

ABOUT THE FOREIGN DIRECT INVESTMENT LAW

Law 6224 on Encouragement of Foreign Capital enacted on January 18, 1954 was a quite liberal law compared with the legislations of some OECD countries of those times. The term "encouragement" in the name of Law 6224 derived from the presence of some principles that were intended as real incentives, such as : "free transfer" and "national treatment". However, notions, definitions and applications concerning foreign direct investments have changed so rapidly that Law 6224 lagged behind the contemporary demands of both foreign investors and Turkey. As a result the need for a new Foreign Direct Investment Law emerged.

Law 4875 emphasizes the key elements of the liberal investment environment in Turkey. We believe that foreign investment legislation of any country is the representative of the nation's attitude towards international investments. With Turkey's new Foreign Direct Investment Law, our equal (level playing field) and liberal approach to international investments is clearly reflected. Our new law is the "legal guide" to international investors about their rights and obligations, with explicit messages.

WHAT IS NEW ?

I. International Standards

"Foreign direct investment" and "Foreign investor" terms are defined within international standards in order to clarify the field of application of the Foreign Direct Investment Law. Within this scope:

a) Foreign Investor is defined as :

- 1) Real persons who possess foreign nationality and Turkish nationals resident abroad,
- 2) Foreign legal entities established under the laws of foreign countries and international institutions, who make foreign direct investment in Turkey.

b) Foreign direct investment is defined as :

- i) Establishing a new company or branch of a foreign company
- ii) Share acquisitions not by means of capital markets, and share acquisitions through capital markets where the foreign investor owns 10 percent or more of the shares or voting power, By means of but not

limited to the following economical assets:

- 1) Assets acquired from abroad by the foreign investor:
 - Capital in cash in the form of convertible currency bought and sold by the Central Bank of Turkey,
 - Stocks and bonds of foreign companies (other than government bonds),
 - Machinery and equipment,
 - Industrial and intellectual property rights
- 2) Assets procured from Turkey:
 - Reinvested earnings, revenues, financial claims, or any other investment-related rights of financial value
 - Commercial rights for the exploration and extraction of natural resources.

II. Abolishing Permits

With this Law, all permits granted by the General Directorate of Foreign Investment are abolished. As a result, all transactions for establishing a company with foreign capital will be the same as with local companies. Since all companies established in Turkey within the framework of the Turkish Commercial Code are accepted as Turkish companies, all duties and responsibilities are equal regardless of the nature of capital formation.

III. Informing Investors About Their Existing Rights

National Treatment

The National Treatment, the major principle of foreign investment policy of Turkey, was emphasized in the new law.

Protection against Expropriation

Principles stated in the Constitution and the Expropriation Law are stated in the new law, as in the bilateral investment agreements and other international agreements. Therefore it is clarified that expropriation can not take place with any reason other than the above-mentioned regulations.

Guarantee of Transfers

In the new Law, the right of free transfer of profits, dividends, proceeds from sale or liquidation of all or any part of an investment, amounts arising from license, management and similar agreements, reimbursements and interest payments arising from foreign loans, banks or special financial institutions is clearly stated.

International Arbitration

According to the new law, for the settlement of disputes arising from investment agreements subject to private law and disputes arising from conditions and contracts made with the administration under which concessions concerning public services are granted, foreign investor can apply, beside the authorized local courts, to national or international arbitration, or other means of dispute settlement, provided that the conditions in the related regulations are fulfilled and the parties agree thereon.

Employment of Expatriates

Foreign personnel can be employed for investments in Turkey. Considering its importance to foreign to foreign investors, employment of expatriates is explicitly mentioned in this Law.

IV. The New Role of Undersecretariat of Treasury

Foreign Investment policy of Turkey has changed from screening system to monitoring system. With this new scope, Undersecretariat of Treasury will collect any kind of data concerning the foreign investments and determine the foreign investment policy of Turkey.

Existing Rights of Investors

- **National Treatment**
- **Protection against Expropriation**
- **Guarantee of Transfers**
- **International Arbitration**
- **Employment of Expatriates**