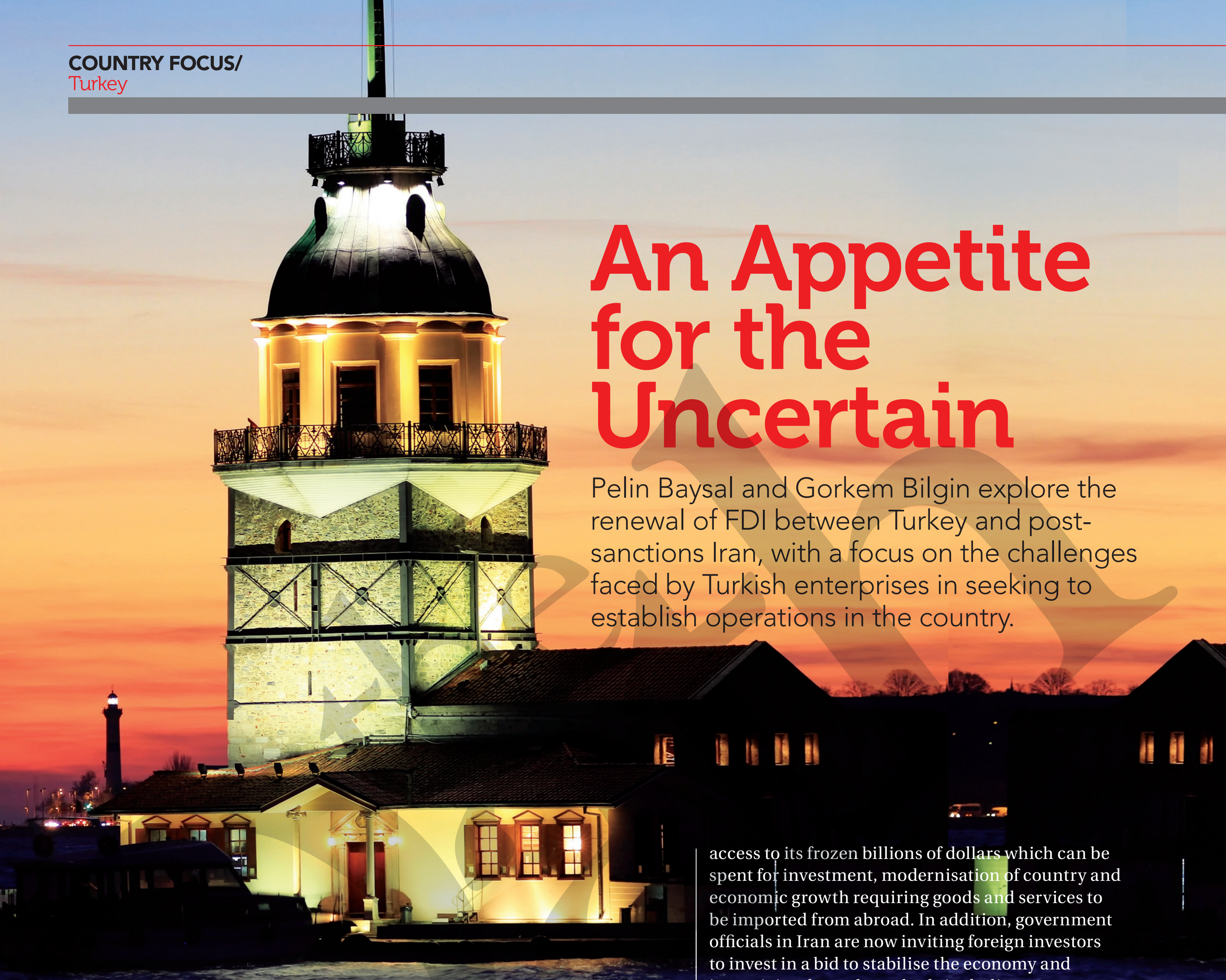

An Appetite for the Uncertain

Pelin Baysal and Gorkem Bilgin explore the renewal of FDI between Turkey and post-sanctions Iran, with a focus on the challenges faced by Turkish enterprises in seeking to establish operations in the country.

Upon confirmation of International Atomic Energy Agency that Iran has completed the necessary preparatory steps to start the implementation of the Joint Comprehensive Plan of Action on January 16, 2016, both the US and the EU announced that certain economic and financial sanctions have been lifted. However, it should worth noting that there are still several sanctions directly applicable to US companies and enterprises which prevent them from benefiting from the lifted nuclear sanctions.

Even though all may not benefit from the lifting of sanctions, it is certain that Iran is more attractive for the Turkish companies and enterprises, than it is especially for US companies and US-related EU companies. “We believe that Turkey-Iran relations will gain a significant momentum in the economic field with the removal of embargoes,” says Turkish prime minister, Ahmet Davutoglu.

Indeed, there is much excitement. Iran's population of approximately 80 million people and high unemployment rate among young and educated workforce may be tempting for Turkish enterprises. Along with the lifting of sanctions, Iran will now have access to its frozen billions of dollars which can be spent for investment, modernisation of country and economic growth requiring goods and services to be imported from abroad. In addition, government officials in Iran are now inviting foreign investors to invest in a bid to stabilise the economy and incentivise through methods including tax exemptions.

FOREIGN INVESTMENT REGULATIONS

Currently, incorporation of Iranian companies and investment by foreigners are regulated under the Iran’s Foreign Investment Promotion and Protection Act (FIPPA). Legally speaking, FIPPA introduces many incentives and protections for foreign investors such as exchange rate securities, money transfer guarantees, arbitration as a dispute resolution method and fair compensation in case of any expropriation/nationalisation. Pursuant to the FIPPA, foreign investor is defined as non-Iranian natural persons and/or legal entities or Iranians using capital imported into Iran whether in cash and/or in kind (i.e. foreign capital).

In order to enjoy such incentives and protections, foreign investors need to apply for a Foreign Investment License, which requires a large amount of documentation and paper work. The application process has two stages. First of all, the investor candidate shall have to identify and choose its investment project with consideration of the general principles of the FIPPA. Then, the investor candidate shall preliminary permit from the relevant Iranian organisation/ministry considering the nature of the project as to submit such permit to the Organisation for Investment, Economic and Technical Assistance of Iran ("OIETA", the competent authority established under Iranian Ministry of Economic Affairs and Finance) for their material and further evaluation on granting the Foreign Investment License. Upon receipt of such permit and completion of other requirements, the application for Foreign Investment License can be filed before OIETA. Even in case of obtaining a permit from the relevant organisation/ministry, the admissions for Foreign Investment License are still subject to several conditions. The investor may be required to sufficiently document its purpose of development and promotion of producing activities, mining, agriculture and services, and shall convince OIETA that its investment will result in economic growth, upgrade technology and/or increase employment opportunities.

Furthermore, the value of the goods and services procured by foreign investment shall not have a market share more than 25 per cent in the relevant economic sector and more than 35 per cent in the relevant sub sector or field. Once the Foreign Investment License is obtained, then the incorporation procedures may commence and the incentives and protections become applicable.

As implied, the procedure is compelling and conditional at the discretion of OIETA. Normally, if everything goes well, the evaluation of any application shall not pass 45 days but it is difficult to determine how long it would take to complete all documents including detailed feasibility studies and to get permits from the relevant organisations and ministries. Such delays are challenging for the investors' investment expectations.

Without following the process, it is possible to incorporate joint stock and limited liability companies which will be subject to Iranian laws and cannot benefit from the foreign investment privileges. In accordance with the Iranian Commercial Code ("ICC"), there is no restriction applicable to non-Iranians to incorporate companies and to manage the same.

KEY SECTORS

With the biggest combined energy deposits in the world, one of the largest oil reserves and the second highest in gas, Iran is becoming a shining star for enterprises in energy sector. Since the production efficiency is getting lower and lower, it is known that investment is required to modernise and lead the way to Iran becoming one of the biggest energy markets, which also means energy companies can expect better agreement terms.

Last but not the least, Iran's Minister of Industry has recently expressed their expectations for the mining sector as well. Accordingly, Iran will need a further USD20 billion of investment by 2025 for the exploration and development of mines.

Although all these opportunities would reveal that there is a paradise waiting for the investors to make their investments in this area, when the subject is Iran, there is always a 'but'. So, it should be first kept in mind that Iran should be giving investors more confidence and taking solid steps to realise the expected promises. For instance, one of the loudly spoken complaints is Iran's current intellectual property protection regime which may result in companies defenseless against IPR infringements and unfair competition matters. Iran is not completely bound by World Trade Organisation's ("WTO") international trade principles since it is not a full member of WTO. But it has been said that when the economic sanctions and economic isolation be removed, Iran may accelerate the realisation of its promises to have an effective presence in international competition and international trade. For Iranian officials, the time may have come to give potential investors not only mouth-watering promises but also real cause to invest in Iran.

FINAL NOTES

It is uncertain what will be the result of Iran's first parliamentary election after the lifting of sanctions, and how Middle East tensions between world powers effect Iran. It is also uncertain whether re-admission to the global banking systems and payment network could be a real solution for one of Iran's biggest problems (i.e. foreign bank transfer transactions).

In addition to all, lack of transparency in governmental policies/conducts and of strict observation on corruption matters are also serious topics for any potential investors. It is advisable to test the market dynamics with start-ups rather than establishing joint ventures with local enterprises since trust could be a real problem. But before all, enterprises should decide on the investment they are planning to make and take consultancy from the local experts accordingly since it would be the best practice in the presence of such risks and relative unknowns.

Sanctions may be just the tip of the iceberg, but potential investors should be determined to take actions to start their investments in this hot market offering many untouched opportunities.

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