

FOREIGN DIRECT INVESTMENT LAW

OBJECTIVE AND SCOPE

Article 1. The objective of this Law is encourage foreign direct investments; to protect the rights of foreign investors; to define investment and investor in line with international standarts; to establish a notification-based system for foreign direct investments rather than screening and approval; and thus regulate the principles to increase foreign direct investment though established policies. This Law establishes the treatment to be applied to foreign direct investments.

DEFINITIONS

Article 2. The terms used in this Law shall have the following meanings:

a) Foreign investors:

- 1) Real persons who possess foreign nationality and Turkish nationals resident abroad, and
- 2) Foreign legal entities established under the laws of foreign countries and international institutions,

Who make foreign direct investment in Turkey.

b) Foreign direct investment:

- 1) Establishing a new company or branch of a foreign company,
- 2) Share acquisitions, where the foreign investor owns 10 percent or more of the shares or voting power,

by means of, but not limited to the following economic assets:

- 1) Assets acquired from abroad by the foreign investor;
 - Capital in cash in the form of convertible currency bought and sold by the Central Bank of Turkey,
 - Stocks and bonds of foreign companies (excluding government bonds),
 - Machinery and equipment,
 - Industrial and intellectual property rights;
- 2) Assets acquired from Turkey:
 - Reinvested earnings, revenues, financial claims, or any other investment-related rights of financial value,
 - Commercial rights for the exploration and extraction of natural resources.

c) The Undersecretariat: The Undersecretariat of Treasury.

PRINCIPLES CONCERNING FOREIGN DIRECT INVESTMENTS

Article 3.

a) Freedom to Invest and National Treatment

Unless stipulated by international agreements and other special laws:

1. Foreign investors are free to make foreign direct investments in Turkey,
2. Foreign investors shall be subject to equal treatment with domestic investors.

b) Expropriation and Nationalisation

Foreign direct investments shall not be expropriated or nationalised, except for a public purpose and upon compensation in accordance with due process of law.

c) Transfers

Foreign investors can freely transfer abroad, through banks or special financial institutions; profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans.

d) Access to Real Estate

Companies may freely acquire real estate or limited rights in rem through a legal entity in Turkey established or with participation by foreign investors, provided such acquisitions are permitted for Turkish citizens.

e) Dispute Settlement

For the settlement of disputes arising from investment agreements subject to private law and disputes arising from conditions and contracts made with the administration and under which concessions concerning public services are granted, foreign investors can apply either to the authorised local courts, or to national or international arbitration or other means of dispute settlement, provided that the conditions in the related regulations are fulfilled and the parties agree thereon.

f) Valuation of Non-Cash Capital

Non-cash capital is valued within the regulations of Turkish Commercial Law. Stocks and bonds of companies residing abroad will be accepted as foreign capital share of foreign investors and the values determined by the courts of the home country, or other relevant authorities in the home country, or any other international institutions performing valuations will be accepted.

g) Employment of Expatriates

Foreign personnel working permits are issued by the Ministry of Labour and Social Security for foreign personnel to be employed in the companies, branches and entities established within the scope of this law.

In a Regulation to be prepared jointly by the Undersecretariat of Treasury and the Ministry of Labour and Social Security, according to Article 23 of the Law no. 4817 on Foreign Personnel working permits dated 27 February 2003, the companies and entities with foreign capital which shall be in the context of the regulation, the definition of the key personnel in the scope of the Regulation and other special procedures and principles concerning the work permits of key personnel will be determined.

Provisions stipulated in Article 14, paragraph 1, sub-paragraph (b) of Law No. 4817 will not be applicable to personnel to be employed within the context of this Regulation. The conditions under which the provisions stipulated in paragraph 1 of Article 13 of Law No. 4817 are to be applied to key foreign personnel employed will be specified in the Regulation.

h) Liaison Offices

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

DETERMINATION OF POLICIES AND DATA COLLECTION

Article 4. Taking into account the development plans, annual programs, general economic status of the country, trends in international investments and the opinions of related public institutions and private sector professional organisations, the Undersecretariat is authorised to determine the general framework of policies concerning foreign direct investments, and for this purpose, participate in the activities of other organisations. The consent of the Undersecretariat shall be taken before any amendment or enactment of a regulation related with foreign direct investments.

For the purpose of establishing and developing an information system related to foreign direct investments, the Undersecretariat is authorised to request statistical information on investments from all public institutions and private sector professional organisations.

Foreign investors shall submit statistical information on their investments according to the procedures and principles to be determined by a regulation to be enacted by the Undersecretariat. Such information cannot be used as evidence or for any means other than for statistical purposes.

OTHER PROVISIONS

Article 5.

a) Existing Companies with Foreign Capital

All companies with foreign capital established pursuant to Law No. 6224 dated 18 January 1954 shall be subject to this law, reserving their granted rights.

b) Regulations

The implementing procedures for this Law will be determined in a regulation to be prepared by the Undersecretariat within one month of the publication of the present Law.

c) Repealed Provisions

The law No 6224 for Encouragement of Foreign Capital dated 18 January 1954 is repealed. The reference made to Law no. 6224 and its regulations and amendments are considered as referring to this law.

d) Any alteration concerning the articles of this law is only regulated by means of amending and appending provisions to the present Law.

PROVISIONAL ARTICLE 1.

The provisions of the decrees, communiques and circulars in effect, which are in conformity with this Law, shall remain in force until new regulations to regularise the implementation of this Law take effect.

EFFECTIVENESSE

Article 6. This Law shall come into force on the date of its publication.

ENFORCEMENT

Article 7. The Council of Ministers is entrusted with the enforcement of this law.

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