in those treaties, the provisions of those treaties also must be studied in such a case.

Tax Administration

There is a tax administration office in each Administrative District. The fiscal impositions and the tax have to be paid in 3 installments.

RETURNS

Corporate Income Tax returns must be given within the 4th fourth month of closing the yearly accounts which, unless a special permission is obtained from the Ministry of Finance, is from 1st, of January to the 31st of December.

Following the closing of the three month accounts, a Provisoryional Corporate Income Tax return must be given submitted subject to be adjustment in the following three month returns or yearly return.

PAYMENT OF TAX

The Corporate Income Tax which has to be paid according to the three months provisoryional returns or according to the yearly tax return given within the fourthth, month of closing the yearly accounts has to be paid within the same month.

INDIVIDUAL TAXES

General Note

Individual income tax is regulated by the Income Tax Law No: 193, dated December 1960, and relates to all according which all kind types of commercial, industrial, agricultural incomes, salaries, professional activity incomes, movable and immovable property incomes and all other incomes which are subject to the Income Tax Law.

Territoriality and Residence

All individuals having the above mentioned incomes except wages, have to apply to the Tax Authority of his/her place of residence place and except for the exemptions mentioned in the law have to declare all their income and give submit a tax return for all his/her incomes generated in Turkey and/or abroad.

Gross Income

EMPLOYEE GROSS INCOME

Employees whose income is only wages are not obliged to give file a tax return. The Taxes of the employee are paid by way of a withholding tax by the employer.

CAPITAL GAINS AND INVESTMENT INCOME

Capital Gains and Investment Income which are over a certain limit or are not subject to withholding tax like incomes made out outside Turkey must be declared with a tax return.

CAPITAL LOSSES

Capital losses may be deducted from capital gains.

Deductions

BUSINESS DEDUCTIONS

All business expenses incurred made for the commercial, industrial, agricultural or professional activity, or for the movable or immovable income, are deductible from the gross profits

NON BUSINESS EXPENSES

In general non business expenses can not be deducted from the taxable activity.

LEGAL REDUCTIONS

No any legal reduction is accepted.

PERSONAL ALLOWANCES

No any personal allowance is accepted, except for private health, accident and pension premiums , not exceeding 5 % of the income or the yearly minimum salary amount which is the lowest.

CORPORATE TAX INCENTIVES

Investments made in special areas may have an investment incentive provided they meet the relevant requirements in this respect.

Tax Credits

Tax credits may be given in cases where that the tax payer has a reimbursing right to reimbursement from the Tax Authority such as like over paid withholding taxes, or VAT reimbursements for in export activities.

Other Taxes

SOCIAL SECURITY TAXES

There are is no social security taxes in Turkey. All employees must be declared and registered with the local Social Security Directorate and premiums on his or her salary have to be paid partly by the employee and partly by the employer which are 14 % for the employee and 19,5 % for the employer.

LOCAL TAXES ON INCOME

Turkey, not being a federal country, has there is no any local tax or on income.

WEALTH TAXES

Except the Heritage and Transition Tax, which is applied only in cases of inheritance and donations, there is no a wealth tax in Turkey.

turkey | foreign investment

The Turkish Government gives strong support to foreign investments, especially in banking, energy, techniques, transport, and communication sectors where there is a need for foreign contributions.

In this respect the Foreign Investment Law has been changed and all prior permissions and feasibility report presentations and other bureaucratic formalities and the requirement of a minimum of US \$50.000 has been abolished.

To encourage foreign traders to invest in Turkey the judgment system has been revised by accepting international arbitration even in contracts signed with State Enterprises. Arbitration remedies provide a better and quicker procedure in every respect.

A program has been established for the privatisation of some State owned commercial enterprises.

Registration with Government, Authorities and Permits

The need to apply to the Foreign Investment General Directorate with a feasibility file to obtain the prior permission of that department was abolished in June 2003. Since then foreign traders may participate in existing companies or establish new ones without any prior permission. Companies with foreign capital have to send in an "information form" to the Foreign Investment General Directorate in May of each year giving a list of shareholders and their participation and a short activity report.

In the same way foreigner traders may invest in the Istanbul Stock Exchange without any prior permission.

Transfer of Dividends, Interests and Royalties Abroad

There is no restriction for the transfer abroad of dividends, interests and royalties. Such transactions may be carried out by banks or financial institutions without any special permission..

Repatriation procedure and restrictions

Except for a very few specific areas like for telecommunication or broadcasting companies, in the Turkish foreign investment legal system there are no special repatriation procedures or restrictions on the repatriation of dividends or liquidation proceeds or proceeds of sale and transfer of shares.

In the Turkish foreign investment legal system there are no participation limitations for foreign companies. Consequently foreign participation may be 100%.

Foreign Personnel

Foreign personnel must obtain a “working visa” and a “work” and “residence” permit. Applications from outside Turkey must be submitted to the Turkish Consulate and applications of those who already have prior permission must be submitted directly to the Ministry of Labor and Social Security in Turkey without going to the Consulates.

The Ministry provides a fast procedure to respond to all applications. Work permits are given for one year on first application and on subsequent applications permits are granted for 3 or 5 years and finally for an indefinite time.

Foreigners working in companies with foreign investments and who are in a key position are subject to a special and easier procedure.

The Act on Direct Foreign Investment defines a “key position” as a position of management to manage and represent the company. Such personnel are subject to a simpler procedure in which it is possible for them to apply for permission and work at the same time. This procedure requires a “working visa” in addition to other permissions. However, this procedure is easier and faster than the standard way.

turkey | labor law

Turkey has a very European Labor Law system and is a member of the ILO (International Labor Organization) and signatory of most of the ILO treaties. Consequently having a very international Labor Law system there are no special considerations to which we need draw the attention of new investors except that all foreign investors like local employers must have a legal adviser and the employer must consult the adviser before taking any action.

Employment contracts are primarily regulated in general terms by the Code Obligations dated 1926. Additional legislation comprises:

- Labor Law NO. 4857 (LL) renewed on May 22, 2003,
- Maritime Labor Law,
- Labor Law for those working in the Press, and
- New Labor Law for Civil Aviation is under preparation.
- Law NO. 4817, Law regarding Work Permits for Foreigners, regulates the working permits and working conditions of foreigners wishing to work in Turkey.

Employment Contracts

CLASSES

Under the Labor Law there are different classes of Employment Contracts:

Generally, Employment Contracts may be entered into for a fixed period of time, called “Time Contracts” or they may have no specified period and those are called “Continuing Contracts”.

Employment Contracts which are for a temporary period of less than 30 days are called “Transitory Contracts”.

Employment Contracts may cover full time or part time working and in seasonal fields it is also the possible to have "Seasonal Contracts".

Another type of contract is for workers who are "on call" to work only when required.

It is possible to have "Group Contracts" with a group of employees or if the majority are members of a Union, Collective Bargaining Agreements may be used.

COST OF DISMISSAL AND WRONGFUL DISMISSAL

The Employer may terminate the Employment Contract without cost or compensation, if the termination is based on one of the "Rightful Reasons" specifically mentioned in the Labor Law, for example if the employee does not carry out his or her duties, does not attend regularly at work or causes substantial damage to the Employer, etc

Even in case of dismissal for a "Rightful Reason" the Employer although not liable for compensation, has to pay all other accrued liabilities, such as unpaid wages, unused holiday entitlement, and paid overtime etc.

Even if there is no "Rightful Reason" the employer may terminate continuous contracts at any time, provided it has a "Justified Reason" to terminate the contract, and provided it gives due notice. In this case the Employer has to pay a "Seniority Indemnity" which is one month's salary for each year of service, not to exceed a certain limit which is determined each year by the Budget Law. (1.649 NTL around 1000 € for the first 6 months of 2005)

The notice period to terminate a Labor Contract is 2, 4, 6 or 8 weeks according to length of service. The Employer has the option to terminate the contract immediately on paying salary in lieu of notice.

In case of dismissal with "Justified Reason" the Employer must in addition to the said payments, pay all other accrued liabilities such as unpaid wages, non used holiday entitlement, overtime etc.

If the dismissal is not for a "Justified Reason", and provided other requirements mentioned in the Law are met, on the request of the Employee, the Labor Judge, may order the Employer to reinstate -employ the dismissed Employee, in which case the Employer is obliged to re-employ the Employee within 1 month. An Employer who does not implement the reinstatement order may have to compensate the Employee with additional compensation of 4 to 8 months salary.

It should be noted that, in general, the Employee has no right to compensation if he or she terminates the employment contract with the exception that if the Employee terminates the employment contract for a "Rightful Reason", as set out in the Law, or for military service, by reason of retirement or, in the case of women, within 2 years after marriage, they have right to the "Seniority Indemnity" mentioned above.

EMPLOYMENT CONTRACTS FOR DIRECTORS

Under Turkish labor law all employees, from laborers to senior executives, have similar contracts and no distinction is made for directors.

Employees Representatives and Union Representation

BRIEF OVERVIEW

In Turkey Unions are organized in all fields of Labor, (28 different fields mentioned in S. 60 of the Law of the Unions) and they are protected by the law and have power to protect Employees' rights. Unions may propose a Collective Bargaining Agreement to employees and, if the necessary conditions are fulfilled, they may opt to strike and in such a case the Employer has the right to institute a Lock-out.

WHEN DOES LABOR UNION REPRESENTATION BECOMES BINDING?

A Union must represent at least 10% of the employees of that sector working in Turkey, and in addition it must have represent the majority of employees working in those premises. In order to negotiate with the Employer the Union

has to apply to the Ministry of Labor and Social Security, prove that the above conditions are fulfilled and obtain the necessary authorization.

RIGHTS AND PRIVILEGES OF LABOR UNION REPRESENTATION INSIDE A COMPANY

Unions have the right and duty to support and preserve the rights of the employees, to take care of the working conditions, to try to resolve problems between the Employer and the Employees in an amicable way and to negotiate and sign a Collective Bargaining Agreement.

In each working place where a union is authorized there must be one or more Employee representatives appointed by the Union. The number of the representatives is determined by the Law and depends on the number of Employees working in those premises.

Employee representatives have the power, right and duty to listen to and convey to the Employer the demands and complaints of the Employees, to protect the interests of the Employees and to create an harmonious and peaceful working atmosphere. Their employment contracts can not be terminated without "Rightful Reason".

Collective Bargaining Agreements, Other Agreements

CLASSES

Collective Bargaining Agreements can be on an "Employment Location" basis or if the company has more than one premises, and provided the Union has the majority in all or in some of the premises, they can be entered into on an "Enterprise" basis.

ARE COLLECTIVE BARGAINING AGREEMENTS BINDING ON EMPLOYMENT CONTRACTS?

Collective Bargaining Agreements are binding on the parties and on all individual contracts, provided however that any additional conditions in individual contracts which are to the benefit of the Employee, continue to be applicable for that individual Employee.

Wages and Other Types of Compensation

CLASSES OF WAGES

Under the Labor Law the Employer has to pay a monthly salary not less than the "Minimum Salary" stipulated by a special commission. The Minimum Salary Commission meets twice a year with the Confederation of Employers' Union, Confederation of the Employees' Union and representatives of the Government.

Salaries can not be less than the minimum salary but there is not a maximum limit and yearly or monthly wages and salaries are agreed between the parties.

In addition to the above some additional payments, like bonus, premium, education allowance or marriage allowances can be made.

MINIMUM SALARY IN 2005

The minimum salary for the first 6 months of 2005 is gross NTL 488.00 which is equivalent to 282 € per month.

COST OF OVERTIME HOURS

The standard working week is 45 hours and working days are 6 days a week. Normally Sunday is a weekend holiday, but in premises which require a 7 day-week, for example restaurants or hotels, one day off must be given within the week.

In case of overtime undertaken in excess of a 45 hour week, the overtime rate is a minimum one and a half times normal pay but for working on a religious or national holiday and at week-ends it has to be at least double normal rates. Those amounts may be increased with some Collective Bargaining Agreements.

Employment Regulations

As stated above Employment contracts are primarily regulated in general terms by the Code Obligations dated 1926 and in addition to that there is

- Labor Law NO. 4857 (LL) renewed on May 22, 2003,
- Maritime Labor Law,
- Labor Law for those working in the Press, and
- Labor Law for the Civil Aviation (is under preparation)
- Law NO. 4817, Law regarding the Work Permit for Foreigners, regulates the working permits and working conditions of foreigners who wants to work in Turkey.
- Trade Union law
- Law relating to Strikes and Lock-Outs

Social Security

CONTRIBUTION FORMS (TERMS AND PROCEDURES)

All employees must be registered with Social Security before commencement of work and both the employer and the employee have to pay the appropriate contributions for Maternity, Invalidity, Illness, Accident and Retirement. The accident contribution varies according the level of risk attaching to the activity. The minimum rates are as follows.

SOCIAL SECURITY COST FOR THE COMPANY

The employer's contribution is 19,5%.

SOCIAL SECURITY COST FOR THE WORKER

The employee's contribution is 14%.

Health and Safety

ESSENTIAL DUTIES OF THE COMPANY

The Employer is obliged to take all necessary safety measures to prevent any illness and any accident in the workplace, and in cases where there are more than 50 employees, the Employer is obliged to retain an "Enterprise Doctor" for necessary health support.

MAIN REGULATIONS

There are very detailed regulations regarding the safety measures that the Employer has to undertake in the premises, and the appointment, rights and obligations of the Enterprise Doctor.

Contracting and Outsourcing of Work or Service

Although some services may be out-sourced, the essential activity of the Enterprise cannot be out-sourced and the main Employer remains liable to the Employees as "Principal Employer".

turkey | real estate

Property and Real Estate transactions are regulated by the Civil Code dated 1926, and renewed in 2001. The Civil Code of 1926 was the translation of the Swiss Geneva Civil Code which is based on the French Civil Code prepared by Napoleon, and consequently Turkish Civil Law is similar to the European system.

Ownership of an “Independent Division”, i.e. ownership in one apartment in a building having many apartments, is regulated by the Flat Ownership Law, No: 631.

In addition to that the Land Registry Law No: 2644 regulates all items regarding registration, transfer, mortgage and all other aspects relating to property.

Types of Ownership

OWNERSHIP

In principle, there are 2 types of Ownership which are :

- Individual Ownership and,
- Collective Ownership or Co-Ownership

Collective Ownership is divided into two main sections, i.e. Continuous Collective Ownership and Time Sharing Ownership.

A different system of Collective Ownership is ownership subject to the Flat Ownership Law No 634 whereby each apartment or shop comprising part of a building having many apartments or shops, is registered as an “Independent Division”. Although each owner is the sole owner of his or her apartment or shop (Independent Division) there is collective Ownership of the common parts.

USUFRUCT

Normally the Owner enjoys all rights and privilege of the benefits generated by the property. In some cases prescribed by Law or by Special Contract, the Owner may separate the right of property and the right to the benefits which are called “the Usufruct” and these Usufruct may be transferred to a third party for a certain period of time. The right of Usufruct has to be registered in the Land Registry.

RIGHTS OF SUPERFICIES

According to the Civil Code, the owner of the land also has ownership of everything under the earth of that land and all things which are on the lands, e.g. buildings, etc.

In some cases, the owner may assign for a certain period of time, the right to use the Superficies of the land in which case buildings and installations made on the land belong to the owner of Superficies right.

This right of Superficies also has to be registered at the Land Registry as a Separate Ownership. Most of of BOT, (Billed Operate Transfer), contracts are made subject to the Right of Superficies and then although the land belongs to the owner, the buildings belong to the Lessee/BOT Operator for the term of the lease and reverts to the land owner at the end of that time.

Land Registry

According to Land Registry Law each piece of land, and in cases of Flat Ownership, each Individual Division is separately registered at the Land Registry. This is regulated by a governmental body called “Land Registry and Cadastral General Directorate” established in Ankara and Land Registry Directorates established in all Administrative Districts.

According to the Civil Code anybody may rely on the Official Registries and acquisitions based on good faith are protected by the law. In cases of a mis-registration the State is responsible for any consequential damages.

Transfer Formalities

Transfer of Land/Property can be carried out only before Land Registry Directorates and no other department has authority in such transactions, with the exception of Public Notaries who may carry out “Undertaking of Selling and Purchase Contracts”.

Mortgages

All types of Mortgage Agreements must be in accordance with Land Registry Rules and registered to that registry.

Mortgages give to the owner priority to his receivable in case the land is sold. If the land is sold by the owner the new buyer is bound by the mortgage and if the debt is not paid in due time the mortgagee has the right to sell the mortgaged property.

If the property is sold by way of a Court Action for the non payment of the mortgage, the property can not be sold at a price lower than the existing mortgage and the mortgagee has the right to redeem the debt owed to it before anyone else.

Restrictions on Acquisitions

Foreigners cannot acquire any property in Military Zones in village districts. Apart from the above mentioned restrictions, there are no other restrictions for foreigners provided however that Turkey has accepted the principle of reciprocity. Foreigners may acquire Real Estate Property in the principles of reciprocity which means that those foreigners are subject to the same rules and conditions that Turkish nationals are subject to in that other country.

Preemption Rights

With the exception of collective ownership, subject to “Flat Ownership Law”, co-proprietors have the right of pre-emption, in the case that a co-proprietor has sold its share to a third party.

Construction and Use Restrictions

All buildings can be built after obtaining a “Construction Permit” from the local municipality, and can be used after a “Building Using Certificate” has been granted from the same municipality, which certifies that the building has been built according the Construction Permit and other rules and regulations in this respect.

Any construction or any use of any building without the above mentioned permits or certificates will constitute an infringement against the Law and may give way to serious penalties.

Leasehold Types

In general Real Estate leasing is regulated by the Code of Obligation and for buildings situated within the municipal territories having a roof by a special Law no 6570 .

According to the Code of Obligation there are two types of leasing.

- simple leasing and
- Usufruct lease

A Usufruct Lease is the leasing of goods or rights which may generate an outcome such as agricultural land or the lease of hotel or resorts estate. All leases which are not Usufruct Leases are Simple Leases

Lease Formalities

There are no special formalities to follow except that Real Estate Lease contracts must be in written form and in certain circumstances before a Public Notary. Lease Contracts may be registered at the Land Registry in order to preserve the rights of the Lessee in case of the transfer of the Lease to 3rd parties. It is recommended to register long term lease contracts with the Land Registry.