

FOREIGN DIRECT INVESTMENT LAW

Law No. 4875

Date of Passage: June 5, 2003

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OBJECTIVE AND SCOPE

Article 1. The objective of this Law is to regulate the principles to encourage foreign direct investments; to protect the rights of foreign investors; to define investment and investor in line with international standards; to establish a notification-based system for foreign direct investments rather than screening and approval; and to increase foreign direct investments through 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 investor:

- 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:

- i) Establishing a new company or branch of a foreign company by foreign investor,
 - ii) Share acquisitions of a company established in Turkey (any percentage of shares acquired outside the stock exchange or 10 percent or more of the shares or voting power of a company acquired through the stock exchange)
- 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 the Republic of Turkey,
- Stocks and bonds of foreign companies (excluding government bonds),
- Machinery and equipment,
- Industrial and intellectual property rights;

2) Assets acquired from Turkey by foreign investor:

- 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 public interest and upon compensation in accordance with due process of law.

c) Transfers

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

d) Access to Real Estate (annulled by B.2003/71, R: 2008/79 decision of the Constitutional Court dated of 03/11/2008)

e) Dispute Settlement

For the settlement of disputes arising from investment agreements subject to private law and investment disputes arising from public service concessions contracts and conditions which are concluded with foreign investors, 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. In case that stocks and bonds of companies established abroad are used as foreign capital share of foreign investors, the values determined by the relevant authorities in the home country, or by the experts designated by the courts of the home country, or any other international institutions performing valuations will be accepted.

g) Employment of Expatriates

Work 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 accordance with the Article 23 of the Law on Work Permits for Foreigners No. 4817 dated 27 February 2003, the definition of the key personnel within the scope of the Regulation the companies and the entities with foreign capital which shall be in the context of the Regulation, and other special procedures and principles concerning the work permits of the key personnel will be determined in a Regulation to be prepared jointly by the Undersecretariat of Treasury and the Ministry of Labour and Social Security,

Provisions stipulated in Article 14, paragraph 1, sub-paragraph (b) of Law No. 4817 will not be applicable to those 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. Considering the objectives of the development plans and annual programs, the general economic status of the country, trends in international investments and the opinions of the relevant 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 to 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 concerning the investments from all public establishments and institutions and private sector professional organisations.

Foreign investors shall submit the 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 other than for statistical purposes.

OTHER PROVISIONS

Article 5.

a) Existing Companies with Foreign Capital

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

c) Repealed Provisions

The Law for Encouragement of Foreign Capital No. 6224 dated 18 January 1954 is repealed.

The references made to Law No. 6224 in the legislation are considered as referring to the related provisions of this Law.

d) Any amendments concerning the articles of this Law can only be done by means of amending or appending provisions to this Law.

PROVISIONAL ARTICLE 1. The provisions of the decrees, communiqués and circulars in effect, which are in conformity with this Law, shall remain in force until new regulations for the implementation of this Law take effect.

EFFECTIVENESS

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

ENFORCEMENT

Article 7. The provisions of this Law shall be enforced by the Council of Ministers.