

# Concurrences

## FOREIGN DIRECT INVESTMENT GUIDE

Turkey

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## → Scope of FDI review

### 1. Is there a list of sectors covered by the FDI regime?

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No. A foreign direct investment is defined as setting up a new company or branch or joining the shareholding of a company by way of acquiring shares outside securities exchanges or at least 10% shareholding or voting rights at the same amount from securities exchange through the following economic assets:

- a) Cash capital, company securities (excluding state securities), machinery and equipment, industrial and intellectual property rights imported to Türkiye from abroad,
- b) Sources provided domestically, such as profits, revenues, receivables, or other rights related to investments having financial value used for reinvestment, rights related to the exploration and extraction of natural resources.

### 2. What types of foreign investors are covered by the legislation ?

#### Turkey

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(i) Natural persons who are non-Turkish nationals, (ii) Turkish citizens residing abroad, and (iii) legal entities and international organizations incorporated under foreign laws.

### 3. What type of local nexus is required for the target company to fall within the scope of the FI regime?

#### Turkey

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Branch offices of foreign companies (registered with the trade registry pursuant to the Turkish Commercial Code), local companies (also registered with the trade registry pursuant to the Turkish Commercial Code) and liaison offices (registered with Ministry of Industry and Technology).

Mere existence of employees, external contractors, IP right registration, cash receivables, assets or generation of revenue is insufficient.

### 4. Does the FDI regime apply to indirect investment via change in control of a parent entity

#### Turkey

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No. However, a post-closing notification requirement arises:

(i) when shareholding structure of a foreign-capitalized Turkish company in Türkiye changes as a result of share transfer to a foreign real person/legal entity; and

(ii) when a Turkish company becomes a foreign-capitalized company, as a result of share transfer to a foreign real person/legal entity.

In addition, there are also annual and event-based notifications due to payment of share capital and changes to the share capital that are provided under the General FDI Legislation (see more details below).

## 5. In addition to FDI, are there sector-specific notification regimes beyond corporate/business registry that may require a separate filing?

### Turkey

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Yes.

#### (i) **Turkish Commercial Code**

Apart from the standard corporate filings to complete the share transfers, if invested companies are among the joint stock companies requiring Ministry of Trade's approval for incorporation or amending their articles of association, (i.e. banks, financial leasing, factoring, insurance companies, holding companies, publicly traded companies) before incorporation of company, a permit must be obtained from the Ministry of Trade and if closing transaction results in an amendment to the articles of association (i.e. share capital increase) in such companies, prior approval of the Ministry of Trade will be required.

There are also other post transaction disclosure requirements under the Turkish Commercial Code regardless of the sector in which the target company operates. Article 198 of the Turkish Commercial Code and Article 107 of the Regulation on Trade Registry set forth a post-closing disclosure obligation in case of a direct or indirect share transfer in a Turkish entity. This is not only related to the foreign investors, as all Turkish companies are obliged to fulfil this requirement.

Relevant articles stipulate that in case an undertaking (real person, legal entity, organization, public economic enterprises etc.), directly or indirectly, reaches 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% of shares representing share capital of a Turkish entity, then said undertaking shall disclose such event to the relevant Turkish entity, within 10 (ten) days following realization of the transaction. Accordingly, the Turkish entity shall have such event registered with the trade registry within 10 (ten) days following the disclosure.

Also, Article 338 of Turkish Commercial Code provides a disclosure requirement if a Turkish company is solely owned by one shareholder. This is not only related to the foreign investors, and all fully owned Turkish companies are obliged to fulfil this requirement.

#### (ii) **Specific Regulations of Regulated sectors**

Certain sectors may require prior approval or post-transaction notification regardless of the nationality of the investor, while rules vary from one

sector to another, in several sectors the acquisition of 10% or more of the share capital of a regulated company triggers the need for regulatory clearance or regulatory authority may require post-closing notification including indirect acquisitions. Besides, change in company's management may also require notification requirements as per the sector regulations.

In addition, among the regulated sectors, some of the sector regulations specifically regulate the foreign investment restrictions. Transactions concerning to Mining Law No. 3213, Law on Establishment and Broadcasting Services of Radios and Televisions No. 6112, Banking Law No. 5411, Turkish Civil Aviation Law No. 2920, Cabotage Law No. 815, Private Educational Institutions Law No.5580, Land Registry Law No. 2644 are subject to restrictions on ownership of foreign investors. Sector regulations are not limited to those listed above, and each law should be examined on a sector-specific basis.

## → Jurisdictional Thresholds

### 2. Do greenfield investments require notification?

#### Turkey

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Yes (post-closing).

### 3. Do internal restructurings or intra-group transactions require notification?

#### Turkey

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Yes, if they result in a direct change in shareholding of a foreign capitalized Turkish company or cause a Turkish capitalized company to become a foreign capitalized company.

## 4. Are passive LPs in a private equity fund required to make a separate FDI filing or is reportability exclusively the responsibility of the GP/Fund?

### Turkey

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There is no distinction of responsibility between LP or GPs. FDI filings regulated under the General FDI Legislation are under the responsibility of the Target located in Türkiye which should be fulfilled through its authorized user registered with E-TUYS.

## Notification

### 1. Is the notification voluntary or mandatory?

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Mandatory.

### 2. Is filing suspensory? Is it possible to close globally but carve-out local closing pending ongoing local review?

#### Turkey

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If the filing to be submitted is for incorporation of liaison office and/or permit extension of a liaison office, yes, the filing is suspensory.

Other filings which are required to be made annually or required to be

made post transactions are not suspensory.

### 3. Which party is responsible for the filing?

 Turkey

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The Target.

### 4. What is the filing fee, if any?

 Turkey

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None.

### 5. When must the notification be filed relative to signing and closing?

 Turkey

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Notifications as to the changes to the shareholding structure should be made within one month as of closing if the notification requirement arises from share transfer.

For incorporation of liaison offices filing should be made before incorporation of the liaison office considering that the review process would take 15 business days if documents are full and completed.

Likewise, if a term extension is requested for a liaison office filing should be made before end of the term considering the review process would take 15 business days, provided that documents are full and complete.

## 6. What information needs to be provided in the notification?

### Turkey

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The notification is made electronically through the FDI Authority's online system (E-TUYS), which requires corporate information and contact information regarding the entity invested in, information regarding its shareholders (i.e., foreign investor in case of acquisition of shares) and subsidiaries of the target.

This includes: (i) information on direct share transfers, (ii) payments made with regard to share capital increase (if any) or transfer of shares (i.e. bank, currency, country information), (iii) information on share capital increase or decrease (if any), (iv) information on investor, list of shareholders (i.e. address and country of the shareholders), if applicable, affiliated companies, and (v) information on capital and operations (employees, balance sheet, expenditure, investments) of company which will be filled on annual basis.

## 7. Can the competent agency/governmental body initiate ex officio reviews into investments that do not meet the notification threshold?

### Turkey

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No.

## → Sanctions

### 1. What administrative penalties (administrative and criminal) can be imposed for failure to notify the deal / closing prior to approval?

#### Turkey

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*Nazlı Nil Yukaruç*

No penalty for failing to notify, except for liaison offices (their operation permit of the office may be revoked).

### 2. Can the agency require the transaction be unwound (if closed before or during an ongoing FDI review)? If so, within what period from closing?

#### Turkey

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No. In case of acquisition of 50% or above shares in a Turkish company which owns real estate in Türkiye, post-closing notification to the FDI Authority triggers a background check regarding whether the criteria for the real estate ownership rules are met. In case there are any national security risks (i.e. if real estate is located in a military zone, secured area, etc.) associated with the foreign investor's interest in such real estate, the target may be given a certain time period to divest such real estate.

There may also be further divestment and disposal requirements under other regulated sectors. For instance, in education sector, if foreign real persons or legal entities are detected among the founders of private educational institutions, regulatory authority will grant 30 (thirty) days period for foreign shareholders to dispose their shares. Likewise, for broadcasting sector, if foreign investors hold more than 50% shares in a broadcasting company, this breach of the laws would need to be corrected within the term to be granted by regulatory authority which will be maximum 90 (ninety) days.

## → Practice

### 1. Are you aware of deals being notified in practice?

 Turkey

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Yes.

### 2. If possible, can you indicate the types of deal/sector that are of particular interest to the agency and/or that are notified in practice?

 Turkey

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General FDI notification does not depend on the type of deal and/or the sector due to the notification requirements linked to direct shareholding changes, share capital changes. Therefore, FDI Authority does not have particular interest in specific sectors.

### 3. Does the agency body impose remedies in practice (structural and/or behavioral)?

 Turkey

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No.

## 4. Has any sanction ever been imposed?

### Turkey

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*Nazlı Nil Yukaruç*

To the best of our knowledge, no sanction has been imposed since sanction has not been foreseen in the legislation.

For liaison offices, FDI Authority might have revoked the operation permit of liaison offices that do not send mandatory information/documents.

## 5. Has a deal ever been blocked?

### Turkey

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*Nazlı Nil Yukaruç*

If the filing to be submitted is for incorporation of liaison office and/or permit extension of a liaison office, yes, the process may be blocked because the application may be rejected.

Other filings which are related to the share transfers and share capital changes are post-transaction filings and those are not subject to suspensory review. Therefore, those cannot block any deal and cannot cause a transaction to be unwound.

However, if the target is subject to sector-specific regulation must obtain approval before the share transfer from the relevant authority, it is possible to conclude this situation as a deal blocker.

## → Review Process

### 1. Which agency/governmental body accepts notifications and administers the process?

#### Turkey

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Ministry of Industry and Technology's General Directorate of Incentive Practices and Foreign Capital (Turkish: T.C. Sanayi ve Teknoloji Bakanlığı Teşvik Uygulama ve Yabancı Sermaye Genel Müdürlüğü).

### 2. What are the statutory time limits for the review procedure?

#### Turkey

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*Nazlı Nil Yukaruç*

For incorporation of liaison offices and liaison office term extension processes applications are reviewed and finalized by the FDI Authority within 15 business days if all the documents are full and complete.

Otherwise, for the post transactional notifications and annual notifications set forth under the General FDI Legislation there are no statutory time limits for the review procedure. Typically, it is not expected to receive any feedback.

### 3. How long do reviews take in practice?

#### Turkey

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See above – the FDI authority generally follows the statutory review period.

#### 4. Are the agency's clearance decisions subject to a deadline?

 Turkey

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*Nazlı Nil Yukarıç*

For incorporation of liaison offices and liaison office term extensions, clearance must be obtained, and permit will be valid for maximum 3 (three) years. Permit can be extended upon separate application to FDI Authority.

For the post-closing notifications and annual notifications set forth under the General FDI Legislation there is no clearance decision for share transfers in terms of General FDI Legislation and therefore there is no deadline.

#### 5. Are pre-notification discussions provided for or expected? Is there a formal consultation process in case of doubts?

 Turkey

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No. If needed, an official application to the FDI Authority can be submitted for consulting purposes pursuant to Right to Information Law.

#### 6. Are the agency's decisions subject to judicial review? Have there been any judicial challenges in the last 5 years?

 Turkey

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*Nazlı Nil Yukaruç*

No. However, if the target benefits from certain subsidies, the FDI Authority's decision may be subject to judicial review. Public incentives and related regulations (i.e. Decree on Government Support for Investments) should be considered along with the judicial challenges by special advisors.

### 7. For EU jurisdictions: under what conditions does the authority share a filing with the EU screening cooperation mechanism?

 Turkey

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N/A

## → Statistics

### 1. Number of notifications under the national FDI regime

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There are over 85,000 notified companies and branches; and there are over 300 liaison offices according to publicly available List of Foreign-Capitalized Companies and Liaison Offices published by FDI Authority ([link](#)).

## 2. Number of notifications rejected because not reportable

### Turkey

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*Nazlı Nil Yukaruç*

This information is not publicly available.

## 3. If available, number of decisions.

### Turkey

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*Nazlı Nil Yukaruç*

N/A