

# DÜNDAR SİR

## LAW FIRM

December - 2025

### FOREIGN DIRECT INVESTMENT IN TÜRKİYE

Like every country, Türkiye has its own foreign direct investment ("FDI") regime, which is regulated under the Turkish Foreign Direct Investment Law No. 4875 ("Law") and the Turkish FDI Regulation. Since this regime provides the principle of Equal Treatment, the foreign investors must be treated equally with domestic investors, and they are free to invest in any industry except for strategic sectors.

This Brief Note aims to summarize the FDI Regime in Türkiye, certain exceptions for strategic sectors and make a comparison with the European Union ("EU") screening regime.

1. **FDI:** FDI refers to (i) the establishment of a new company or a branch, or (ii) the participation in an existing company, either by purchasing shares outside the stock exchanges or by acquiring at least 10% of the shares or voting rights of a company traded on the stock exchanges by a foreign investor under the Law. FDI can be made through the following types of economic assets:
  - (i) assets brought from abroad, such as cash capital in the form of convertible currency purchased and sold by the Central Bank of the Republic of Türkiye, company securities (excluding government bonds), machinery and equipment, and industrial and intellectual property rights; and,
  - (ii) assets obtained from within Türkiye, such as profits, proceeds, receivables, or other rights having financial value that are used in reinvestment, as well as rights related to the exploration and extraction of natural resources.
2. **Foreign Investor:** The following are considered as foreign investors under the Law: (i) individuals who are citizens of foreign countries and undertake FDI in Türkiye, (ii) Turkish citizens residing abroad, (iii) legal entities established under the laws of foreign countries, and (iv) international organizations are considered foreign investors under the Law.
3. **Equal Treatment & Freedom to Invest:** Law provides the principle of Equal Treatment. The foreign investors must be treated equally with domestic investors and except for strategic sectors they are free to invest in any industry without getting any approval.
4. **Approval Procedure:** Since principle of Equal Treatment applies, there is not any permit or approval procedure for FDI in Türkiye; only a notification to the Turkish Ministry of Industry and Technology ("Ministry") is required.
5. **Exceptions: Strategic Sectors & Liaison Office:** For certain sectors, there are certain exceptions to the freedom to invest:
  - Defense Industry: Enterprises engaged in the production of military vehicles, equipment, weapons, ammunition, and explosives, as well as facilities involved in classified activities, must obtain the approval of the Ministry of National Defense and obtain certain authorizations such as establishment and manufacturing permits, plant, and personal security certificates.

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- Civil aviation: The majority of shareholding, board, and control of a company operating in Turkish civil aviation sector must remain with Turkish citizens. Therefore, any acquisition by the foreigners must be reported to the Ministry of Transport and Infrastructure.
- Radio and Television Broadcasting: As a rule, foreign ownership of a media service provider may not exceed 50% of its paid-in capital, and a foreign investor may hold direct shares in no more than two media service provider organizations.
- Acquisition of Real Estate: Foreign-owned companies in Türkiye, which 50% or more of the shares or management rights are held by foreigners, may acquire real estate and limited real rights such as mortgage and access. Yet the total area acquired may not exceed 10% of the total land area or 30 hectares per person overall.
- Maritime and Cabotage: Under Turkish law, maritime transport within Turkish territorial waters is exclusively reserved for Turkish citizens and companies. As a principle, foreign ships are not allowed to conduct commercial operations or carry goods and passengers between Turkish ports.

In addition to the above, the Mining Law, Environmental Law, and Tourism Incentive Law also set out specific regimes and require approval procedures in certain cases for FDI in Türkiye.

6. **Merger Clearance Requirement**: The Turkish Competition Authority mandates prior clearance for mergers, acquisitions, and joint ventures that (i) create a permanent change of control and (ii) exceed certain turnover thresholds for both foreign and domestic investors. Failure to get a merger clearance leads to imposition of administrative fines and may even cause the annulment of the transaction.
7. **Dispute Resolution**: Turkish law allows the foreign investors to choose a foreign applicable law and alternative methods of dispute resolution, such as international arbitration. Therefore, any disputes may be settled through the arbitration.
8. **Comparison with FDI Screening in EU**: In the European Union, there are two essential legislations governing foreign investments: Foreign Subsidies Regulation (“FSR”) and the FDI Regulation. The FSR aims to prevent market distortions arising from foreign subsidies, while the FDI Regulation allows Member States to implement screening mechanisms for FDI. Under the proposed 2025 amendment to the FDI Regulation, all Member States will be required to establish such mechanisms, and investments in sensitive sectors -such as space, transport, and energy-will be subject to national screening procedures.

Türkiye does not have such strict screening requirements and maintains equal treatment for FDI, however each industry (e.g.; energy, e-commerce, beverages, hospitality, life sciences) may have its own regulations to follow.

Should you have any inquiries regarding this Brief Note, please do not hesitate to contact us.

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