

FOREIGN DIRECT INVESTMENT

ACT Law No. 4875

Date of Endorsement : 5.6.2003

Purpose and Scope

Article 1 - The objective of this Act is to encourage foreign direct investments; to protect the rights of foreign investors; to define investment and investor in line with international standards; to transform the current screening and approval system into a notification based system for foreign direct investments; and thus regulate the principles to increase foreign direct investments through established policies. This Act comprises the treatments to be applied to foreign direct investments.

Definitions

Article 2 - The terms used in this act shall have the following meanings:

a) Foreign Investor:

- 1) Real persons residing abroad possessing foreign nationality and Turkish citizens residing abroad, and
- 2) Foreign legal entities established under the laws of foreign countries and international institutions, that effect foreign direct investments in Turkey,

b) Foreign Direct Investment:

- Capital in cash in the form of convertible currency purchased and sold by the Central Bank of Turkey,
- Stocks and bonds (other than Treasury bonds) and other forms of capital in kind participation in the companies,
- Machinery and equipment,
- Industrial and intellectual properties, that are acquired from abroad, or;

i) Establishment of a new company or a branch office,

ii) Participation in an already existing company either by acquisition of shares except through stock exchanges or by acquisitions of minimum 10% of shares or an equal proportion of voting rights through stock exchanges, by means of;

- Reinvested earnings, financial claims, or any other investment related rights of financial value; and
- Commercial rights for to the exploration and extraction of natural resources, that are acquired in Turkey, by foreign investors.

c) Undersecretariat: The Undersecretariat of Treasury.

Principles of Foreign Direct Investments

Article 3 –

a) Freedom to invest and national treatment:

Unless there are no international agreements or special legal provisions to the contrary;

- 1- International investors are free to make direct investments in Turkey,
- 2- International and Turkish investors are subject to equal treatment.

b) Expropriation and Nationalization;

Foreign direct investments, in accordance with current legislation, may not be expropriated or nationalized except for a public purpose upon prompt, adequate as well as effective compensation.

c) Transfers;

Foreign investors may freely transfer profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, proceeds derives from their commercial activities as well as payments under licence, management agreement, technical assistance agreements and repayments of foreign credit principal and interest through banks and private finance institutions.

d) Acquisition of an immovable;

Foreign investors may freely acquire of an immovable or have limited rights in rem through a legal entity incorporated under Turkish Law, that foreign investors may only acquire of an immovable where Turkish citizens have right to acquire of an immovable.

e) Settlement of disputes;

For settlement of disputes arising from investment agreements subject to private law and disputes arising from exclusive public service provisions and concession agreements made between foreign investors and the Turkish State, in addition to authorized local courts, the parties are entitled to apply to national or international arbitration or other means of dispute settlement channels, provided that the conditions in the related regulations are fulfilled and the parties agree thereon.

f) Assessment of the value of capital in kind;

The capital in kind is valued within the regulations of Turkish Commercial Law. However, the shares of companies residing abroad will be accepted as foreign capital share of foreign legal entities and the values determined by the courts of the home country, or other relevant authorities in the home country, or any other international credit rating agency's valuations will be accepted while adding to Turkish company as capital in kind.

g) Employment of foreign personnel;

Working permits for foreign personnel to be employed in companies, branch offices and organizations to be established within the scope of this Law will be granted by the Ministry of Labour and Social Security.

Other principles and procedures of particular feature that will specify which foreign investor companies and organizations are deemed to be within the scope of this application and the definitions of key foreign personnel to be employed and their working permits will be regularized by a directive to be jointly prepared by Undersecretariat of the Treasury and the Ministry of Labour and Social Security in accordance with the provisions of Article 23 of Law 4817 dated 27 February 2003 on Working Permits for Foreign Personnel.

Provisions stipulated in Article 14, paragraph 1, sub-paragraph (b) of Law 4817 will not be applicable to foreign personnel to be employed within this framework. The conditions under which the provisions stipulated in paragraph 1 of Article 13 of Law 4817 will be applied to key foreign personnel employed, will be specified in the directive to be prepared.

h) Liaison offices;

The Undersecretariat may grant permission to foreign legal entities in order to open a liaison office in Turkey provided that they shall not engage in any other commercial activities.

Determination of policies and information requests

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 organizations; the Undersecretariat is authorized to establish the general framework of policies relating to foreign direct investment, by taking into account general economic conditions, annual welfare programs, and its aims as well as tendencies occurring globally in international foreign direct investment. The consent of the Undersecretariat is necessary for any amendments to be made in the laws and regulations in force concerning foreign direct investments and for any legislative drafts thereto.

The Undersecretariat, aiming at establishing and developing an information system on foreign direct investments, is authorized to request statistical data related to investments from all public establishments and authorities and professional organizations of the private sector.

Foreign investors will submit the statistical data concerning their investments to the Undersecretariat, in accordance with the procedures and principles stipulated in the Directive to be prepared by the Undersecretariat. The subject data, except for statistical purposes cannot be used as any means of proof.

Miscellaneous Provisions

Article 5 –

a) Existing with foreign investor companies;

All companies established pursuant to the Law No: 6224 dated 18 Jan. 1954 shall be subject to this Law, reserving their granted rights.

b) Directive;

The application procedures of this Law will be regulated by a Directive to be prepared by the Undersecretariat within one month following the publication of this Law.

c) Repealed Provisions; Law for the Encouragement of Foreign Capital with No: 6224 dated 18 Jan. 1954 is repealed. Any references made to Law No: 6224 in the laws and regulations are considered as made to this Law.

d) "Amendments on the provisions of this Law are to be regularized only by adding provisions to this Law or by affecting revisions thereto".

Provisional Article 1 – The provisions of the decrees, communiqués and circulars, in effect, which are in conformity with this Law, shall remain to be in force until new regulations to regularize the implementation of this Law take effect.

Effectivity

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

Enforcement

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

<http://www.yased.org.tr/page.asp?PageID=1105>