

Intellectual Property Transactions in Türkiye: Overview

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A Q&A guide to intellectual property transactions law in Turkey.

The Q&A gives an overview of IP assignment and licensing, research and development collaborations, IP and M&A transactions, lending and taking security over IPRs, settlement agreements, employees and IP, competition law, tax, and non-tariff trade barriers.

Any references to Turkey in this resource or on our site are referring to Türkiye, the official name of the jurisdiction as recognised and implemented by the UN on 3 June 2022. We are in the process of implementing that change in our resources.

IP Assignment

Assignment Basis and Formalities

Main Terms for Assignments

IP Licensing

Scope and Formalities for IP Licensing

Main Terms for Licences

Research and Development Collaborations

Improvements and Derivatives

Joint Ownership of IP

IP Audit

IP Aspects of M&A

IP Due Diligence

Warranties/Indemnities

Transfer of IPRs

Lending and Security Interests

Settlement Agreements

Employees and Consultant Agreements

Employees

Consultants

Key Issues in IP Transactions

Competition Law

Tax

Non-Tariff Trade Barriers

Contributor Profiles

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IP Assignment

Assignment Basis and Formalities

1. On what basis can the main IPRs be assigned? What formalities apply?

Patents

Basis for patent assignment. Under the Intellectual Property Law No. 6769 (IP Law), a patent can be assigned in whole. A patent cannot be assigned in part.

Formalities for patent assignment. Under the IP Law, a patent assignment must be in writing and signed by both parties and notarised before a notary public.

Registration of a patent assignment with the *Turkish Patent and Trademark Office (TPTO)* is required for it to have effect against third parties. A short form of the assignment agreement is also accepted for recording purposes. The IP Law and its Implementing Regulation do not set a specific timeframe for registration. However, the assignment only has legal effect against third parties on registration and publication by the TPTO.

Utility Models

The same principles apply as for patents (see above, *Patents*).

Trade Marks

Basis for trade mark assignment. Trade marks can be assigned in whole or part for some of the goods or services for which the trade mark is registered. A trade mark assignment must be for the entire Turkish territory (IP Law).

Goodwill in the trade mark is automatically assigned (but the parties can agree otherwise).

Formalities for trade mark assignment. Under the IP Law, a trade mark assignment must be in writing and signed by both parties and notarised before a notary public.

Registration of a trade mark assignment with the TPTO is required for it to have effect against third parties. A short form of the assignment agreement is also accepted for recording purposes. The IP Law and its Implementing Regulation do not set a specific timeframe for registration. However, the assignment only has legal effect against third parties on registration and publication by the TPTO.

Copyright

Basis for copyright assignment. Only authors' economic rights can be assigned in whole or part under the Law on Intellectual and Artistic Works No. 5846 (Copyright Law).

The copyright holder cannot assign or waive their moral rights, but they can license the right to use their moral rights.

Formalities for copyright assignment. An assignment of the author's economic rights must be in writing and the agreement must individually specify the rights being assigned (Article 52, Copyright Law).

There is no compulsory registration system for copyright in Turkey. There is a voluntary registration system with the Ministry of Culture and Tourism's General Directorate of Copyright. If the copyright to be assigned has already been registered voluntarily, the assignment must be notified to the Ministry. Voluntary registration may be helpful to prove the existence of the transactions and the scope, terms, and ownership of the copyright in the event of possible future disputes. There is no specific timeframe for voluntary registration.

Design Rights

Basis for design rights assignment. Design rights can be assigned in whole under the IP Law.

Assignment in part is only possible if the registration covers multiple designs. In this case, the owner can assign only some of the designs covered by the registration.

Formalities for design rights assignment. Under the IP Law, a design right assignment must be in writing and signed by both parties and notarised before a notary public.

Registration of a design right assignment with the TPTO is required for it to have effect against third parties. A short form of the assignment agreement is also accepted for recording purposes. The IP Law and its Implementing Regulation do not set a specific timeframe for registration. However, the assignment only has legal effect against third parties on registration and publication by the TPTO.

Trade Secrets and Confidential Information

Basis for assignment. Trade secrets and confidential information can be assigned by agreement in whole or part. There is no specific regulation on this. The agreement is an ordinary assignment agreement subject to the general rules of contract law.

Formalities for assignment. There are no specific formalities for an assignment of trade secrets and confidential information. It is recommended to have the agreement in writing and signed by both parties with undertakings about non-disclosure and confidentiality.

There is no system for registration of trade secrets and confidential information in Turkey.

Domain Names

Domain names can be assigned under Article 13 of the Domain Names Regulation.

A registry agency authorised by the Information and Communication Technologies Authority deals with applications, renewals, cancellations, and transfers of domain names and provides templates for domain name assignments on its website.

To assign a domain name, the domain name holder must fill in a template and the registry agency completes the assignment through the *TRAB#S* system, the central online system for domain names of the Information and Communication Technologies Authority (Article 13, Domain Names Regulation). The TRABIS system was activated on 14 September 2022.

If the domain name has a ".com.tr" extension, the registered trade mark or trade mark registration application that is the basis of the domain name registration must also be assigned.

It is advisable to have an assignment of a domain name in writing between the assignee and the assignor for evidentiary reasons.

From 14 June 2024, domain names with the "a.tr" structure continue to be allocated on a first come first serve basis as in the current system. The sale of "a.tr" domain names is prohibited until 14 September 2025.

Main Terms for Assignments

2.What main terms should be included in an assignment of IPRs?

The main terms to include in an assignment of IPRs are:

- Names and addresses of the parties.
- Registration numbers of registered IPRs, application numbers for registration applications, or any other form of identification of the IPRs.
- For a partial assignment, the scope of the assignment, relating to:
 - the goods and services for which a trade mark is assigned; or
 - the specific design rights assigned (in the case of multiple designs).
- Payment details (if any).
- An undertaking from the assignor (to prevent future disputes) that:

- confirms that there are no other registrations or applications for the same or similar IPR(s);
 - confirms that there will be no further applications; and
 - warrants that the assignor has full power to assign the relevant IPR(s).
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- Additional obligations to register the assignment (for example, any papers that the assignor must sign).

For copyright, an assignment of the author's economic rights should also contain the:

- Rights to be assigned, expressly and separately stated using specific terms (for example, references such as "any media" must be avoided).
- Term of the assignment and the territory for which the rights are assigned, stated expressly.

IP Licensing

Scope and Formalities for IP Licensing

3. On what basis can the main IPRs be licensed? What formalities apply?

Patents

Scope of a patent licence. A patent licence is governed by the IP Law. Registered patents and patent applications can be licensed on an exclusive, non-exclusive, and sole basis.

Unless the patent owner reserves its rights to use the patent, the patent owner cannot use the patent if the owner grants an exclusive licence.

Depending on the nature of the invention protected by the patent and the scope of the independent claims, a patent can be licensed in part for some of the claims. A licence can include jurisdictional restrictions and time limits.

Formalities for a patent licence. A patent licence must be in writing and signed by both parties (IP Law). No notarisation is required. Parties are free to determine the terms of the licence.

A patent licence does not need to be registered with the TPTO to be valid and enforceable. However, registration is beneficial for the licensee if the patent is assigned to a third party who is not aware of (and not able to discover) the licence. In these cases, if the patent licence is registered the licensee can enforce the licence against the third-party assignee.

The IP Law and the Implementing Regulation do not set a specific timeframe for patent licence registration.

Utility Models

The same principles apply as for patents (see above, *Patents*).

Trade Marks

Scope of a trade mark licence. Registered trade marks and trade mark registrations application can be licensed on an exclusive, non-exclusive, and sole basis (IP Law). Unless the trade mark owner reserves its rights to use the trade mark, the trade mark owner cannot use the trade mark if the owner grants an exclusive licence.

Trade marks can be licensed in whole or part for some or all of the goods and services for which the owner uses the mark. The parties can agree on jurisdictional restrictions and time limits. The parties are free to determine the terms of the licence.

A trade mark licence automatically include the goodwill in the trade mark (but the parties can agree otherwise).

Formalities for a trade mark licence. Under the IP Law, a trade mark licence must be in writing and signed by both parties. No notarisation is required. Parties are free to determine the terms of the licence.

A trade mark licence does not need to be registered with the TPTO for it to be valid and enforceable. However, registering the licence is beneficial for the licensee if the trade mark is assigned to a third party who is not aware of (and not able to discover) the licence. In these cases, if the trade mark licence is registered, the licensee can enforce the licence against the third-party assignee.

The IP Law and the Implementing Regulation do not set a specific timeframe for trade mark licence registration.

Copyright

Scope of a copyright licence. Under the Copyright Law, both the economic and moral rights of the author can be licensed on an exclusive, non-exclusive, and sole basis. Copyright can be licensed in whole or part. The parties can agree on jurisdictional restrictions and time limits. The parties are free to determine the terms of the licence.

The copyright holder cannot assign or waive their moral rights. Therefore, a copyright licence cannot include a moral rights waiver. However, it is possible to license the right to use the author's moral rights.

Formalities for a copyright licence. A licence of the author's economic rights and moral rights must be in writing and signed by both parties. The relevant right being assigned must be specified individually. (Article 52, Copyright Law.)

There is no compulsory registration system for copyright in Turkey. There is a voluntary registration system with the Ministry of Culture and Tourism's General Directorate of Copyright. If the copyright to be licensed has been registered voluntarily, the licence must be notified to the Ministry. Voluntary registration may be helpful to prove the existence of the transaction and the scope, terms, and ownership of the copyright in the event of future disputes. There is no specific timeframe for voluntary registration of a copyright licence.

Design Rights

Scope of a design rights licence. Under the IP Law, registered designs and applications for registered designs can be licensed on an exclusive, non-exclusive, and sole basis.

Design rights can be licensed in whole or part. A partial licence is only possible if the registration covers multiple designs and the owner licenses some of the designs covered by the registration. The parties can freely agree on jurisdictional restrictions and time limits.

Formalities for a design rights licence. A design licence must be in writing and signed by both parties (IP Law). No notarisation is required. Parties are free to determine the terms of the licence.

A design right licence does not need to be registered with the TPTO for it to be valid and enforceable. However, registering the licence is beneficial for the licensee if the design right is assigned to a third party who is not aware of (and not able to discover) the licence. In these cases, if the design licence is registered, the licensee can enforce the licence against the third-party assignee of the design.

The IP Law and the Implementing Regulation do not set a specific timeframe for the registration of design rights licences.

Trade Secrets and Confidential Information

Scope of a licence. Trade secrets and confidential information can be licensed on an exclusive, non-exclusive, and sole basis. They can be licensed by agreement in whole or part, with jurisdictional restrictions and time limits as the parties wish. No specific regulation applies and the licence is subject to the general rules of contract law.

Formalities for a licence. There are no specific formalities for a licence of trade secrets and confidential information. However, it is recommended to have a written agreement that clearly defines the scope of the licence and includes appropriate provisions to maintain confidentiality.

Main Terms for Licences

4. What main terms should be included in an IP licence?

The main terms that should be included in an IP licence are:

- Names and addresses of the parties.
- Registration numbers of registered IPRs, application numbers for registration applications, or any other form of identification of the IPRs.
- For a partial licence, the scope of the licence, concerning:
 - the goods and services for which a trade mark is licensed; and
 - the design rights being licensed (in the case of multiple designs).
- Licence term and territory for which the licence is granted.

- Whether the licence is granted on an exclusive, non-exclusive, or sole basis (if the licence is silent on this, it is assumed to be non-exclusive).
- Powers granted to the licensee, for example, whether a sub-licence is allowed (if the licence is silent on this, it is deemed that sub-licensing is not allowed).
- Royalties (if any).
- Warranties and liability provisions.
- Obligations to record the licence.
- Other general business terms, depending on the relationship between the parties, including clauses on:
 - governing law;
 - jurisdiction;
 - penalties; and
 - confidentiality.

To license an author's moral and economic rights, the licence agreement must expressly and individually the rights being licensed using specific terms (for example, references such as "any media" must be avoided).

Depending on the nature of the technology or IP developments being licensed, government permits may be required (see [Question 21](#)).

Research and Development Collaborations

Improvements and Derivatives

5. How should research and development collaborations address improvements and derivatives?

There is no specific law or regulation on IPRs subsisting in improvements or derivatives arising from research and development (R&D) collaborations. Therefore, it is essential to carefully set them out in the collaboration agreement.

Collaboration agreements should clearly and specifically define improvements/derivatives to avoid any future confusion or dispute. While in some cases key definitions such as know-how, material, and product also cover improvements/derivatives, it is advisable to include a separate definition of an improvement/derivative in the agreement.

Under the Copyright Law, the right to exploit a work by adaptation belongs exclusively to the author. Similarly, under the IP Law, use of a patented invention is subject to permission or licence from the right owner. In these cases, a party who wants to use the IPR of another party while creating improvements/derivatives must obtain permission or a licence from the right owner.

It is particularly important to determine the ownership of IPRs resulting from improvements/derivatives. In practice, there is a fine line between an improvement/derivative and the contribution/effort of each party to generate it. It may be problematic to determine who owns the IPRs resulting from improvements/derivatives without a term in the agreement. In principle, it is possible to apportion these IPRs according to the contribution of each party. Parties can also decide to vest these IPRs in a specific party, regardless of their contribution. Whether improvements/derivatives are patentable/copyrightable or not, including separate terms about their ownership before engaging in a project is highly advisable.

To realise the intended objectives of a collaboration project, it is important to include terms that allow both parties to use the subject matter of the improvements/derivatives in the context of the project, regardless of IPR ownership.

However, terms that regulate how to apportion/assign the ownership of these IPRs may breach antitrust and competition rules, depending on the circumstances. For example, under the Law on the Protection of Competition No. 4054, agreements, decisions, and practices that prevent, distort, or restrict competition between undertakings and abuse of dominant positions are examples of unfair competition. If a dominant party uses its superior position to have all the IPRs assigned to it, this may raise antitrust issues. In this case, the assignee may consider offering reasonable compensation or a licence of the IPRs to the assignor.

Joint Ownership of IP

6. How does joint ownership of IP arise?

Joint ownership of IP can arise from various commercial alliances/collaborations and by operation of law.

Under the IP Law, IP is jointly owned if an invention or design (and under the Copyright Law, a work) has been created as a result of joint intellectual efforts of two or more parties (see [Question 7](#)).

Under the IP Law, if an IPR belongs to more than one party, the IPR ownership is determined according to the agreement between the parties. If there is no agreement, the default provisions of the Civil Code (Law 4721) under the Law of Property section on joint ownership apply. As these provisions are insufficient because they are very generic, it is advisable to conclude a joint ownership agreement to cover specific needs for IPRs (see [Question 7](#)).

7. What key issues arise in terms of the parties' rights to exploit and enforce jointly owned IP? How should these issues be dealt with in the agreement between the parties?

Exploiting and Enforcing Jointly Owned IP

The starting point is the agreement between the joint owners of the IPRs relating to prosecution and maintenance, licensing, and other exploitation, enforcement, and termination of the IPRs (see [Question 6](#)).

If there is no such agreement, the Law of Property section of the Civil Code sets out default rules for joint ownership of IPRs. If the share of each owner is separable, each owner owns their share and can:

- Exploit the rights freely relating to their share.
- Use their share of the IPR freely.
- Take necessary measures to protect their share.

If one of the owners wants to sell their share to a third party, the sale must be notified to the other owners as they have a pre-emption right.

Each owner can bring legal infringement proceedings against third parties (Articles 689 to 697, Civil Code).

To license a jointly owned IPR, the right holders must reach an agreement. If not, any of them can apply to court for a decision to authorise one or more of them to license the IPR on an equitable basis (with regard to the specific circumstances) (Articles 689 to 697, Civil Code).

While the law sets out some rules about the exploitation and enforcement of jointly owned IPRs, it is difficult to apply them and they do not provide an effective basis for IPR exploitation and enforcement. It is therefore advisable for joint owners to decide on the terms in an agreement and to authorise one joint owner for the purposes of exploitation and enforcement.

Joint Ownership Provisions in Collaboration Agreements

A collaboration agreement should include the following:

- Clear definition of the contributed IP that each party brings to the collaboration (background IP).
- Clear definition of the jointly created IP generated by the collaboration and/or improvements/derivatives.
- Apportioning and determining ownership of jointly created IP and/or improvements/derivatives (see [Question 5](#)).
- Prosecution and maintenance of jointly created IPRs subject to the collaboration, such as defining the party responsible for the registration and renewal of IPRs used, payment of the relevant fees, and corresponding with the competent authorities.
- Licensing and other IPR exploitation. It is important to determine the scope of use of the jointly created IPRs by each party. If one party is willing to solely hold all the IPRs, reasonable compensation should be paid to the other party by allowing use of the IPRs in the scope of the project. During the commercialisation of the IPRs, it is practical to identify the authorised party who will grant licences to third parties and include a specific mechanism for these purposes.
- Enforcement of IPRs against third parties and defences against legal claims by third parties. It is important to identify the authorised party and the mechanism to duly protect the jointly created IPRs.
- Termination of the relationship and assignment or separation of the joint IPRs on termination.

- Confidentiality provisions.

IP Audit

8. What are the main steps in conducting an IP audit in your jurisdiction to determine the content of an IP portfolio?

The following steps are usually taken to determine the content of an IP portfolio:

- Listing all the IPRs of a business (see [Question 9](#)).
- Verifying the status of IPRs, including examining pending or potential conflicts, licences, and other agreements.

IP Aspects of M&A

IP Due Diligence

9. What IP-related due diligence is commonly carried out in both a share sale and an asset sale?

Share Sale or Merger

In a share sale or a merger, IP due diligence is based on an analysis of the relevant undertaking's IPRs in terms of:

- Quality.
- Scope.
- Registration.
- Use.
- Protection status.

- Strengths and weaknesses.
- Potential risks.
- Potential opportunities.

Efficient due diligence on the IPRs includes:

- Listing and classifying all the undertaking's IPRs (patents, trade marks, copyrights, design rights, domain names, know-how, trade secrets, and so on).
- Verifying the status and owners of the IPRs, including any pending or potential disputes, licences, and other agreements.
- Identifying any current or potential infringements to minimise risk or mitigate loss.

These checks can be done by reviewing relevant documents, requesting original documents from the TPTO, and detailed registry research at the TPTO.

Asset Sale

The same applies as in a share sale or merger (see above, *Share Sale or Merger*).

Warranties/Indemnities

10. What IP-related warranties are commonly given by the seller to the buyer in both a share sale or merger and an asset sale?

Share Sale or Merger

Common IP-related warranties and indemnities given by the seller are that:

- A list of all the IPRs together with their complete history has been provided.
- Ownership of all the IPRs is full and valid, and the seller has full power to assign the IPRs without additional authorisations from third parties.
- The IPRs do not infringe those of third parties.
- Information on any pending or potential disputes about the IPRs has been provided, including pending or potential attachments of registered IPRs.

Asset Sale

The same applies as in a share sale or merger (see above, [Share Sale or Merger](#)).

Transfer of IPRs

11. How are the main IPRs transferred in both a share sale and an asset sale?

Share Sale or Merger

A share sale does not usually involve a change of ownership of the IPRs, as they continue to be owned by the target company after the share sale. Therefore, the IPRs do not usually have to be transferred in a share sale.

If the share sale specifically requires the transfer of the IPRs, the transfer must comply with the assignment rules (see [Question 1](#) and [Question 2](#)).

Asset Sale

In an asset sale, the main IPRs usually have to be specifically transferred. It is important to execute separate agreements to assign the IPRs (see [Question 1](#) and [Question 2](#)).

Lending and Security Interests

12. Can security be taken over IPRs?

Security can be taken over all main IPRs, namely trade marks, patents, designs, and copyright. In practice, security is commonly taken over trade marks or patents. It is important to conduct detailed due diligence to determine the owner of the IPRs and whether any security has been taken over them.

The main issue in taking security over IPRs is valuing the secured assets. There are also likely to be issues relating to enforcing the security, such as determining the rank of creditors if more than one pledge has been taken over the IPR, and enforcing the security against third parties who take an assignment of the secured IPR without being aware that security has been taken over it.

It is not possible to take a pledge over trade mark and design applications which are not yet registered with the TPTO. However, it is possible to take security over unregistered IPRs such as copyright and trade secrets with a proper agreement.

13. What are the main security interests taken over IPRs and how are they created and perfected?

Patents, Utility Models, Trade Marks, and Design Rights

The main security interest taken over IPRs is a pledge. A pledge cannot be taken over trade mark and design applications which are not yet registered with the TPTO.

A pledge agreement over IPRs must be in writing and is subject to the general provisions of the Civil Code.

To be enforceable against third parties, the pledge must be registered with the TPTO. The documents submitted for registration must be in Turkish.

Copyright and Trade Secrets and Confidential Information

As there is no compulsory copyright registration system in Turkey, a pledge in the traditional sense is not possible. Security can be taken over copyright after a proper valuation and through an agreement between the parties.

The same applies for trade secrets and confidential information.

Settlement Agreements

14. What are the main considerations when entering an IP litigation settlement agreement?

Parties may prefer entering into a settlement agreement as an amicable dispute resolution method during litigation or before litigation. In these agreements, the most preferred way is to license the use of the IPRs to the alleged infringing party. While future use is licensed in return for a licence fee, past use can also be licensed/compensated in a form and amount agreed by the parties.

However, if a settlement agreement results in the prevention, distortion, or restriction of competition between any undertakings, or a party to the agreement abuses its dominant position by imposing terms while settling the dispute, this may cause antitrust issues (see [Question 17](#)). Settlement can give rise to other antitrust issues. For example, a payment of money to the claimant in a patent invalidity case. To avoid any potential risk or breach and achieve the best result possible, it is advised to consult a local lawyer with expertise in the relevant area.

If the parties reach a settlement while court proceedings are ongoing, they can apply to the court and request an official acknowledgement of the agreement. This will end the court proceedings and have the same effect as a final judgment. If the

agreement also requires the assignment of an IPR, the party who undertakes to assign the IPR must apply to the TPTO to do so within a prescribed time.

An advantage of court-acknowledged settlement agreements is that they can be enforced in the same way as a court decision through the execution offices. In practice, a party may still breach the settlement no matter how broad its terms. Therefore, it is crucial to have penalty clauses that can be enforced through an execution office in the case of a breach.

Parties can also include legal costs in the agreement and decide freely on the scope of costs, which party bears them, and how to allocate them without involving the court.

The court encourages the parties to settle during the preliminary examination phase (Article 137, Civil Procedural Law No. 6100). These offers to settle do not have any specific advantages in IP litigation and are usually conducted as a procedural requirement. In most cases, the parties respond negatively to them. There is also a separate mandatory mechanism under Article 5/A of the Commercial Code No. 6102 for monetary claims in commercial disputes, including compensation actions in IP matters. This could have an advantage in complex compensation actions that are only resolved after long court proceedings. In practice, it has not yet proved to be an effective method to shorten the process and most cases are still resolved by the courts, as the parties usually do not reach agreement during these mandatory proceedings.

Parties can also include a no-challenge clause in a settlement agreement, but they are not enforceable under Turkish law on their own. An action for breach will be examined as a breach of contract under the general provisions of contract law. To strengthen its effect, a penalty clause can be linked to a no-challenge clause.

Employees and Consultant Agreements

Employees

15. Who owns each of the main IPRs created by an employee in the course of employment?

Ownership

Patents and utility models. Inventions developed by employees are divided into two categories:

- **Service inventions.** These are inventions made by the employee during the term of their employment while performing a task assigned to the employee, or which are based largely on the employer's experience and activities.
- **Free inventions.** These are inventions that are not service inventions.

In principle, free inventions belong to the employee. Under the IP Law, an employer can claim partial or total ownership of a service invention by notifying the employee in writing. If the employer claims total ownership, all rights to the invention pass to the employer on notification to the employee. If the employer claims partial ownership, rights to the invention partially pass to the employer on notification to the employee. The rest of the invention becomes (in principle) a free invention.

Designs. Unless the employment contract or nature of the employee's work provides otherwise, ownership of a design developed by an employee vests in the employer if it was created either:

- In the performance of their duties.
- Using the information and equipment available at work.

Under the IP Law, there are no further requirements to transfer ownership. However, it is advisable to include a specific clause in employment agreements to ensure that the employee cannot claim that ownership was not transferred.

Depending on the importance of the design, it may also be advisable to execute specific and separate assignment agreements.

Copyright. The author's moral rights cannot be transferred or waived and belong to the employee but the economic rights are transferable.

The employer is not the owner of the economic rights. However, the employer is the legal owner of the right to exercise the economic rights over a work created by an employee during the performance of their duties (Article 18, Copyright Law).

Due to the strict regulation of copyright, it is advisable to execute separate agreements to assign the economic rights once the work comes into existence.

The right to exercise the moral rights can be separately assigned to the employer.

Compensation

Patents and utility models. If the employer claims total or partial ownership, the employee is entitled to claim reasonable compensation from the employer.

Designs. The employee receives compensation corresponding to the importance of the invention to the employer and the market.

Copyright. The Copyright Law does not set a compensation amount to be paid to the employee if its economic rights or rights to exercise the moral rights are assigned to the employer. In practice, the parties cover this in the assignment agreement.

Main Steps

See above, *Ownership*.

For other types of IPRs, the employer must include a specific clause in the employment contract or sign separate assignment agreements when the relevant IPR comes into existence. Separate assignment agreements are advisable for every IPR, depending on its importance for a business, as this provides the strongest protection for an employer.

Consultants



16. Who owns each of the main IPRs created by an external consultant?

Ownership

If an external consultant works under the strict supervision and instruction of the commissioning business, they are treated as an employee in relation to the IPRs (see [Question 15](#)).

For copyright, Turkish law does not recognise the "work made for hire" concept. However, if the external consultant acts independently, it is accepted in judicial practice that there is an on-demand work agreement between the parties. The General Assembly of the Civil Court of Cassation has held that in an on-demand work agreement relationship, ownership of the work belongs to the commissioning party and copyright vests in the external consultant who creates the work (Decision E. 2019/11-474, K. 2020/26, dated 16 January 2020). The commissioning party can use the work within the scope of the on-demand work agreement even without a separate assignment or licence for this use. According to an on-demand work agreement, the creator of the work can only request payment of the fee under the agreement and cannot claim infringement if use by the other party falls within the agreement.

For other IPRs, if the external consultant acts independently, the external consultant generally owns the IPRs and a separate assignment agreement is required for the IPRs to vest in the commissioning party.

Main Steps

If the external consultant works under the strict supervision and instruction of the commissioning business, the main steps a business can take to ensure it owns each of the main IPRs are the same as for an employee (see [Question 15](#)).

For copyright, if the external consultant acts independently, it is highly advisable for the employer to enter into separate agreements to assign the relevant IPRs, specifying each assigned or licensed right individually. In particular, if the relevant work is intended to be used in a different way to that agreed in the on-demand work agreement, a written assignment must comply with the Copyright Law by specifying the format and media of the relevant use (see [Question 1](#) and [Question 2](#)).

For other IPRs, if the external consultant acts independently, it is highly advisable for the employer to enter into separate agreements to assign the relevant IPRs.

Key Issues in IP Transactions

Competition Law

17. What are the most common national competition law issues that arise in the exploitation of the main IPRs?

IPRs create monopoly rights and provide an advantageous position for their owner. Although ownership of IPRs or their exploitation does not distort free competition in a given market as such, it may have a significant effect. The most common examples of competition law issues that may arise from the exploitation of IPRs are as follows:

- If an entity that already has a dominant position in a market is assigned trade marks (or other IPRs) from its closest competitor, this may strengthen its dominant position and may not be allowed by the Competition Board.
- If an entity in a dominant position in a market refuses to license its IPRs (particularly patents or utility models), this may be an abuse of a dominant position if the entity does not have reasonable grounds for the refusal or imposes unreasonable conditions.
- Applying anti-competitive conditions to an IPR licence (for example, resale price maintenance and market sharing) may be an anti-competitive agreement prohibited by the Law on the Protection of Competition No. 4054 (Competition Law).

The Competition Law generally mirrors EU competition legislation. The main antitrust provisions under the Competition Law and its secondary legislation (relevant regulations, communiqués, and guidelines) that may affect the exploitation of the main IPRs are:

- The prohibition of agreements, concerted practices, and decisions that actually (or potentially) prevent, distort, or restrict competition. These include:
 - price fixing;
 - market sharing; and
 - deterrence of entry, resale price maintenance, and discriminatory behaviour.
- The prohibition of an abuse of a dominant position. This includes:
 - imposing unfair prices or conditions;
 - discriminatory behaviour;
 - tying and bundling;
 - applying high sales price; and
 - preventing market entrance of undertakings.

The Competition Law also provides an authorisation system for mergers and acquisitions that may create or strengthen the dominant position of one or more enterprises as a result of which competition is significantly distorted. The Competition Board (the decision-making body of the *Competition Authority* authorised to monitor compliance with the Competition Law) has determined the thresholds for mergers and acquisitions that require authorisation.



18. What exclusions or exemptions are available for national competition law issues involving the exploitation of the main IPRs?

Under the Competition Law, the Competition Board has the power to grant block exemptions and individual exemptions.

The Competition Board can exempt individual agreements, concerted practices, and decisions of associations of undertakings if they:

- Ensure new development and improvement or economic or technical development in the production or distribution of goods or the provision of services.
- Benefit the consumer through the above development or improvement.
- Do not eliminate competition in a significant part of the relevant market or limit competition any more than necessary to achieve the above benefits.

Block exemptions are covered by communiqués issued by the Competition Board relating to:

- Vertical agreements on sales, purchases, and resales of goods and services, including provisions relating to IPR transfers and use (Communiqué 2002/2).
- Research and development agreements (Communiqué 2003/2).
- Vertical agreements and concerted practices in the motor vehicle sector (Communiqué 2005/4).
- Technology transfer agreements (Communiqué 2008/2).
- Agreements among parties in the insurance sector (Communiqué 2008/3).
- Specialisation agreements, including provisions relating to IPR transfers and licensing (Communiqué 2013/3).

Tax

19. What are the main taxes payable by a licensor on the licensing of the main IPRs?

Stamp Duty

Stamp duty is payable at 0.189% of the total royalty amount for the term of the licence.

All signatories to the licence are jointly liable, but the parties are free to decide who is liable to pay the stamp duty.

Under the Law on Support to Research and Development Activities No. 5746 (R&D Law), all documents and agreements relating to R&D, innovations, and design activities within the scope of the R&D Law are exempt from stamp duty.

Income Tax

If the licensor is an individual resident in Turkey, income earned from an IPR licence that exceeds the minimum threshold is subject to income tax at progressive rates from 15% to 40%.

If the licensor is a corporation resident in Turkey, income from an IPR licence is subject to corporate income tax at 25%.

A non-resident individual is subject to Turkish income tax on income they earn in Turkey, including from an IPR licence, at progressive rates from 15% to 40%.

A non-resident corporation is subject to Turkish corporate income tax on income it earns in Turkey, including from an IP licence, at 25%.

Double taxation legislation may apply, so that if a corporation has already paid tax abroad on their income it can deduct that amount from its Turkish tax liability.

If the licensor is the inventor, earnings from royalties are classified as "income from self-employment" under the Income Tax Act. In principle, inventors are exempt from tax.

For licences granted to public enterprises, other public entities, foundations, economic enterprises of associations and foundations, and so on (as listed under Article 94 of the Income Tax Law), a withholding tax of 25% is charged on royalty fees paid by those entities.

Value Added Tax (VAT)

VAT is charged at a usual rate of 20% on supplying goods and services in Turkey and importing goods or services into Turkey.

Licensing of IPRs is subject to VAT if the licence is granted in Turkey.

If the licensor is a Turkish resident and the licence is granted in Turkey, the licensor must pay VAT at 18%.

For more information, see the [Revenue Administration's website](#).

20. What are the main taxes payable by a seller on the sale or transfer of the main IPRs?

Stamp Duty

See [Question 19, Stamp Duty](#). The rate of stamp duty for a sale of IPRs agreement (for 2024) is 0.948% of the agreed amount.

Income Tax

See [Question 19, Income Tax](#).

If the seller is an individual (Turkish resident or non-resident), income from the sale exceeding the minimum threshold of TRY110,000 (for 2024) is taxed at progressive rates from 20% to 40%.

For a non-resident individual, if the IPRs are sold to public enterprises, other public entities, foundations, economic enterprises of associations and foundations, and so on (as listed under Article 94 of the Income Tax Law), the taxpayer does not pay tax on the sale.

If the seller is a corporation (Turkish resident or non-resident), income from a sale of IPRs is subject to corporate income tax at 25% (see [Question 19](#)).

VAT

In principle, a sale of IPRs in Turkey is subject to VAT (see [Question 19, Value Added Tax \(VAT\)](#)).

Non-Tariff Trade Barriers

21. Are there any non-tariff trade barriers affecting IP development and licensing transactions?

Depending on the nature of the technology and IP developments involved, regulatory consents may be required. These permits can be considered a non-tariff trade barrier. It is highly advisable to consult the local regulations on the relevant technology area before engaging in transactions and commercial relationships.

For example, public procurement practices may be considered as a non-tariff trade barrier. The public procurement terms usually require the public authority to fully own the IP, which creates obstacles for foreign companies.

In addition, in the pharmaceutical industry, pricing regulations create a significant burden on innovative pharmaceutical companies, which creates obstacles for these companies to invest in their IP in Turkey.

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