Legal Framework

Regulation push to make Istanbul a global financial hub
Financial sector reforms to align with EU standards
Government moves to increase workplace safety
Incentives invite private investment in infrastructure

New capital market regulations aim to grow Istanbul as a financial hub

Regulating for growth

Legal changes are guiding and enabling investment across the board

With the primary goal of establishing a leading global financial centre in Istanbul, the Turkish government continues to create a legal framework that will encourage and accommodate this goal. The foundation was laid with the recent Capital Markets Law (CML) No. 6362. The Capital Markets Board (CMB) continues to align Turkey's legal basis to comply with EU regulations. The following enactments and communiqués have been declared by the CMB to ensure the functionality and development of Turkey's capital markets through the establishment of a secure, transparent, and competitive environment for investors.

NEW CATEGORISATION SYSTEM FOR BROKERS: Communique No III-37.1 No 39 & No V-134 introduced a categorisation system for intermediaries based on their activities, imposing a minimum capital for these companies by July 2015. It rescinds the former license-based approach and states the minimum capital requirements as: "Introducing Brokers": TL2m (€704,200); "Execution Brokers": TL10m (€3.5m) and "Market Makers": TL25m (€8.8m).

This legal change will inevitably result in mergers or acquisitions of existing investment firms in order to meet the minimum capital requirements.

CMB REGULATES SQUEEZE-OUT & SELL-OUT: The procedure to determine the total expulsion price of minor shareholders in a squeeze-out procedure has been regulated by the Communiqué No. II-27.2, published in November 2014. Based on Article 27 of the CML, the Communiqué regulates for the first time the rules and principles of a squeeze-out and sell-out. A (group of) shareholder(s) who wishes to exercise their squeeze-out right, shall use that right within a period of three months, starting from the day the amount of their shares reached 98% in total.

The shareholder is required to provide the CMB with the relevant documents, along with a formal application. Upon approval of the CMB, the controlling shareholder(s) shall deposit the total purchase amount to the company's bank account. Other shareholders have the right to object to the price within 30 days from the expulsion decision date. Shareholders are entitled to sell their shares to exercise their squeeze-out right to the controlling shareholder after the expiry of the three-month period.

The shareholder shall request the company to notify the controlling shareholder in writing to exercise its sell-out right. The procedure foresees a set deadline of six business days for filing required reports to the CMB and being paid for the shares by the company.

DIVIDEND PROTECTION: The Communiqué No. II-19.1, published in January 2014, strengthened the protection of dividends. It sets out the principles and procedures for the payment of dividends in accordance with Articles 19 and 20 of the CML. Corporations will now have to distribute their dividends equally (pro rata) to all existing shares at the date of distribution, regardless of their dates of issuance and acquisition. Dividend-privilege related rights are, however, reserved. The decision to pay dividends in (x number of) instalments lies upon the corporation's general meeting of shareholders. Carrying dividends forward to the following year or distributing dividends to interested parties, directors, employees or other non-shareholders is not permitted unless and until the dividend determined for shareholders is fully paid in cash.

INTRODUCTION OF THE ELECTRONIC FUND DISTRIBUTION PLATFORM (TEFAS): Within the CML, TEFAS came into effect on January 9, 2015. The platform allows investors to buy mutual funds (incorporated by permission of CMB) through a single investment account. TEFAS is open to all foreign, local, individual and institutional investors. TEFAS can be described as a fund supermarket, creating an environment that enables simple access to mutual funds.

STIMULATING THE VENTURE CAPITAL MARKET: The CMB announced in March 2015 its plan to change the financial regulations initiatives towards attracting clients to banks and intermediary companies. Currently the promotional benefits are based only on a share of the revenue achieved by the venture capital market company through the gain of the customer. Promotions are only permitted when clients are won through telemarketing. The CMB wants to allow promotions benefits for attracting customers by any means, where not only the person winning the client, but the client themself shall benefit from promotional campaigns.

FISCAL INCENTIVES CONTINUE FOR ANGEL INVESTORS: Realising that it is crucial but difficult for small and medium-sized enterprises and start-ups to receive adequate funding, the government enacted fiscal incentives for investing in small businesses.

Business angels are entitled to substantial tax benefits upon investment, under the Law Regarding Amendments to the Private Pension Savings and Investment System Law No. 6327, its subsequent Regulation on Individual Capital Participation and the Income Tax Law No. 193.

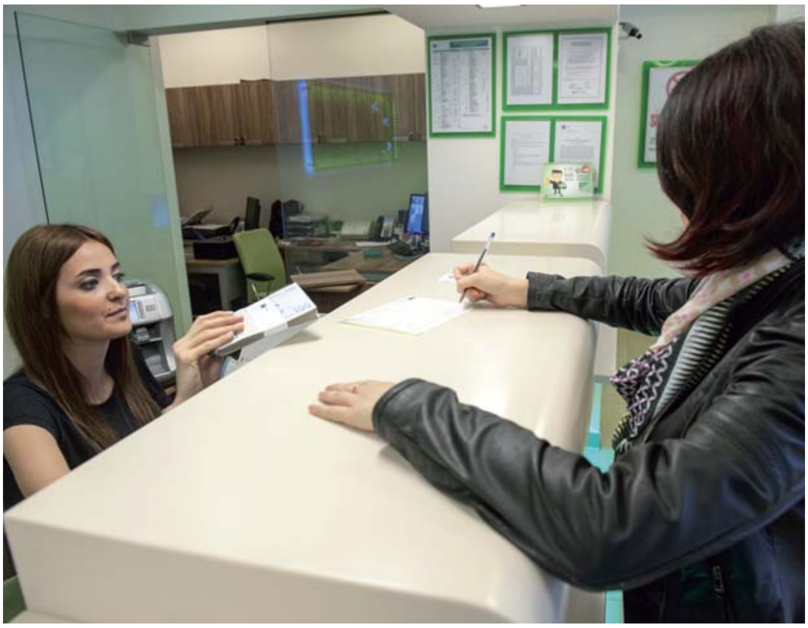
In December 2014, an amendment to the regulation increased income tax relief for angel investors to 100% when investing in enterprises active in research, development, and innovation, up to a maximum amount of TL1m (€352,100) annually.

GROWING BANKING SECTOR CONTINUES TO ALIGN WITH INTERNATIONAL STANDARDS: The Banking Regulation and Supervision Agency (Bankacılık Düzenleme ve Denetleme Kurumu, BDDK) stated in February 2015 that the total assets of the banking sector had increased by 15% and the primary funding source, the deposits, have gained 11.3% in comparison to 2013. The biggest assets are loans (18.5%) and securities (5.4%). Therefore, the industry's net profit for 2014 amounted to TL24.67bn (€8.69bn).

Starting with the enactment of the International Convergence of Capital Measurement and Capital Standards, the government began applying the recommendations of Basel II in July 2012. Continuing the process, the BDDK issued the Communiqué on Calculation of Amount Subject to Credit Risk with Approaches Based on Internal Rating, and the Communiqué on Calculation of Amount Subject to Operational Risk with Advanced Measurement Approach, both of which became effective January 1, 2015. Thereunder, capital adequacy calculations are subject to BDDK's permission. Thus, the agency issued two draft guidelines that determine the application process, rules and practices to which banks must comply.

NEW PLAYERS IN ISLAMIC BANKING: The Islamic banking sector, commonly referred to as "participation banking", has witnessed growing interest due to increasing demand among Turkish citizens and investments from the Middle East. The BDDK approved three more Islamic bank applications in the first quarter of 2015.

NEW REGULATION PLACES RESTRICTIONS ON THE LEASING, FACTORING AND FINANCING SECTOR: Enacted in December 2014, the Leasing, Factoring, and Financing Companies Law No. 6361 imposed a minimum capitalisation value of TL20m (€7.04m) for companies doing business in this sector. However, businesses that were founded prior to the law have a grace period of three years in order to meet this requirement.



Growth in the banking sector continues to be strong, with 2014 seeing a 15% increase in total assets

Thus, this legal obligation is likely to result in mergers and acquisitions in the sector during 2015.

ENERGY SELF-SUFFICIENCY: As an emerging market, Turkey has experienced a significant increase in the demand for electricity, and consequently, the necessary amount of investment and finance to meet this demand is up to $5bn annually.

It is projected that the total energy investment required up until 2023 may surpass $120bn. Thus, the market requires capital from private companies. The government is aiding investments through tenders for privatisation and building or allowing new power plants within the next decade.

The World Bank's December 2014 "Focus Note" states that "energy imports contribute significantly to Turkey's external imbalances". Considering that Turkey imports 60% of its energy, reducing this percentage is essential. Thus, the government has an active liberalisation policy for the domestic energy market.

CREATING A COMPETITIVE MARKET: Reforms in the energy market are intended to achieve liberalisation by allowing more competition. The Turkish Competition Authority has published a report with the aim of guiding the sector towards a competitive market structure. The report emphasises the period 2018-19, that being when most power purchase agreements and guarantees will expire.

Furthermore, the ongoing privatisation process of the state-owned power companies will be concluded by 2019. These developments will undoubtedly lead to a more competitive market.

TAKING ACTION ON RENEWABLE ENERGY: Turkey enacted its first National Renewable Energy Action Plan in December 2014 with the support of the European Bank for Reconstruction and Development (EBRD). This plan is based on the EU Directive 2009/28/EC regarding the promotion of energy use from renewable sources. Turkey has agreed to meet 30% of its energy needs from renewable sources by 2023. Turkey aims to add 35 GW of hydropower, 20 GW of wind power,

The government is responding to rising demand for electricity by incentivising domestic energy investment

5 GW of solar energy, 1 GW of geothermal and 1 GW of biomass. As well as the $70m provided by the EBRD, the World Bank approved another $300m for use in renewable energy projects in Turkey.

The Energy Market Regulatory Authority (EMRA) initiated the first pre-license tenders according to the Electricity Market Licensing Regulation (EMLR) while capping the application ceiling at 600 MW. The awarded bidders received two licenses for an 8 MW solar park in Elazığ and a 5 MW project in Erzurum in May 2014. These projects have created clear procedures and obligations for future bidders as the EMLR has since awarded 228 MW of PV projects in January 2015. However the 600-MW capping will be amended in 2015.

Under the EMLR, recipients of a pre-license have to complete their power plant within 24 months. In the event of compelling reasons, the enterprise may request an extension period for an additional 12 months. The EMRA will decide on the extension petition by evaluating the type of energy source and capacity.

AN INCREASING SUPPLY OF NUCLEAR POWER: The Akkuyu Nuclear Power Plant and the Sinop Nuclear Power Plant have paved the way for a third. Turkey's Electricity Generation Company, China's State Nuclear Power Technology Corporation, and Westinghouse Electric Company entered into an agreement in November 2014 to commence negotiations for the construction of a new four-unit nuclear power plant.

A MORE LIBERAL GAS MARKET: The Natural Gas Market Law will be amended to divide the current vertically integrated and state-owned Petroleum Pipeline Corporation (BOTAŞ) into three divisions for transmission, storage and other activities. This amendment will abolish the dominant position of BOTAŞ and establish a competitive, investment-friendly oil and gas market. The draft law also includes the privatisation of the Istanbul Gas Distribution Company, subject to the approval of the Istanbul Municipality .

SWIFT RESPONSE TO MINING MARKET NEEDS: The Turkish Mining Law No. 3213, was amended on February 18, 2015, with significant provisions in terms of workplace health and safety and also royalty agreements with third parties. Excluding underground coal mine licenses granted by public authorities, no licence holder shall enter into royalty agreements with subcontractors for the operation of the coal mine. However, executed royalty agreements shall be subject to the approval of the Ministry of Energy.

CREATING A COMPETITIVE TELECOMMUNICATIONS MARKET: The Information Communications Technologies Authority (ICTA) has recently identified potential growth in the telecommunications sector. According to the ICTA report for the third quarter of 2014, the number of operators in the electronic communications sector is 654 and the number of authorisations granted to those operators is 1094.

In the third quarter of 2014, the amount of total mobile traffic was 53.1bn minutes and 3.3bn minutes for fixed traffic. These numbers constitute an increase of approximately 1.9% in mobile traffic and a decrease of 11.1% in fixed-line traffic when compared to the figures for the second quarter of 2014.

The report outlines that in the mobile industry only three companies have significant market power. Thus, the Turkish government is eager to open this market to an additional mobile service provider when the 4G network is introduced in 2015, particularly when the licences for frequency bands 800, 900, 1800, 2100 and 2700 MHz come up for public tender. The report also outlined the need to create the technical and legal basis to introduce and operate 4G services.

BIG CHANGES FOR FIXED-LINE PROVIDERS: In December 2014 the ICTA amended the Authorisation Regulation in the Electronic Communications Sector. Pursuant to this amendment, operators shall only be formed as a joint stock or limited liability company with a minimum capital of TL1m (€352,100). The companies will have to apply for fixed-line services authorisation to the ICTA. In case of failure to provide the minimum capital amount, the authorisation of the operator will be cancelled.

Furthermore, Türk Telekom (TT) has been designated as an enterprise with significant market power on call termination in fixed telephone networks. Thus, TT will be subject to certain requirements, such as providing access, non-discrimination, transparency, publication of reference offer, tariff control, accounting separation and cost accounting.

E-COMMERCE RULES TIGHTENED: Enacted in November 2014, the Law on the Regulation of Electronic Commerce comes into force on May 1, 2015. All commerce by means of an electronic medium without the requirement of personal communication is subject to the regulations of the new law.

In general, the law will regulate and define the trade relations, the obligations and liabilities of online service providers, the form and content of agreements executed for electronic devices, information duties and penalties for violations of the regulations.

Most notably, the law requires legal provisions of online service providers. Under the law, they have to provide the consumer with clear, accessible and detailed information regarding the terms and conditions of agreements before they are entered into. These regulations also include technical possibilities to correct a fault that might have occurred in the process of entering into agreements by means of e-commerce.

PROTECTION FOR CONSUMERS: The Consumer Protection Law came into force in May 2014. The law's primary purpose is to grant the consumer the right to receive all relevant information relating to the contract and its terms before concluding legal transactions. Thus, the law imposes on the merchant partner an obligation to inform the consumer before or during the conclusion of a contract.

If the consumer has not sufficiently been informed on certain matters, he shall benefit from the rights to the detriment of the party who has drafted the contract. Furthermore, the law regulates the state prohibition of, and subsequent sanctions against, misleading advertisements.

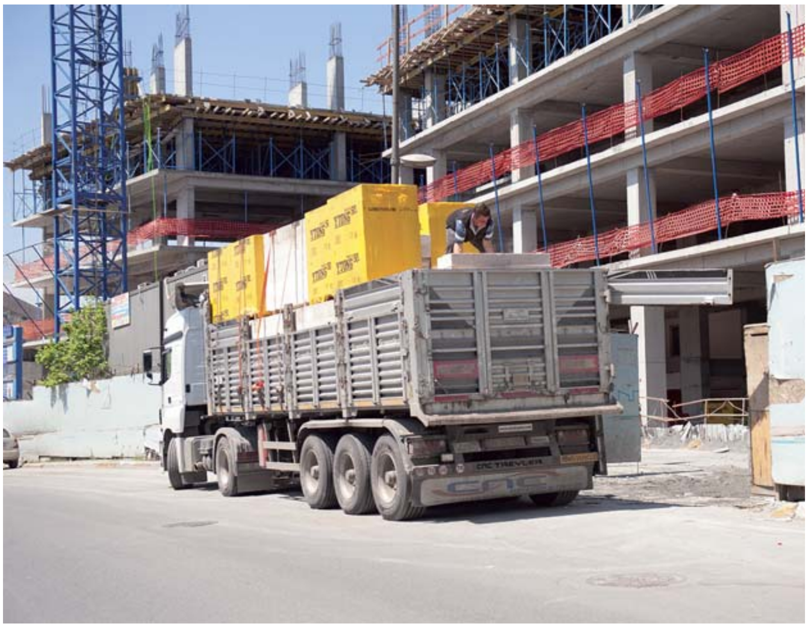
REAL ESTATE & PROPERTY LAW: An important factor in the Turkish construction market has been the government introducing the Law on the Transformation of Disaster Risk Areas (LTDRA) in 2012, triggering an urban regeneration revolution in all the main cities. Within this regeneration process, 6.5m residential homes will be demolished and reconstructed, and it is estimated $400bn will be spent over the next 20 years. LTDRA and its subsequent regulations implemented several incentives to support urban regeneration. These include providing financial support, giving buyers low-interest mortgages and exempting the real estate purchase from several public charges.

The government will also enact laws and regulations to create demand for investments and enable an investment-friendly legal environment in the realm of construction.

PURCHASE OF REAL ESTATE BY FOREIGNERS: The Land Registry Law was amended by Law No. 6302, which simplified the process of purchasing real estate and extended the reciprocity list of countries whose nationals may acquire property in Turkey from 53 to 129. The law also outlines 52 countries whose citizens may acquire property but with certain restrictions.

COMMERCIAL CORPORATIONS: Commercial corporations may purchase real estate and limited in rem property rights in accordance with special laws such as the Petroleum Law, the Law for the Encouragement of Tourism, and the Organised Industrial Zones Law. If a business duly established under the Turkish Commercial Code No. 6103 and the foreign investors either individually or collectively hold 50% or more shares, the company may freely purchase up to 30 ha of property in Turkey and acquire limited in rem rights.

Under the Commercial Code, there are no legal limits on real estate purchase for companies in the case of foreign investors who hold less than 50% of the company's shares. These incentives introduced by the government will benefit both companies and ndividuals alike and create more opportunities for foreign investors to enter the Turkish real estate market.



The 2012 Law on the Transformation of Disaster Risk Areas is triggering massive urban renewal

It appears that the Turkish government with its current agenda will provide more incentives for the property sector.

TIGHTER REGULATION: In response to recent tragic workplace accidents causing the deaths of many workers, the Turkish government plans to enact stricter regulations on upholding the Occupational Health and Safety Law No. 6331, which introduces a system of workplace accident-recording for each employer. This system will reward companies that have a record of no workplace accidents with tax benefits and impose sanctions on those employers who fail to comply or have a record of continuous workplace accidents.

FEWER RESTRICTIONS ON FOREIGN WORKERS: With the Law on Foreigners and International Protection No. 6458, Turkey tries to coordinate the legal and bureaucratic prerequisites in response to an increasing demand for foreign employees within Turkey. The law regulates and simplifies the conditions for obtaining a residence permit, and Article 6 of the Law on Work Permit for Foreigners No. 4817 has been modified and now allows foreign nationals to receive permanent work permission after a lawful stay of eight years.

Many questions still remain with regards to the real-time implications of both laws. The situation is that neither law is comprehensive and both leave unnecessary space for interpretation: for example, whether the documents provided by the foreigner for a residence permit meet the criteria of the law and its listed documents, in light of this ultimately being decided differently by each local authority.

Being in a different district within the same city may cause various bureaucratic obstacles and expenses. The government has said it plans to enact regulations and internal instructions in order to unify the application procedure and to train each authority adequately. These regulations are expected to be passed in 2015.

OBG would like to thank *Kılıç and Partners* for its contribution to THE REPORT Turkey 2015

Harun Kılıç, Partner, Kılıç and Partners

Opening the door

Harun Kılıç, Partner, Kılıç and Partners, on reforms inspiring investor trust

Turkey seeks to become a top-10 economic power by 2023. The most important step in reaching this target will be the provision of the necessary finance needed for business and investment opportunities. The country will have to triple GDP within the next eight years to achieve this target. It is apparent that to do this Turkey will require substantial foreign direct investment. Reforms and amendments to current law and regulation will only serve as part of what is required to attract investors. Confidence and trust in the system and a clear legal framework is the key to achieving more private investment and some industry sectors are clearly benefitting from recent changes.

Infrastructure investment is the key to Turkey's future economic growth. A number of legal reforms have been made in the area of public-private partnerships (PPPs). This has created major foreign investment with the assistance of the European Bank for Reconstruction and Development (EBRD) and the World Bank, investing in such mega projects as the Dalaman Airport Concession, with a loan of €175m provided in February 2015. Significant financing is also available in the health sector, with a PPP programme launched by the Turkish government to build new hospitals. The effectiveness of applicable law plays an important role for these organisations and private investors, who provide finance for PPP projects. It is to Turkey's credit that within the EBRD assessment framework for PPP legislation and effectiveness, it achieved a 70% effectiveness level for the "Definitions and Scope of the Law" category, and 90% effectiveness in the "Settlement of Disputes and Applicable Laws" category, which gives the power to obtain a proper remedy for any breach through international arbitration and the enforcement of arbitral awards.

Reforms create new opportunities for investors: changes in the finance sector and initiatives to attract foreign investors are set to expand Turkey's foreign investment inflow in the financial markets. Through the recent introduction of new regulation, Turkey continues to align its legal basis in financial transactions with the EU. Furthermore, there is stricter regulation on brokers, banks and corporate governance, as well as the introduction of an electronic fund distribution platform (TEFAS) and tax-saving incentives for angel investors. The amendments made to current legislation provide a stronger and more robust financial system and strengthen investor protection.

Another important industry is the energy sector. The generation, sale and distribution of both electricity and gas has been opened up to competition and private investment. Due to a high demand for electricity, the sector has needed significant infrastructural investment, which has increasingly been provided by private companies via privatisation and investments. In 2003 the private investment contribution in the electricity sector was 38%; by 2013 this had increased to 61%, by virtue of new legislation and in line with the government's target. It is expected that the ongoing liberalisation of the energy sector will continue to attract more private companies willing to invest.

Energy and finance are not the only sectors being targeted by foreign investors and companies. The reforms in the telecommunications and e-commerce sectors are a hot topic for foreign investment. These priority sectors were targeted for reform during the first quarter of 2015, with moves to open up competition and restrict the monopolisation of the market through amendments to supplier regulation and restrictions on some of the biggest providers in both mobile and fixed-line services. With the recent introduction and development of 4G mobile technology, the aim is to open up the market by introducing a fourth mobile licence to the sector in order to create more competition and to allow for the private investment in infrastructure required by a 4G network.

While we do also believe amendments are made to Turkish law far too frequently, they are nonetheless necessary to creating a better business environment for our international investors and business clients.