

The Turkish Update

This is the Second Quarter 2009 Edition of our email news service – The Turkish Update. This edition provides concise summaries of sector specific legal developments in Turkey through April, May and June 2009 and includes brief articles on current “Hot Topics” in Turkish law.

Scroll down to view all the updates or click on the headings below to shortcut directly to your relevant sector:

[Banking & Finance](#)

[Corporate and Commercial](#)

[Competition](#)

[Telecommunications](#)

[Pharmaceuticals](#)

[Energy and Infrastructure](#)

[IP/Technology](#)

[Media](#)

[Hot Topics](#)

Feel free to forward this email on to anyone else who might be interested in legal developments in Turkey: they can join The Turkish Update by sending an email with the subject heading “subscribe” to theturkishupdate@dentonwildesapte.com.

You can also use this email address to provide us with comments or feedback on The Turkish Update. Should you wish to unsubscribe from The Turkish Update you can simply send an email to this address with the word “unsubscribe” in the subject heading.

Part 1 - Legal developments

[Banking and Finance](#)

New measures for foreign currency loans and foreign currency indexed loans: New measures for foreign currency loans and foreign currency indexed loans. The Decree of the Council of Ministers numbered 2009/15082 published on 16 June 2009 introduces various new measures:

- it cancels the minimum term limit for foreign currency loans extended to Turkish residents by banks working in Turkey for financing of exports, sales and deliveries;
- from now on, foreign currency loans must have an average term of more than one year and loan amount of more than US\$5 million;
- from now on, foreign currency loans to Turkish residents by banks working in Turkey will be free, if:
 - (i) the security receivables amount kept in Turkey by banks working in Turkey is not exceeded; and/or
 - (ii) the value of foreign securities issued by or with the surety of the central governments and central banks of OECD member countries is not exceeded;
- banks will only be able to extend foreign currency indexed loans to Turkish residents for commercial or occupational purposes; and
- Turkish residents can only secure foreign currency loans and foreign currency indexed loans in the form and manner allowed under the Decree.



Corporate and Commercial (including capital markets)

Online public disclosure platform launched: The Official Gazette published the Capital Markets Board's (CMB) Communiqué Serial: VIII No: 61 on 30 May 2009. Under the Communiqué, listed companies and funds, brokerage houses and independent audit firms will from now on have to file various information, reports and explanations to an online public disclosure platform: www.kap.gov.tr. The documents/events that these entities must disclose on line include independent audit reports, material events, financial reports, general assembly minutes and articles of association. Such entities have to get a certificate for a secure electronic signature from the various authorities approved by CMB to make online disclosures. The entities must continue to make public disclosures to the CMB and/or Istanbul Stock Exchange in parallel with online public disclosures.

Turkey enters UN Convention on Contracts for the International Sale of Goods: Through a law published on 14 April 2009. This Convention regulates the form of the sale contract, and the rights and duties of the seller and the buyer arising from it.

Competition

New members of the TCB: New members of the TCB, Prof. Dr. Nurettin Kaldirimci (president of the Board), Dr. Cevdet İlhan Günay (candidate of the Court of Appeal) and Murat Cetinkaya (candidate of the Turkish Competition Authority) started their duty on 7 April 2009.

Fines imposed on the major steel producers for breach of competition rules: On 16 June 2009, the Turkish Competition Board (TCB) completed its investigation in the flat steel market. The investigation concerns the following companies (names shortened): Ereğli Demir; ArcelorMittal Ambalaj; Arcelor Mittal FCE; and Borçelik. The TCB decided that:

- The 25 per cent shareholding of Ereğli Demir in ArcelorMittal Ambalaj would result in coordination of competitive behaviour between the parties and was in breach of competition rules. Therefore, the TCB fined Ereğli Demir TL10.06 million and ArcelorMittal Ambalaj TL1.2 million.

- The 9.34 per cent interest of Ereğli Demir in Borçelik (a joint venture between Borusan Group and Arcelor Group) was restricting competition in the market. Therefore, the TCB fined Ereğli Demir TL10.06 million and Borçelik TL2.5 million.
- Ereğli Demir must end its partnership in Borçelik and ArcelorMittal Ambalaj within 12 months following the delivery of the TCB's reasoned decision.

Fines imposed for abuse of dominant position in pharmaceuticals: On 20 April 2009, the TCB fined Sanofi Aventis İlaçları Ltd. Şti TL3.6 million as it has abused its dominant position by fixing sales conditions in the market of various medicines.

TCB Q&As on fuel oil distribution contracts (and ancillary usufruct arrangements): Published by the TCB on 11 June 2009 following its decision on 5 March 2009 on fuel-oil distribution contracts. For further details on this decision please see the Competition section of The Turkish Update - First Quarter 2009. The Q&As answer various questions from various entities in the fuel oil distribution market about how the TCB will apply its approach on specific cases. Please let us know if you want further information on the Q&As.

Telecommunications

For a summary of the key legal developments in the telecommunications sector please see our article entitled "Groundbreaking telecommunications law: secondary legislation so far" in the Hot Topics in Part 2 of this Update.

Pharmaceuticals

Amendments to Regulation on Pharmaceutical Product Registration: Published on 22 April 2009. The amendments mostly focus on what documents/information licence owners must give to the Ministry of Health to register their pharmaceutical products

Energy and Infrastructure (including oil and gas and electricity)

Electricity

Amendment to the Electricity Market Licence Regulation: Published in the Official Gazette on 20 June. Some of the changes this Regulation introduces are:

- the rights and duties of a company which has applied for a generation or auto-producing licence can transfer to another legal entity. However, this transfer can only take place if this legal entity separated from or has the same ownership as the transferee. Any such transfer needs Energy Market Board approval;
- a company cannot assign rights of distribution and transmission (granted under a relevant licence) to third parties without Electricity Market Board approval. Companies which have electricity generation licences do not need such approval;
- it sets out extra documents/information that companies that have received Electricity Market Board consent for a licence must provide;
- further duties for legal entities to amend their Articles of Association to comply with the Electricity Market Licence Regulation;
- it amends the rules on licence amendments;
- It amends the procedure for EMRA to return a letter of guarantee (presented as part of a licence application) if EMRA temporarily accepts the relevant power generation plant;
- legal entities with an electricity wholesale licence can affiliate with legal entities engaged in electricity generation; and
- share transfers leading to a change of control in a legal entity's partnership are subject to Board approval. Issuing redeemed shares is no longer subject to such approval.

The Electricity Market Balancing and Settlement Regulation: Published in the Official Gazette on 14 April. This Regulation sets out procedures and principles for:

- balancing electricity supply and demand; and
- achieving settlement between licence-owning entities.

The Regulation replaces the old Electricity Market Balancing and Settlement Regulation of 3 November 2004, which is still applicable until 1 October 2009. In practice, we understand that electricity companies are continuing to apply the old regulation.

TETAS tender: In April, TETAS, the Government-run wholesaler of electricity, cancelled the tender to buy electricity from private companies for four years.

Privatisation tenders: The privatisation administration published tender announcements for the following electricity distribution companies: Coruh Elektrik Dagitim A.S.; Osmangazi Elektrik Dagitim A.S.; and Yesilirmak Elektrik Dagitim A.S. All tenders will be block sales.

Liquefied Natural Gas

Regulation on Liquefied Natural Gas Plant Use:

Published in the Official Gazette on 16 May. The Regulation mainly deals with how LNG plants should store LNG.

Nuclear

Nuclear Tender: TETAS, Government-run wholesaler of electricity, filed its report on the first nuclear tender of Turkey to the Ministry of Energy on 26 June. The Government will now decide on whether to go on with the tender or to cancel it.

Renewable energy

US\$600 million loan from the World Bank: The World Bank has granted a US\$600 million loan to Türkiye Sınai ve Kalkınma Bankası and Türkiye Kalkınma Bankası for financing private renewable energy projects. The Turkish Treasury guaranteed and publicly announced the loan.

Draft Law on Renewable Energy: Government will discuss this law in the next legislative year and it may come into force in the second half of 2009.

IP/Technology

Simplifying application proceedings before the Turkish Patent Institute:

On 21 April 2009, three amending regulations on Patents, Geographical Marks and Industrial Designs came into force. The main aim of these amendments is to streamline procedures at the Turkish Patent Institute by decreasing the number of documents which applicants need to present.

Abolition of various IP Decrees: The Turkish Constitutional Court has, in two different decisions, abolished certain important rules on certain infringements and their sanctions of the:

- Patent Decree;
- Geographical Marks Decree; and
- Industrial Designs Decree.

The Court's reasoning was the rules infringe the basic Turkish constitutional principle that "laws" and not "decrees" should set out crimes/punishments. The Court's decision on the Geographical Marks Decree will come into force on 30 November 2009 whereas its decisions on the Patent Decree and Industrial Designs will come into force on 1 June 2010. Meanwhile the onus is on the Turkish Government to fill in the legislative "gap" by passing relevant laws before those dates.

We will continue to follow these developments, however if you want any further information about this decision or its potential impact please let us know.

Media

Elections to the Radio and Television High Board

(RTUK): According to the General Assembly decision of the Parliament of 28 May 2009 Hasan Tahsin Fendoglu (AKP - the current Government's nominee) and Esat Ciplak (MHP - a Turkish nationalist party's nominee) will replace Pasa Yasar (AKP's nominee) and Saban Sevinc (CHP - a Turkish social democratic party's nominee) in the RTUK Board. In addition Davut Dursun (AKP's nominee) was re-elected for the next term.

State broadcaster to buy a stake in Euronews

S.A: According to ministerial decision no. 2009/14919 of 6 April 2009, the state broadcaster, the Turkish Radio and Television Corporation (TRT), may buy up to 16 per cent of the shares in Euronews S.A. to improve Turkish broadcasting and aid Turkish prospective membership to the European Union. Euronews S.A. is a multilingual and pan-European television news channel launched on 1 January 1993 in Lyon. The channel produces and broadcasts news programmes simultaneously in eight languages on issues that are of European and global concern.

Part 2 - “Hot Topics”

Scroll down to view all the Hot Topics or click on the headings below to shortcut directly to your preferred topic:

[Debt enforcement tips in Turkey](#)

[The Turkish Government’s new investment incentive plan](#)

[Groundbreaking telecommunications law: Secondary legislation so far](#)

Debt enforcement tips in Turkey

<p>1 A foreign creditor seeking enforcement in Turkey</p>	<p>A foreign creditor has the right to start a lawsuit or an enforcement action against a debtor in Turkey even if there is no reciprocal agreement between Turkey and the creditor’s own jurisdiction. However, in such a case the foreign creditor will have to provide “security” to the court to guarantee paying the relevant court expenses and potential damages the debtor may suffer if the creditor fails in proving its case. The court usually fixes such security amount to be a certain percentage of the disputed amount. If a reciprocal agreement exists between Turkey and the foreign creditor’s own jurisdiction, the foreign creditor may not be needed to provide security when starting a lawsuit or an enforcement proceeding against the debtor in Turkey.</p>
<p>2 Legal proceedings for a creditor that has neither security over assets of the debtor nor any negotiable instrument issued or signed by the debtor to secure the amount</p>	<p>If a creditor has neither security (e.g. mortgage, movable pledge, share pledge, bank account pledge) over assets of the debtor nor any negotiable instrument (e.g. cheque, promissory note, bill of exchange) issued or signed by the debtor to secure the debt, the creditor has two choices:</p> <ul style="list-style-type: none"> (i) the creditor may directly start a lawsuit and after getting a binding court decision start “binding” enforcement proceedings against the debtor; or (ii) the creditor may immediately start “ordinary” enforcement proceedings against the debtor. <p>If there is any objection from the debtor, the creditor must start a lawsuit for cancellation of such objection. The enforcement proceedings against the debtor will only continue after the debtor’s objection has been cancelled by a binding court decision. If the court finds the objection unjustified, the court may order the debtor to pay the creditor an extra penalty of up to 40% of the disputed amount.</p>
<p>3 Legal proceedings for a creditor that has security over assets of the debtor or a negotiable instrument issued or endorsed by the debtor to secure the amount owed</p>	<p>If a creditor has security (e.g. mortgage, movable pledge, share pledge, bank account pledge) over assets of the debtor, or a negotiable instrument (e.g. cheque, promissory note, bill of exchange) issued or endorsed by the debtor to secure the debt, the creditor may start “special” enforcement proceedings against the debtor. If there is an objection from the debtor to the enforcement proceedings, the creditor or sometimes the debtor must start a lawsuit for the continuance or, as the case may be, cancellation of the enforcement proceedings.</p>

<p>4 Court fees: 5.4% of the disputed amount for a lawsuit and 0.5% of the disputed amount for enforcement proceedings</p>	<p>To start a lawsuit the creditor needs to pay 5.4% of the disputed amount to the competent court, of which one-quarter (1.35%) must be paid at the outset and the balance (4.05%) after the judgment becomes available. For starting enforcement proceedings, 0.5% of the disputed amount must be paid to the enforcement office. The creditor must pay the above court fee (5.4%) if the debtor objects during the enforcement proceedings and the creditor starts a lawsuit for the cancellation of the objection. In such a case, the amount which has already been paid to the enforcement office (0.5%) will be deducted from the first payment made to the court (1.35%). These court charges are recoverable from the debtor if the creditor gets a favourable binding court decision..</p>
<p>5 Consider the timing</p>	<p>If the debtor does not object, the enforcement proceedings will usually finish more quickly than a lawsuit. If a lawsuit is started for the cancellation of an objection to enforcement proceedings or if a lawsuit is started against the debtor directly without starting any enforcement proceedings, court proceedings could take between 18 and 30 months. However, if the debtor continues to be uncooperative, sometimes it could be 3 to 4 years.</p>
<p>6 If the preferred approach of the creditor is to start enforcement proceedings, then decide which type of enforcement proceedings</p>	<p>If the debt is secured by security (e.g. mortgage, moveable pledge, share pledge, bank account pledge) the creditor will need to start "Enforcement by Foreclosure of Collateral" proceedings. If the debt is not secured, then the creditor may start enforcement by "Ordinary Attachment" proceedings or "Ordinary Bankruptcy" proceedings. If the debt arises out of a negotiable instrument then consider starting "Special Proceedings for Negotiable Instruments"..</p>
<p>7 The favourite enforcement proceedings for secured creditors</p>	<p>Due to its ease and haste compared to the other enforcement proceedings in Turkey the "Enforcement by Foreclosure of Collateral" proceedings are usually the preferred choice of creditors enforcing in Turkey. The precondition for such proceedings is that the creditor has been granted security to secure the sum outstanding. The disadvantage of this enforcement proceeding is that, if it is available to a creditor, the creditor may not resort to other enforcement or court proceedings before it enforces its security. If the sale proceeds of the security do not satisfy the claim of the creditor, only then can the creditor start other proceedings against the debtor.</p>
<p>8 Decide whether the debtor has enough valuable assets to attach before starting attachment proceedings</p>	<p>A creditor should always be mindful of the nature of the assets of the debtor, the whereabouts of such assets and whether such assets are already the subject of other court proceedings, attachments or encumbrances.</p> <p>To attach any assets in Turkey enforcement proceedings must be started before the competent enforcement office. After completion of such enforcement proceedings the assets of the debtor may only be attached through the enforcement office. Foreclosure of such assets may only be made by the enforcement office by public and not private sales. However, if the enforcement proceedings are started further to a binding court decision, then the attachment proceeding will be performed directly without waiting for completion of enforcement proceedings before the enforcement office.</p>

<p>9 Be wary of the debtor applying for protection in bankruptcy proceedings</p>	<p>Under certain circumstances, if bankruptcy proceedings are started against a debtor, the debtor may seek protection through (i) Reorganisation, (ii) Postponement of Bankruptcy or (iii) Restructuring of Capital Stock Companies by Conciliation. The debtor may apply for protection from a court to prevent any enforcement proceedings and lawsuits being filed against the debtor by seeking protection from creditors through any of (i), (ii) or (iii) above.</p>
<p>10 Getting a preliminary injunction decision from a Turkish court against the debtor</p>	<p>Under Turkish law it is possible to get a preliminary injunction decision before or during an enforcement proceeding or a lawsuit on the assets of the debtor to earn rights against such assets for amounts owed that are not secured by a security. Getting a preliminary injunction from the court will depend on the nature of the debt and the evidence provided by the applicant to persuade the court that in the circumstances injunctive relief is appropriate.</p> <p>For example; if the applicant holds a negotiable instrument (e.g. cheque, promissory note, bill of exchange) issued or endorsed by the debtor, a Turkish court will presumably need the applicant to provide security to the court of between 15% and 100% of the disputed amount. In case of a preliminary injunction granted before starting enforcement proceedings/lawsuit against the debtor, the creditor must start such proceedings within 10 days beginning from the grant of the preliminary injunction. Otherwise, the preliminary injunction decision becomes invalid.</p>
<p>11 Recognition and enforcement of foreign court judgments and foreign arbitral awards in Turkey</p>	<p>Under Turkish International Private Law, a foreign court judgment must fulfil the following conditions to be enforced in Turkey: (i) reciprocity, (ii) the judgment must have become final and binding, (iii) the dispute must not fall within the exclusive jurisdiction of Turkish courts, (iv) compliance with Turkish public policy rules and (v) the judgment debtor's rights must have been respected during the trial.</p> <p>Turkey has signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NY Convention). Therefore, arbitral awards obtained from a contracting state of the NY Convention will be recognised and enforced in Turkey under the NY Convention.</p> <p>The bankruptcy of a Turkish individual or corporation, however, falls within the exclusive jurisdiction of the Turkish courts. Therefore, the bankruptcy of a Turkish individual or corporation may not be the subject of either a foreign court decision or an arbitral award.</p>

The Turkish Government's new investment incentive plan

On 4 June 2009 the Turkish Government announced a new incentive plan for investments in Turkey. This plan has been jointly prepared by the Turkish Treasury, Ministry of Finance and Ministry of Industry and Commerce. The Turkish Cabinet's decision regulating the general principles and procedures for the incentive plan was published on 16 July 2009.

We set out below a general summary of the incentives that will be applied. Please contact us if you need more details on the incentive plan.

1. What types of investment can benefit from the incentive plan?

The plan sets out certain incentives which apply to "large-scale" investments in certain sectors, and other incentives which apply on a regional/sector-specific basis.

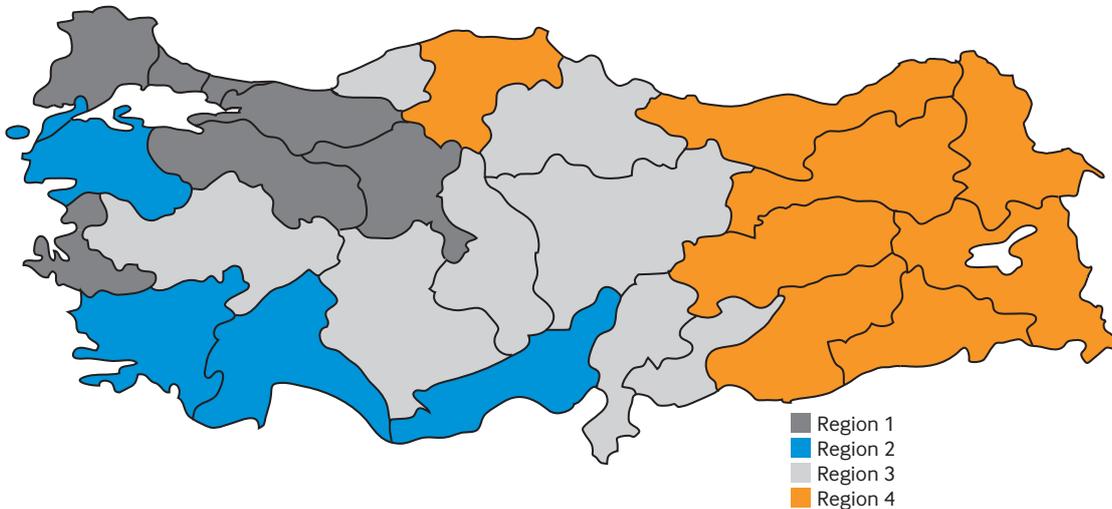
(a) "Large-scale" investments

Investments as set out in the table below are "large-scale" investments under the incentive plan:

Sector	Minimum amount of investment for it to be considered "large-scale" and benefit from incentives
Production of chemicals	<ul style="list-style-type: none"> • TL1,000,000,000 for production of main chemicals • TL300,000,000 for production of other chemical products
Production of refined oil products	TL1,000,000,000
Transport services through transit pipeline	TL 50,000,000
Assembly and production of motor vehicles (which run on land only) and their parts	TL250,000,000
Production of railway and tram locomotives and/or wagon	TL 50,000,000
Harbour and harbour services	TL250,000,000
Electronic industry investments	<ul style="list-style-type: none"> • TL1,000,000,000 for production of LCD/Plasma • TL150,000,000 for production of module panels
Production of medical instruments, sensitive and optical instruments	TL 50,000,000
Medicine production	TL100,000,000
Production of air and space vehicles	TL 50,000,000
Investments in machine production	TL 50,000,000
Mining investments	TL 50,000,000

(b) Regional/sector-specific investments

The plan divides Turkey up into four geographical regions which will benefit from different sector-specific incentives:



Region Number	Regions included	Sectors which will benefit from investment incentives ¹
Region 1	Istanbul, Ankara, Izmir, Bursa, Eskisehir, Bilecik, Kocaeli, Sakarya, Duzce Bolu, Yalova, Tekirdag, Edirne, Kirklareli	Incentivised sectors and minimum investment amounts vary on a provincial basis within these regions. Please let us know if you need more details on these.
Region 2	Adana, Mersin, Aydin, Denizli, Mugla, Antalya, Isparta, Burdur, Balikesir, Canakkale (excluding Bozcaada and Gokceada)	
Region 3	Zonguldak, Karabuk, Bartin, Manisa, Afyon, Kutahya, Usak, Konya, Karaman, Gaziantep, Adiyaman, Kilis, Hatay, Kahramanmaras, Osmaniye, Kayseri, Sivas, Yozgat, Kirikkale, Aksaray, Nigde, Nevsehir, Kirsehir, Samsun, Tokat, Corum, Amasya	
Region 4	Trabzon, Ordu, Giresun, Rize, Artvin, Gumushane, Malatya, Elazig, Bingol, Tunceli, Kastamonu, Cankiri, Sinop, Erzurum, Erzincan, Bayburt, Sanliurfa, Diyarbakir, Mardin, Batman, Sirnak, Siirt, Agri, Kars, Igdir, Ardahan, Van, Mus, Bitlis, Hakkari, Bozcaada, Gokceada	

¹ Please note that these sectors have not been defined in detail at present.

2. What are the investment incentives?

The following investment incentives apply:

(a) Discounted corporation tax or personal income tax:

The incentive plan sets out the following discounts on corporation tax (which is normally 20 per cent) or personal income tax for companies/people who hold an investment incentive certificate from the Treasury, based on the type of investment

	Regional Investments	Large-scale Investments
Regions	Corporation Tax or Personal Income Tax Discount Amount to be applied (%)	Corporation Tax or Personal Income Tax Discount Amount to be applied (%)
1	25	25
2	40	40
3	60	60
4	80	80

However, if the investment is made before 31 December 2010, the following corporation tax or personal income tax discount amounts will apply:

	Regional Investments	Large-scale Investments
Regions	Corporation Tax or Personal Income Tax Discount Amount to be applied (%)	Corporation Tax or Personal Income Tax Discount Amount to be applied (%)
1	50	50
2	60	60
3	80	80
4	90	90

The discounts in corporation tax or personal income tax will apply only until the profits of the investor company/person reach a certain defined threshold (which is determined by calculating the amount equal to the "investment contribution percentage" of the total investment amount and then dividing this by the reduced corporation tax percentage to be applied).

(b) Treasury will pay social security contributions for employers:

The Turkish Treasury will pay the social security contributions that employers must make for their employees for the following time-periods based on the type of investment:

Regions	Investments made before 31 December 2010	Investments made after 31 December 2010
1	2 years	–
2	3 years	–
3	5 years	3 years
4	7 years	5 years

(c) Treasury loan interest support

Research and development investments; environmental investments; and regional/sector-specific investments in Regions 3 and 4 can benefit from this support. If the Treasury gives such an investment an investment incentive certificate, the Treasury may then decide to pay some of the interest that accrues on 70 per cent of the value of the relevant investment. The interest support depends on the type of investment and type of loan, but the maximum amount of interest support cannot exceed TL300,000 for research and development investments and environmental investments; and TL500,000 for regional/sector-specific investments in Regions 3 and 4.

(d) Land provided by the Treasury for investment in certain areas

The Turkish Government has stated under the plan that it will "assign lands for their investments".

(e) Relocation tax support to textile companies

Companies which:

- work in the textile sectors (including textile "confection", "ready-to-wear", leather and leather goods);
- employ a minimum of 50 employees; and
- agree to resettle from Region 1 or 2 to Region 4 before 31 December 2010

will benefit from the following investment incentives:

- 75 per cent discounted corporation tax or personal income tax for five years;
- the Government may grant land for investment;
- the Turkish Treasury will pay the social security contributions that employers must make for their employees for five years; and
- the Turkish Treasury will pay the transport costs for companies moving to Region 4 if they move before the end of 2009.

3. Incentives which apply to all other types of investment (excluding the above)

The following incentives will continue to apply to all other types of investment in Turkey:

- customs tax exemptions (investors will be able to benefit from certain exemptions from tax on the import/export of goods); and
- VAT exceptions (investors will in certain circumstances be able to benefit from certain VAT exceptions).

Groundbreaking telecommunications law: Secondary legislation so far

1 Introduction

As mentioned in our article "Groundbreaking telecom law to come into effect in May 2009" (which was published in the Last Quarter 2008 Edition of The Turkish Update), some of the changes considered by the groundbreaking Electronic Communication Law No.5809 (the Law) which was published in the Official Gazette on 10 November 2008 need implementation through secondary legislation. This article looks at some of the secondary legislation which has been drafted by the new Information and Communication Technologies Authority (ICTA) so far.

2 Regulation on Authorisations on Electronic Communication Sector published on 28 May 2009

As previously mentioned, the Law clarified and simplified the previous system of regulatory authorisation for electronic communication providers. It did this by requiring companies looking to launch electronic communication services, networks and infrastructures to get ITCA authorisation either by prior notice or by gaining a "right of use".

- **Prior notice:** any company looking to launch electronic communication services, networks and infrastructures has to give notice to ITCA before they start activities.
- **"Right of use":** ITCA will decide which type of electronic communication services, networks and infrastructures need to get a "right of use" (as well as provide prior notice). The Law provides that a "right of use" should be held if an electronic communication service needs ITCA to grant a scarce resource (such as a number, frequency or satellite position) for the service to work.

"Rights of use" are finite (they can be granted for a maximum of 25 years) and will usually be granted by ITCA within 30 days of application. However, the application may take longer than this where the application is about service where ITCA only allows a limited number of service providers. For example, if the application is for a GSM licence (which are limited in number by the ITCA) the process may take longer and the application may be subject to separate specific legislation or tender specifications.

This Regulation sets out in further detail the procedures and features of gaining a licence from ITCA for electronic communication services, networks and infrastructures, some of which we briefly summarise below.

2.1 Eligibility

(a) General requirements (see Article 7(1) of the Regulation)

A legal entity which applies to the ITCA for authorisation (an Applicant) should meet certain requirements which include

- an Applicant entity should be a Turkish joint stock company or a limited liability company;
- the Applicant's scope of business (as set out in its Articles of Association) should clearly show: "establishment and operation of electronic communication services, networks and infrastructures" as well as the particular electronic communication activity for which it asks for authorisation; and

- not more than 5 per cent of the Applicant's shareholders should have been found guilty of certain crimes (e.g. terror crimes, crimes against the state, money laundering, tax evading etc).

(b) Requirements for an Applicant for a service where the ITCA only allows a limited number of service providers (see Article 7(2) of the Regulation)

An Applicant which applies for authorisation for a service where the ITCA only allows a limited number of service providers should satisfy the following requirements:

- an Applicant entity should be a Turkish joint stock company and all its shares should be registered shares;
- the Applicant's scope of business (as set out in its Articles of Association) should clearly show: "establishment and operation of electronic communication services, networks and infrastructures" as well as the particular electronic communication activity for which it asks for authorisation; and
- as mentioned above, there may be other specific requirements set out in relevant specific legislation and/or the tender specifications.

2.2 Fees

The Regulation sets out fees as follows:

- Administrative fee: 0.35 per cent of the net sales revenue of the Applicant/Operator (see Article 16 of the Regulation). ITCA has the right to decrease or increase this rate as it thinks necessary but, according to Article 11 of the Law and Article 16 of the Regulation, this fee cannot exceed 0.5 percent of the net sales revenue of the Applicant/Operator; and
- "Right of use" fee: the minimum values of these fees shall be determined by the Council of Ministers on the proposal of ITCA and the decision of the Ministry of Transport.

The fees for Applicants which apply for authorisation for a service where the ITCA only allows a limited number of service providers shall be determined by ITCA and ITCA may reconsider such fees and revise them as it thinks necessary.

3 Numbering Regulation published on 27 June 2009

As number allocation is a scarce source, ITCA was authorised to make a national numbering plan under the EC Law. Therefore ICTA adopted this Regulation with the aim of regulating numbering allocation policies in greater detail. Please let us know if you would like further information on the detail of this Regulation.

4 Regulation on the Devices with Electronic Identity published on 27 June 2009

This Regulation introduced some duties for mobile phone operators to tackle the cloned

mobile telephones problem. However, many Turkish mobile telephone producers feel that it did not go far

enough to deal with this problem. Please let us know if you would like further information on the detail of this Regulation.

5 Regulation on the Use of Turkish Language on Short Messaging Services (SMS) published on 16 May 2009 and came into force on 1 July 2009

This Regulation states that both device producers and the operators shall enable their devices/services to allow the use of Turkish characters (e.g. "ç,Đ,ö,ü, etc). ITCA shall be the responsible body to ensure the application of the SMS Regulation.

Further Information

Ece Güner

T +90 (0) 212 282 4385

eg@guner.av.tr

Ece Güner is the founder and managing partner of Güner Law Office. She specialises in M&A, energy, telecom and projects work. She also has broad experience with all types of commercial contracts, litigation and arbitration, privatisation and banking work. Ece has spoken at many conferences on the legal framework for electricity and petroleum in Turkey. She is regarded as a leading energy and project finance lawyer by the International Projects 500, Chambers Global and An International Who's Who of Project Finance Lawyers.

Brett Hailey

T +90 (0) 212 284 6091

brett.hailey@dentonwildesapte.com

Brett is a resident partner of Denton Wilde Sapte in Istanbul. He has over 20 years of experience in banking, structured finance transactions and tax-based transactions, as well as in corporate and commercial transactions in many jurisdictions around the world. Brett is qualified as a lawyer in Australia and in England and Wales. He has also worked in London, Frankfurt, Paris, Rome and Singapore.

Denton Wilde Sapte Danismanlik Hizmetleri
Avukatlik Ortakligi
Levent Caddesi, Alt Zeren Sokak No:7
Daire 1, 34330, Levent, Istanbul, Turkey
T +90 212 284 6091
F +90 212 284 9086
www.dentonwildesapte.av.tr

Guner Law Office
Levent Cadessi
Alt Zeren Sokak No: 7 Daire 2
34330 Levent
Istanbul
Turkey
T +90 (0)212 282 4385
F +90 (0)212 282 4305

This document does not constitute legal or other advice. The information it contains is non-specific and by using it you agree to accept the terms and limits of liability you can access on www.dentonwildesapte.com/terms

Denton Wilde Sapte Danismanlik Hizmetleri Avukatlik Ortakligi is regulated by and registered with the Istanbul Bar Association.