

# An Overview of Legal Reforms in Turkey to Further Enhance Economic Development

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## Jurisdiction

Turkey

## Relevant Companies

Gun + Partners

## Abstract

**Pelin Baysal, Partner and Cansu Akbiyikli, Senior Associate at Gun + Partners provide an overview of legal reforms in Turkey aimed at enhancing the country's economic development.**

## Analysis

In recent years, the Turkish Government has been taking significant steps to continue enhancing the region's economic environment including implementing a number of legislative developments.

The Law Amending Certain Laws for Improvement of the Investment Environment, 6728 was published in Official Gazette 29796 on 9 August 2016 (the Amendment Law). The Amendment Law introduced a number of improvements to various laws including but not limited to the Companies, Stamp Tax and other tax laws.

The Turkish Government also published the Law on Amendment of Certain Laws and Executive Orders for the Development of Industry and Subsidisation of Production in the Official Gazette on 1 July 2017 (Law No 7033) and introduced legislative provisions for technology development zones.

## Amendments relating to Tax Laws and Act of Fees

Amendments relating to the Stamp Tax Law: Stamp tax is regulated by the Stamp Tax Law No 488 (the STL) and applies to a wide range of papers such as agreements, security documents, settlement letters or bills of lading. Stamp tax in Turkey only applies to transactions which take place or benefit those in Turkey. In large-scale transactions, stamp tax has proven to be a real hindrance because of the high costs involved. However, new exemptions have been introduced to decrease transaction costs on investments.

Under the Amendment Law:

- o Stamp tax used to be collected from each copy of a paper subject to proportional stamp tax. Repetitive stamp tax has been abolished following the Amendment Law coming into force. Stamp tax is now calculated for one copy of those papers.
- o If there is more than one guarantee or ordinary surety regulated on the same agreement, stamp tax is now only applied to one of the guarantees or one of the ordinary sureties. Previously, guarantees and ordinary sureties used to be separately subject to stamp tax regardless of the number of the guarantors or sureties.
- o Unless the commitments, which are regulated as a sanction of an agreement such as down payment, forfeit, penalty clause, are directly subject to the agreement, stamp tax will not be calculated based on the

amounts of these commitments. If there had been commitments in the same document attached to the principal transaction, stamp tax arose on either the penal commitment or the principal transaction depending on which one results in the higher stamp tax payment.

o Where there is an amendment to an agreement subject to the highest stamp tax value determined by law, no stamp tax will be applied if the only amendment is to the value of the agreement provided the other provisions remain unchanged. Previously, if an amount in the agreement had been increased after the agreement had been executed, stamp tax was calculated on the increased amount regardless of whether the agreement was initially subject to stamp tax over the highest value determined by law.

o The Amendment Law also introduced new stamp tax and fees exemptions. These are the ones which are considered material in terms of commercial transactions:

o Insurance undertakings;

o Individual retirement agreements;

o Papers for share transfers of joint stock companies and limited liability companies;

o Documents regarding the transfer of loans provided by banks, foreign credit institutions and international authorities and the transfer of receivables arising from the same.

Agreements and letters of undertakings in relation to the allocation of the lands located in the organised industrial sites, free zones, industrial regions, technology development zones and industrial areas are also exempted from the stamp tax in line with Article 7 of Law No 7033.

Amendments relating to the Corporate Tax Law: Under Law No 7033, gains derived by taxpayers operating in technology development zones exclusively from software, research and development and design activities are excluded from income and corporate tax until 31 December 2023. The Council of Ministers is authorised to determine the conditions of corporate tax exemptions relating to gains from the sale, purchase and transfer of intellectual property.

Amendments relating to the Act of Fees: Transactions exempted from fees are regulated by Article 59 of the Act of Fees 492. Following the amendment to Article 59/1(n) by Law No 7033, no fee will be applied to the transactions requiring annotation due to the allocation of lands which belongs to enterprises and which are located in the organised industrial sites, free zones, industrial regions, technology development zones and industrial sites. The transfer and registration of those lands and the buildings on them and the land use conversion transactions regarding the buildings constructed on those lands are also covered under the scope of this fee exemption.

Amendments relating to Real Estate Tax Law: Following the entry into force of the Law No 7033, buildings located at the organised industrial sites, free zones, industrial regions, technology development zones and industrial sites are no longer subject to real estate tax.

### **Amendments relating to Companies Law**

Companies law is regulated under the Turkish Commercial Code 6102 (the TCC). The Amendment Law made certain improvements to the Code to facilitate bureaucratic transactions in company establishments and decrease establishment costs.

Valuable Paper Cost: Following revisions made to the various articles of the TCC by the Amendment Law, during the establishment process, valuable paper costs will no longer be charged on papers constituting articles of association of joint stock companies, limited liability companies, limited partnerships divided into shares and companies with unlimited liability.

Founders' Declaration: Founders' declarations are no longer required for company incorporations since the benefit expected from the document is already met by execution of the articles of association by the

founders.

Certification by a Notary Public: The obligation of notarisation of the signature declarations and articles of association during the incorporation process has been abolished. Real person merchants or authorised signatories of legal entity merchants may give their signature declarations and/or execute articles of association before trade registry directorates without the need for certification by a notary public. In other words, the formal certification requirement still exists. However, this certification may be performed either before the notary public or the trade registry directorate. This way, merchants may avoid additional notarisation costs during the incorporation process.

Conversion of Company Type: The decision to execute the articles of association of the new type formerly required the signature of all shareholders (as a new establishment) which complicated the process in case there are shareholders who cannot be reached or who did not cast affirmative vote for conversion of type. Following the Amendment Law, provisions regarding incorporation will no longer be applied in terms of execution of the articles of association of the new type so the signature of all shareholders will no longer be required.

Distribution at the End of Liquidation: Article 543 of the TCC regulates the distribution at the end of liquidation. Previously, the remaining assets could not be distributed to the shareholders until expiry of the one year term following the third invitation to the creditors. This term has been reduced to six months and the liquidation process has been reduced in line with the Amendment Law.

### **Amendments relating to Cheque Law**

The most significant improvement to the Cheque Law 5941 (the Cheque Law) under the Amendment Law is the introduction of criminal liability for the drawers of dishonored cheques. This improvement aims to enhance the trust in cheques considering there has been a decline in this payment method in recent years.

Under the amendments to Article 5 of the Cheque Law, those who cause a cheque to be dishonoured will be subject to a judicial fine of up to 1,500 days for each cheque following a bearer's complaint. The judicial fine cannot be less than the cheque's amount. In addition to the judicial fine, the court will also prohibit the drawing of cheques and the opening of cheque accounts. Provisions regarding the prepayment, settlement or stay of judgment will not apply to those who cause the issuing of dishonoured cheques and in cases of non-payment the fines will be directly converted into imprisonment with no provision for community service.

Article 6 of the Amendment Law sets out that if the amount of the dishonoured cheque and the accrued interest are paid, the lawsuit will be dropped during the proceedings or the judgment will be removed together with any associated consequences after finalisation of the imprisonment judgment. The same will apply if the bearer withdraws a complaint.

Serial numbers given by the bank and barcode are now included in the mandatory components of cheques to provide transparency. With the barcode, various data regarding the cheque account holder (e.g. identity information, number of banks in which they have a cheque account, number and amounts of cheques which were or were not honoured, whether the cheque account owner is prohibited from opening a cheque account, etc) will be made available to third parties without the permission of the cheque account holder or the endorser being obtained first.

Barcode scanning and information sharing system will be formed by the Banks Association of Turkey's Risk Center. Principles and procedures of these new regulations will be determined by a communiqué to be published by the Customs and Trade Ministry and the Undersecretariat of the Treasury.