

HOW TO INVEST IN TURKEY 1987



TURKISH
INDUSTRIALISTS AND BUSINESSMEN'S
ASSOCIATION

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INTRODUCTION

TUSIAD — The Turkish Industrialists and Businessmen's Association was founded in 1971 by a group of leaders of Turkish industry who saw the need for an independent, non-profit organisation which would seek to improve the quality and effectiveness of free enterprise through research and development, and the wider dissemination of business information.

Within the context of Turkey's adoption of the principles of an outwardly-oriented free market economy, **TUSIAD**'s role in regard to the overall business environment, fiscal matters and, particularly, foreign investment opportunities, has gained still greater importance. Its membership embraces the foremost names in the Turkish business world and their fields of interest in regard to joint ventures and other forms of co-operation with foreign investors cover virtually every sector of modern business endeavour.

This survey has been prepared with the objective of providing potential foreign investors with as much information concerning the business climate in Turkey, and the regulations governing and attitudes towards foreign investment as is practicable in a single, modestly-sized publication. It is fully appreciated that this is not a comprehensive survey but **TUSIAD** will welcome readers' enquiries for more information and will gladly furnish detailed explanations of any points which are of particular interest to any reader.

In great measure, **TUSIAD** will have achieved its objective if this survey succeeds in stimulating a connection between foreign and Turkish investors and entrepreneurs and at the same time provides them with mutually beneficial information.

Ömer DİNÇÖK
Chairman of the Board
Istanbul, February 1987.

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CHAPTER I

GENERAL INFORMATION

1. Geography and Climate

Turkey is uniquely situated at the junction of Europe and Asia and may be described as the bridge between two continents. The Republic of Turkey has an area of 781,000 sq.klms., which is three times the size of West Germany and England put together. Its location on two continents gives the country a major advantage in serving the markets of Europe, the Middle East, and North Africa. Turkey shares common borders with Greece and Bulgaria in the northwest, with the USSR in the north and east, with Iran to the east, and with Iraq and Syria to the south. Many of the markets in the Middle East are close enough to be served by trucks. Turkey also operates shipping ports on four seas; the Black Sea in the north, the Aegean in the west; the Mediterranean in the south, and just south of Istanbul, the Sea of Marmara. These are connected by the Bosphorus and the Dardanelles.

The topography is extremely varied and climatic conditions differ widely between regions. The country consists of a highland plateau surrounded by mountainous areas in the east and fertile plains in the coastal regions. The Climate of the west and south is humid, and temperatures range between 10 and 25° Centigrade. The Black Sea coast has rainfall all through the year and the temperature ranges between 6 and 21° Centigrade. Anatolia has a steppe like climate which is hot and dry during summer, cold and wet in the winter, and the minimum and maximum temperatures are 1° and 27° Centigrade, respectively.

2. Population

The population of Turkey was 51.4 million at the October 1985 census. During the past decade, population growth averaged some 2.6 percent per year. Although, there has been considerable migration to the towns, approximately 46 percent of the population still lives in rural areas.

Ninety-nine percent of population are Moslems and there are small Christian and Jewish minorities. The population is concentrated in the west of the country and especially along the coast. Istanbul, with approximately 6 million inhabitants, is the largest city and the center of industry and commerce. Ankara, the capital city, has 3.4 million inhabitants. The other large cities are Izmir with 2.3 million inhabitants and Adana with 1.6 million.

3. The City of Istanbul

Area is 5711 square kilometres. Population is about 6 million. Minority ethnic groups are Armenians, Jewish and Greeks. Expansion or, more accurately, explosion has violently transformed Istanbul over the course of the last three decades. The city has two parts, one in Asia and the other in Europe separated by the Bosphorus across which is a bridge connecting the two continents, and a second bridge is being built. The European part of Istanbul has two sections: the Old City and Beyoglu (called Pera), connected by three bridges across the Golden Horn.

Istanbul is Turkey's manufacturing and commercial centre, it accounts for 40% of the country's industrial output and 400,000 workers produce about 60% of all export's of manufactured and processed goods. Heavy and light industry abounds in and around the City-shipbuilding, glassware, textiles, leather goods, cigarettes, chemicals, foodstuffs, motor vehicles and parts, domestic appliances, pharmaceuticals, metal products - the list is endless. The noise factor in Istanbul is 70.6 dB.

The headquarters of most of the largest groups of private companies and of the banks are located in Istanbul, as are all the secondary banking establishments and three special finance houses. Almost all the foreign investment companies operate in or near Istanbul, or at least have offices there.

Weather changes are remarkable throughout the year. Winters start with cool breezes and rains from mid-September onwards. The sombre mood set in by fog and damp resembles the supposedly typical English weather. Temperature drops fast, reaching its climax in January and February

Snow should be expected any time between December and March. The beginning of April and May are synonymous with spring but usually cool. Suddenly in late May comes Summer in all its might and sunshine.

4. Transportation

4.1) Highways

Major international highways - such as the E.5, E.80, E.88, E.90, E.880, and E.908 - link Turkey with Western Europe and with the Middle East. An ever-growing volume of goods goes from, comes to and passes through Turkey by road and Turkish-owned trucks play a prominent role in this traffic. On the other hand, regular ferryboat services provide a connection between Istanbul, Izmir, Brindisi and Venice and between Mersin and Famagusta, in Cyprus. There are also non-stop ferry services across the Bosphorus (in addition to the Bridge) and across the Dardanelles.

4.2) Railways

The railways are linked to Iraq, Iran, Syria, Lebanon and the USSR in the east, and to the European countries in the west. The main railway terminal ports are Samsun, Istanbul, Derince, Bandirma, Mersin and Iskenderun.

4.3) Airways

Turkish Airlines (THY) has scheduled flights to the main cities of Europe; London, Paris, Zurich, Geneva, Frankfurt, Vienna, Amsterdam, Munich, East Berlin, Milan,

Copenhagen, Rome, Tel Aviv, Tripoli and Ercan (Cyprus): the numerous other destinations are soon to be added. In addition, THY has transfer cargo services to those cities where it has no regular flights. Domestic services provide scheduled flights to 15 provincial capitals. In addition private airline companies have domestic flights between major cities.

4.4.) Sea Transport

The main seaports are Istanbul and Izmir; other include Mersin, Iskenderun, Antalya, Tekirdag, Hopa, Trabzon, Giresun, Ordu and Kusadasi. Turkish cargo lines operate regular sailings to North and South US ports, to the principal European ports and to North African ports; several Turkish private shipping companies also operate regular foreign services and, overall, the Turkish merchant fleet operates world-wide.

5. International Relations

Turkey is a charter member of the United Nations and participates in many of its specialized agencies. Turkey is a member of NATO, of the Council of Europe, the World Bank, the IMF, and the OECD. In addition, Turkey is a party to the GATT. Turkey is also a member of the Organization of Islamic Conference and Islamic Development Bank, and is a member, together with Iran and Pakistan, of the RCD (Organization for Cooperation in Development). In 1963, Turkey concluded an Association Agreement with the EEC. In 1970, a supplementary agreement was entered into between Turkey and the EEC, providing for a transitional second stage of Turkey's integration with the Community.

CHAPTER II

FOREIGN INVESTMENT REGULATIONS

1. Introduction

The Turkish Government welcomes foreign investment as a means of facilitating the country's economic development. Each proposal for foreign investment requires a specific permit from the authorities and such permits are issued after careful review of feasibility studies and other supporting documents provided by the applicant. Foreign investments are governed by one of the two alternative regulations. These are;

- Law 6224 on the Promotion of Foreign Capital Investment, together with Framework Decree 86/10353, covers capital for investment.
- Decree No: 30 on the Protection of the Value of Turkish Currency and Communiqué 84/30/1 cover capital for commercial activities.

Foreign investment in the petroleum industry is subject to Petroleum Law No: 6326 and its Amendment Law 2808. Applications are made to General Directorate of Petroleum Affairs directly.

2. Types of Establishment

In principle, all legal forms are open to foreign investment including unincorporated joint-ventures (civil law partnerships). However, the legal requirements of the Turkish Commercial Code make most partnership features incompatible with the spirit of Law 6224.

Foreign investors may establish:

- A branch
- A representative office
- A new company with a local partner
- A 100% foreign company and/or
- Invest in an existing Turkish Company

In setting up an establishment as above, permission must be obtained from the FID (Foreign Investment Department of the State Planning Organisation of the Prime Ministry). Under Decree 86/10353, the FID may issue investment permits and provide investment incentives in its own right for all investment projects with foreign participation of up to US \$ 50 million. For projects with foreign participation of over US \$ 50 million, applications must be submitted for preliminary investigation to the SPO and then presented to the Council of Ministers for approval.

Decree 30, Regarding Foreign Investment, was put into effect in 1984. Within the provisions of this Decree 30 and of its related Communiqué, persons resident Abroad are free to realize investments, to participate in partnerships, to open branch offices, to acquire shares and to establish bureaux, representative offices and agencies in Turkey provided that they bring the capital required for such activities into Turkey in the form of foreign exchange, that they obtain the permission of the FID, and that they perform their activities within the framework of the granted to them. The importation of intangible rights, such as patents, licences and know-how, into Turkey shall be subject to the same principles.

Persons resident abroad, who shall realize investments or commercial activities in Turkey, in accordance with the principles foreseen in Decree 30, shall register and cash the capital they have brought into Turkey at the FID. The minimum capital requirements for each enterprise is US \$ 50,000.

In case of the importation of real assets (machinery and equipment) an inspection shall be performed in accordance with principles to be determined by the FID, to determine whether or not the imported equipment and materials comply with the granted permits.

3. Incentives for Foreign Investments

In order to encourage foreign investment in Turkey, a number of specific incentives are available to foreign investors under both Law 6224 and Decree 30. Foreign investors may also benefit from the incentives available to domestic investors. Incentives may vary depending upon the economic sector or geographical location but they may be summarized as follows.

- Exemption from customs duties and other import taxes or payment of initial customs duties in installments
- Investment allowance, up to 100% of total investment depending on the geographical location of the enterprise
- Medium term credit at subsidized interest rates

It should be noted that in order to claim both tax and non-tax investment incentives offered, it is necessary to obtain an "Investment Certificate". This certificate is issued by the SPO (State Planning Organization). Application must be submitted to the SPO through FID.

FID foreign investment approvals do not in themselves constitute an incentive certificate.

4. Formation Procedures

In order for an application to be processed, a feasibility report containing the information described in the format established by the FID must be submitted. The key subjects of the format are:

- General information about the investors
- Nature and type of investment
- Investment finance

- Information concerning proposed operations
- Project evaluation

Documents to be supplied at the same time of application to the FID for investment permission are summarized below:

- Three copies of feasibility study
- Financial statements for last 2 years commitment (for legal entities)
- Foreign partner's participation commitment in the company to be established or in an existent company
- In the said commitment, the amount of the capital to be imported and the type thereof (cash or in kind) must be indicated.

Formation procedures are the same for both Decree 30 and Law 6224. However, formation procedures for foreign investments, under Decree 30 are more simple in so far as only the FID need be directly approached by the applicant for a permit.

5. Acquisition Procedure

Under Law 6224 and/or Decree 30, foreign companies may invest in an existing Turkish Company (including banks). In the case of acquisition of a bank, applications for permits should be submitted in the first instance to the FID which will then review them in consultation with other departments of Undersecretariat of Treasury and Foreign Trade (UTFT).

The FID does not have the authority to approve banking investments. It is however, the organisation which is responsible for processing the applications in the first instance and accordingly it is the FID that an intending foreign investor should first turn.

The following must be enclosed with the application to be presented to the FID in order to found a bank to open a branch, or to invest in any existing bank in Turkey.

5.1) On opening a branch in Turkey

- Articles of Association of the Bank,
- A Feasibility Report giving the reasons in detail for opening a branch in Turkey
- Balance Sheets and Income Statements of the Bank for the previous five years
- Such other documents as may be required by the FID and UTFT
- All the above to be certified by the competent authorities of the country concerned.

5.2) On making an acquisition

- The application should be supported by a Feasibility Report in sufficient detail to enable the authorities reviewing it to take admission thereon.
- Articles of Association of the Participating Bank
- Balance Sheets and Profit/Loss Accounts of the Participating Banks for the previous five years should be submitted.

This Feasibility Study should be prepared according to the Format issued by the FID.

The affirmative opinion of the FID is necessary in accordance with Foreign Capital Law: 6224 and the permit Decree of the Council of Ministers is published in the Official Gazette in due control.

6. Work Permits For Foreign Personnel

If it is desired to employ foreigners in the company, application must be made to the FID in the first instance. A special application format is available from the FID.

7. Transfer of Dividends

Within the framework of the permit granted in relation on the investments and commercial activities realized in Turkey by real persons and legal entities resident abroad:

- Application for the transfer of profits, dividend, and the like shall be directly fulfilled by the commercial banks, upon the request of the company concerned and the FID shall be informed of the details of such transactions. Interested parties should submit to the banks 3 copies of the documents specified below.
 1. Tax declaration and balance sheet and profit/loss calculation approved by the relevant tax office;
 2. Tax verification and/or tax receipt;
 3. Profit distribution tables.
- Sales and liquidation values shall be determined at the end of an investigation to be performed by the FID, or by any institution it may appoint to carry out such investigation on its behalf, and the Central Bank shall thereafter be requested to issue a foreign exchange transfer permit for the amount in question.

8. Utilization of Dividends

The amounts acquired by the persons (real and/or legal entities) residing abroad, from the companies engaged in business activities in Turkey in the form of dividends, profits, and sales revenues, in whole or in part of in respect of equity shares may upon request by the concerned parties and with the approval of the Undersecretariat of Treasury and Foreign Trade (UTFT), be added to the share capital or may be invested in other enterprises or fields of activity under the provisions hereof without necessitating any book transfer operations.

9. Transfer Guarantee

Foreign investors under Law 6224 or Decree 30 may obtain, on application to the FID, a Ministry of Finance and Customs endorsement to their share certificates, or temporary receipts in lieu thereof, guaranteeing repatriation of amounts due in respect of dividends, the sale of shares or of capital assets provided by the shareholder. Such endorsements concern access to the relevant currency from the Central Bank and/or the commercial banks but they make no provisions as regards exchange rates. Provided the FID is duly notified, share certificates and temporary receipts endorsed as above may circulate freely in Turkey or abroad. In the event that certificates/temporary receipts so endorsed are sold to real persons or legal entities resident in Turkey, the basis for the sale price shall be the stock market price at the time or if a stock market has not been developed the price shall be determined by the FID; certificates/temporary receipts sold locally must thereafter be presented to the FID for cancellation of the endorsement.

CHAPTER III

COMPANY LAW REQUIREMENTS

1. Business Entities

Except for farming and self-employment activities, all other business activities (manufacturing, trading services etc.) of trading entities are governed by the Turkish Commercial Law which, has been in effect since 1957. In accordance with the Commercial Law, trading entities have been grouped and defined as follows:

1.1) Personal Companies

- Sole proprietorship
- General Partnership
- Ordinary Limited Partnership

1.2) Joint Stock Companies

- Limited Partnerships with specific capital
- Limited Liability Companies (Ltd.)
- Joint Stock Corporations (Anonim Şirket or AŞ)

2. General Characteristics

A corporation is a legal form of organization used to carry on a business enterprise. It is recognized by law be an entity separate and distinct from its shareholders, directors and officers. A corporation has several notable characteristics, including the power to enter into contracts and to hold property in its own name, continuity of life, and free transferability of ownership interest. Additionally, the liability of corporate shareholders for the fact of the corporation is limited to their investment in its stock. Management of the corporation is centralized in its board of directors.

Limited liability companies (Ltd) differ from corporations mainly in respect of the minimum number of shareholders and capital requirements. In this form of business, shares can not be issued for capital paid in by the shareholders. Limited liability companies require a minimum of two partners of capital subscribers.

3. Formation Procedures

In Turkey, companies are set up in accordance with Turkish Commercial Law No: 6762. The companies that foreign concerns establish in Turkey according to the provision of this Law, either entirely on their own or with Turkish partners, are regarded as "Turkish Companies" and are therefore entitled to all the rights granted by this Law.

Turkish Commercial Law, in its provisions governing the founding of companies, makes no distinction between Turkish citizens and foreigners, and partners and founding partners, be they Turks or foreigners, are entitled to the same rights and are eligible for the same privileges.

Foreigners and foreign companies have the right to set up companies in Turkey as long as they comply with the provisions of Turkish Commercial Law. Foreign firms which want to operate in Turkey in the form of "Turkish Companies" are usually organized either as corporations or as limited companies, since these two forms of organization are most advantageous in so far as the tax laws are concerned.

The Turkish Commercial Law stipulates two different methods of formation:

- formation in a single step, when the founders raise the whole capital stock themselves
- formation by successive subscription, when capital stock is raised by public subscription.

In the latter case, the founders draw up proposed articles of incorporation and a prospectus, on the basis of which those interested may subscribe to the capital stock.

4. Methods of Formation

The conditions and operations required for setting up limited companies are explained below:

- The founders must be at least two share-holding individuals or legal entities, and the number of partners may not exceed fifty. As in the case of Corporations, the partners' liability is in proportion to the amount of capital to which they have committed themselves.
- The capital of a limited company must be at least TL. 10,000. The capital is divided into TL 500 worth portions, and each partner must contribute TL 500 or a multiple thereof. Each partner receives a share of the net profit in proportion to the amount of capital he paid in.
- Unlike corporations, limited companies do not need to obtain permission from the Court for their establishment.
- In the organization of limited companies whose partners exceed twenty, there must be one or more auditors whose duties and authority are as those of the auditors of corporations.

Corporations may be formed with a minimum number of five shareholders and a minimum capital of TL 500,000 where the capital subscribed is to be paid in cash or in kind; 25% of the subscription in cash must be paid up at the date of formation. According to the Foreign Investment Regulations however, foreigners and foreign legal entities wishing to operate in Turkey are required to bring at least US \$ 50,000 worth of capital into Turkey from abroad.

Each shareholder's liability is limited to the value of his shares, and these may have a different nominal values, but each type of share must have equal voting rights. Share certificates, may be in bearer or registered form. Founding shares may be issued to the founding members at the date of formation. They do not bear a nominal value, but entitle the holders to dividends.

The firm to be set up must have a trade name. Companies are free to choose their trade name on the condition that it reveals the nature of their business.

To form a corporation, the following steps would normally be required to be taken:

- Preparation of the articles of incorporation, which would include such information as:
 - - a corporate name
 - - duration of life of the corporation (which may be indefinite)
 - - corporate purpose
 - - number and classes of authorized shares of the equity
- Signing and authentication of the articles of incorporation

5. Business Registrations

Before applying to the Ministry of Industry and Commerce (MIC) foreigners must hold a permit granted by the FID for Law 6224 and Decree 30 investments, and a permit from the GDPA for Law 6236 investments in the Petroleum Industry.

Seven copies of the Articles of incorporation and the letter written to the Ministry by the bank which blocked the 25% of the nominal capital must be submitted to the MIC along with the foreign investment permit issued by the relevant authority. Formations permits for a trading entity are issued by the MIC, but are subject to the approval of the Commercial Court.

A trading entity is constituted by being registered with the local Trade Registry. Following registration, the articles of association are published in the Trade Registry Gazette. Any changes in the articles of the company, changes in the place of business or changes in division of duties among its members as well as the minutes of annual general meetings must also be gazetted.

Corporations whose shares or bonds have been issued to the public must also be registered with the Stock Exchange. Corporations whose number of shareholders exceeds 100 are subject to the regulations of the Capital Market, which include financial reporting requirements, disclosure and announcement of a prospectus for the issue of shares to the public and an authorised share capital. The Capital Market Commission is the Law's executive body.

6. Additional Formalities

The following are the additional formalities which concern most new businesses:

- Registration of trade marks is not obligatory by Law: registration is with the MIC
- All trading entities are required to register with the Chamber of Commerce and/or Chamber of Industry in the locality of their operations.
- Registration with the relevant Employer's Association is optional.
- Permits to start operations must also be obtained from the local authorities.
- Registration with the provincial office of the Ministry of Labour is required.
- Ownership of real estate must be registered in the Property Registration Office.
- Registration with local tax and social security offices is obligatory, as is the notification and registration of any changes therein.

7. Board of Directors

All powers of a corporation are vested in the board of directors unless otherwise provided in the articles of incorporation. The company is administered by the board of directors composed of a minimum of three and maximum of nine persons. The directors are elected at the general meeting for a period fixed by the shareholders. The directors may be re-elected for an indefinite period. They must deposit at the corporation's principal office, for the duration of their term of office TL 5,000 in shares provided by the Law and designed to protect the corporation against any damages which they may possibly cause in the fulfilment of their duties. The board of directors designates the individuals authorised to represent the company vis-a-vis third parties and determines the details concerning signatories' powers. Foreigners may be appointed as members of the board of directors.

8. Auditing

Individuals must be appointed as auditors and they must not be related to any Board member. Auditors may not be shareholders. In the event that the number of auditors exceeds one, they constitute a board and act as a body with the majority vote prevailing, unless it is otherwise stated in the articles of incorporation of the company concerned. The total number of auditors may not exceed five. In addition to the Statutory auditors, Certified Public Accountants (for equivalent) may also be appointed by corporations.

9. Annual Meeting

The general meeting is the supreme authority of the company and is composed of all shareholders. There are two types of meeting;

- the ordinary general meeting of shareholders which is held annually within four months following the end of the fiscal year,
- the extraordinary general meeting called as often as is considered necessary.

The general meeting has the right to adopt and modify the articles of incorporation, to appoint directors and auditors, to approve the profit and loss account, the balance sheet and the directors' report, to ratify the acts of the directors, and, in general, to make all important decisions which are not delegated to any other body. The shareholders must also approve the amount recommended by the directors to be distributed as a dividend as well as the directors' profit participation or other remuneration.

A general meeting is called by the board of directors or, if it fails in its duties, by the auditors. One or more shareholders, representing in aggregate at least one-tenth of the capital stock, can at any time request the calling of an extraordinary shareholders' meeting. They must do this in writing, indicating the purpose of the meeting.

In general, a simple majority of votes represented at the general meeting is sufficient to pass a resolution and make elections to office. However, certain decisions require a vote of two-thirds of the capital stock.

10. Liquidation of a Company

A company may be dissolved for any voluntary reason provided for in the articles of incorporation or by decision of the general meeting of shareholders, including decisions concerning mergers or conversion. An involuntary dissolution can be imposed upon the company by a declaration of bankruptcy or by a court decision. A court may decide upon the dissolution, for example, in a case where the number of shareholders falls below the mandatory number or where serious violations of legal or statutory provisions have occurred. Furthermore, shareholders representing at least ten percent of the capital stock may request dissolution by the court if they have good cause (for example, if minority interests have been grossly violated). Upon dissolution - whether voluntary or involuntary - a company is to be liquidated, unless the dissolution is incident to a merger or takeover operation.

11. Mergers and Consolidation

Mergers and consolidation of corporations are permitted under the Turkish Commercial Law. To accomplish a merger or consolidation, a resolution must be approved by the respective boards of directors and must be approved by the shareholders of each corporation. The Tax Laws may have a considerable effect on the execution of a merger.

12. Accounting Principles

General principles for the keeping of books and the preparation of financial statements are laid down in the Commercial Law and the Tax Procedure Law. The Commercial Law and Tax Procedure Law prescribe the official books which commercial establishments must maintain. Every transaction and all financial statements must be based on the books. The Tax Procedure Law specifies various formalities, the most important of which are given below:

12.1) The books must consist of at least:

- Cash book
- General ledger, including bank accounts
- Journal
- Stock (inventory) ledger
- Fixed assets register
- Accounts receivable and payable ledger
- Costing ledger (for manufacturing operations only)
- Minute book of meetings of the Board of the Directors and of shareholders.

12.2) The Law requires that all books be bound; and their pages numbered and authenticated by a public notary before use. By the end of January following the year to which it relates, the journal entry book must be stamped by Notary. The books must be handwritten in Turkish. Every entry must be recorded individually. EDP records are permitted. All outputs must be authenticated by a Notary Public.

13. Reporting

Accounting and valuation principles are not codified in Turkish Commercial Law so that in practice they generally derive from the Tax Law. Financial reporting practices are limited to those required by;

- the Commercial Law, only imposed on corporations

- requirements imposed by various government offices and agencies on banks and insurance companies,
- additional requirements imposed on Public Corporations by the Capital Market Commission.

An audited annual report is required in respect of each fiscal year. Reports must be filed with the local Trade Registry within 30 days of the annual meeting and must be available for inspection by all shareholders 15 days prior to annual general meeting. The annual report must comprise a profit/loss statement and a balance sheet. Public corporations, in addition, must publish their financial statements together with the auditors' report in the Official Gazette and in a minimum of two local newspapers. They must also submit them to the Capital Market Commission.

Banks and insurance companies have to submit their quarterly and annual reports to various agencies and their financial statements must be published in a newspaper. The format of financial statements must be in accordance with the grouping approved by the related government offices.

State Auditors may conduct audits of all business entities. The fiscal authorities have the right to examine the relevant books and records of a tax-paying company within five years of the relevant balance sheet date. This right is almost invariably exercised in respect to medium-sized and large companies. Small businesses are subject to fiscal audit on a random basis. The five years statutory period is strictly adhered to, and can only be interrupted if the fiscal authorities communicate to a taxpayer the additional amount of tax which they claim is due. Fiscal audits are carried out without any warning.

CHARTER IV

INVESTMENT INCENTIVES

1. Introduction

Until 1985, published decrees listed incentives for investments on the basis of sectors and products. With Decree 84/8530, dated October 14 1984, there has been a change in the form of presentation of the incentive system. In this decree are listed "investments that are not encouraged" rather than encouraged investments, which would be found in the positive lists published prior to 1985. This new negative list enumerates sectors and products in which investment will not receive any incentives. All activities that are not found in this list are thus encouraged.

Incentives are granted on the basis of an incentive certificate to be issued in respect of each investment projects by the State Planning Organisation. Requests for incentive certificates must be supported by documentation demonstrating the desirability of the projects within the context of the overall economic development of the country.

Incentive measures have been directed towards three major aims:

- to reduce the cost of investment,
- to reduce the need for external financing,
- to increase profitability.

There are certain particularities in Turkey's incentive scheme. The first such is the differentiation of incentives on a regional basis. For the purpose of incentives, Turkey has been divided into four zones:

- developed regions,
- regions enjoying first degree priority in development,
- regions enjoying second degree priority in development,
- normal regions.

The second category derives from having to meet certain minimum conditions, such as, "lower limits", "investment totals", "minimum level of own sources" and "export potential" in order to benefit from certain kinds of incentives.

Yet another characteristic is that all incentives originate from the central government. Provincial, or municipal administrations are not involved in such schemes. The agency of the government which administers the incentives scheme is the "Incentives Application Directorate" of the Prime Ministry's State Planning Organization. The incentives scheme is implemented on the basis of "incentive certificates" granted by this agency.

2. Incentive Measures

Incentive measures may be divided into the following groups from the point of view of the benefits they provide:

2.1) Tax Benefits

These are in the form of tax exemptions during investment and subsequent phases (exemption from custom duties, real estate tax and various other taxes, fees, and duties).

2.2) Economic benefits

These render investment and operations more productive and profitable (such as the availability of low interest credits and monetary contributions). These are payments in cash made by the government on the basis of realized investment, or equipment purchased domestically. As examples of such pecuniary support, may be mentioned the "fund to support investment", or the "incentive premiums" paid against capital goods obtained domestically.

2.3) The availability of certain opportunities

These consist of allowances to the investor depending on the nature of the undertaking (such as in allocation of foreign exchange and authority to import and install other than new machinery and plant)

2.4) Other benefits

In addition to the above categories, there are certain incentive schemes particular to specific undertakings.

As may be seen from the foregoing it is possible to classify currently applied incentives according to whether they apply to the investment phase, or to the operations phase. Some apply to both phases.

3. Incentives Applicable to the Investment Phase

Incentives directed towards the "investment phase" are those which apply to the period between investment activities per se and the commencement of actual production.

3.1) Customs Exemption

Machinery which must be imported for investments which bring new technology and increased competitiveness, and which are sanctioned by the development plans and programme may be imported duty free.

The customs exemptions for investments requiring equipment and machinery which must be brought from outside the country, for which an incentive certificate has been obtained also apply to the stamp duty, wharf dues and municipal contributions. The 5 percent of CIF value of the imported machinery and 10 percent of CIF value of the imported raw materials is deposited to the Export Promotion Fund at the Central Bank.

Although such imports are subject to VAT, the payment of this tax on imported capital goods specified in incentive certificates may be postponed until such time as the tax is actually levied on output. Since this postponement does not entail the payment of interest, the VAT will not increase costs during the investment period.

3.2) Exemption from Taxes, Fees, and Duties

If an investment is guaranteed to generate a certain level of exports, then the loans made for this investment will receive exemptions from taxes, fees, and duties. These exemptions apply to medium and long term domestically obtained investment loans and to foreign exchange and externally funded loans received for investment projects which include an undertaking to export a given proportion of their output for five years after reaching full capacity output. The exemption from taxes, fees, and duties applies to all such financial obligations accruing during the period in which the loan is obtained and repaid, including bank, notary, cadastral etc. charges (bank operations tax, mortgage fees, stamp duty and notary fees). The formation of the company and the capital expansion are exempted from taxes, fees and duties.

The necessary ratio of exports to output, in keeping with the logic of the incentive system, varies according to region, and is lower in the less developed regions.

	Minimum Annual Export	Rate
Investments in developed regions		70 20
Investment in normal regions		70 10
Investment in development priority re.		70 5

3.3) Premium to Support Investments

Of the investment amounts to more than TL 1,000 million, then a cash payment to the investor is made from the "Fund to Support the use of Resources". This monetary contribution to investors is called an investment support premium. The amount of this premium varies according to the scale of investment

a) Investment exceeding TL 1 billion

If the investment amounts more than TL 1 billion, the support premium as indicated below, is calculated as a percentage of the actual fixed investment cost (excluding customs duties):

— regions with first degree priority in development	20%
— regions with second degree priority and investments in shipbuilding	15%
— normal regions	7%
— Plants which have been re-located due to expropriation or other outside intervention	10%

b) Investment below TL 1 billion

In such undertakings, there is no monetary support calculated on the basis of the cost of investment. Instead, the support premium is paid on the basis of investment credits loaned to investors with certificates of incentives. The ratio of this premium is 7%. There is no minimum to investments in the first priority development regions or re-located plants.

3.4) Incentive Premium on Domestic Capital Goods

This monetary incentive is a premium paid to the investors amounting to 20% of the value of capital goods obtained domestically.

3.5) Other Incentives

Various other incentives have been brought into the economy. Among those currently valid are foreign currency allocations: the availability of external credits in cash or kind; allowances for imports of used plants; exemption from construction permit etc. fees; incentive premiums to investment goods manufacturers; exemption from taxes, fees, and duties on the purchase retail or transfer of ownership of land in regions with development priority; land allocations by the government in tourism investments and its undertaking of infrastructural investments. However, this last group of incentives are of negligible importance in this study concerning industrial investments.

4. Incentives During Operations Phase

“Operating Phase” means the period which comes after the completion of investment activities, i.e., the period which begins with a commencement of production.

4.1) Investment Incentive Allowance

The investment allowance is applied in the form of a tax exemption for investment projects for which the investment allowance is granted by an incentive certificate. This is applicable to investments which aim at production, increasing production, raising productivity, increasing exports, raising the quality of output, saving energy, raising the level of culture, developing scientific and technical research, improving work-place safety, and attracting tourists (without distinguishing between expenditures from own sources and borrowed funds). A percentage of the cost of buildings, machinery, equipment, instruments and other depreciable capital assets may be deducted from the company's taxable corporate income. As may be seen, this allowance constitutes a tax benefit by relieving the company of Corporation or Income tax until authorised level of exemption is reached. The investors anyway pay no taxes until such time as investment per se is completed. If the company fails to make a profit, or suffers losses, this allowance may continue with regard to the taxable income of subsequent profitable years. The percentage of the investment incentive allowance varies according to region as follows:

— Organized industrial zones developed areas	40%
— Developed regions	30%
— Normal regions	40%
— Agricultural investments	40%
— Regions with second degree priority	60%
— Investment in aquatic products	100%
— Regions with first degree priority	100%

Where the total amount of investment exceeds 1 billion, investment in the following fields are eligible for an investment allowance of 100%; energy, electronics and communications; production of medical equipment; integrated agricultural and animal husbandry and related establishments, all kinds of tourism and educational investments; aquatic products; shipbuilding; importation of Ro/Ro, train ferry, ferryboat and container vessels.

4.2) Investment Finance Fund

This fund may be used by holders of investment incentive certificates, including those who also qualify for an investment allowance. The amount used from the finance fund is deducted from the profits of the year in which the investment is undertaken and is

therefore chiefly of assistance to companies already in production. When the investment is completed, such amount may no longer be set aside.

The amount set aside may not exceed the amount of the total investment, and is limited to 25% of the corporate taxable income. The amount is deducted from the corporate taxable income and deposited in an account at the Central Bank. It can be withdrawn using a withdrawal slip issued by the State Planning Organization and used for investment.

4.3) Low Interest Credit

In addition to investment credits derived from rediscount operations, investments with incentive certificates may benefit from the same type of credit for their production operations. This credit, which carries an interest rate lower than the current bank rate, has a maturity of five years.

4.4) Real Estate Tax Exemption

In investments benefiting from incentives, the real estate tax on fixed real estate assets such as land and buildings is waived.

4.5) Employee Wage and Salary Tax Exemption

Employees working in facilities constructed in either first or second priority development regions or in priority industries are exempted from income tax on their wages and salaries for a limited period. This practice could result in lower gross wage levels and is thus, in effect, a labour cost subsidy.

CHAPTER V

EXCHANGE CONTROL

1. Exchange Control

Until recently, Turkey operated a very rigid system of exchange control originally established to protect the value of Turkish Currency and put into effect during the world economic crises in 1929.

A new and for, for more liberal decree (Decree: 30) came into force in 1984, and modified by the Circulars (No: 1/5, and No: 1/T). and Communiqué No: 86-30/8 published in 1986. In order to protect the value of the Turkish Lira, all transactions involving foreign exchange are now governed by the Communiqués and Circulars issued by the Under-Secretariat for the Treasury and Foreign Trade (UTFT), and the Central Bank.

The provisions of the current system concerning currency rates and foreign exchange may be summarized as below:

— The value of the Turkish Lira against foreign currency shall be determined by the Central Bank. All foreign exchange purchasing and sales shall be effected on the basis of current rates on the date of each transaction. Within the framework of the principles determined by the Central Bank, banks may effect time purchasing and sales of foreign exchange. The prices shall be determined by the parties concerned.

— The commercial banks must transfer at least 15% of their foreign currency revenues to the Central Bank and may retain up 85% of their foreign currency revenues. The Central Bank is authorised to increase or decrease this rate.

— Non-residents may, with the permission of the FID purchase real estate and participate in investment in Turkey, but shares in Turkish companies, open branch offices and operate as agencies or as representatives of foreign companies, provided they import the necessary capital.

— Profits, dividends and the proceeds of sales by foreign investors may be transferred abroad or reinvested in Turkey.

— Turkish residents may export capital (in cash or in kind) up to \$ 3 million with the permission of the UTFT.

— Foreign exchange bureaus, are authorised to deal with purchase and sale of foreign exchange.

— Foreign credits may be contracted directly by authorized banks and trading companies, as well as residents holding investment incentive certificates. Interest rates, bank charges and commissions are negotiable and banks must make transfers of principal and interest payments from their own resources. The exchange rate risk is to be born by the interested parties. Residents in Turkey, including banks, may extend foreign exchange credits to parties abroad.

— Persons in Turkey are not subject to any restrictions whatsoever for carrying or holding foreign currencies or opening foreign currency accounts with the banks concerned. Foreign exchange accounts may be freely used for saving purposes, and may be utilized as effective foreign exchange.

— Banks acting as intermediaries for export transactions must comply with the procedures for bringing into Turkey the foreign exchange corresponding to the value of the exports effected.

2. The Foreign Trade Regime

2.1) Import Regime

Imports are governed by the import regime decree. Imports are divided into two categories as follows:

- Items subject to import licence.
- Items may be freely imported.

Within the import regime, imports from countries whose foreign trade is state-controlled are subject to a separate system. According to this system, goods from such countries may only be imported by;

- State owned corporations which require such imports for their own use,
- Export Trading companies whose exports in the preceding calendar year exceeded \$ 50 million, and

Small and medium size export trading firms are allowed to import from the country to which it exported in the preceding year.

In the case of imports from countries with which Turkey has no payment agreement, payments have generally to be made in convertible currency.

The importation of reconditioned used or defective goods such as machinery and equipment is prohibited. The Inventions Application Directorate may however, authorize importation of such goods on project basis.

With the exception of imports subject to licence, all imports may be conducted through the mediation of any bank authorized to operate on foreign exchange position. In the case imports subject to licence, applications must be made to the UTFT.

2.2) Guarantees for Imports

Persons requesting the allocation of foreign exchange are required to deposit a guarantee based on a percentage of the Turkish Lira equivalent of the foreign exchange requested of the authorized banks.

The guarantees are turned over to the Central Bank to be withdrawn when the payment for the import is finalized. In case the import is not realized within the period allowed, the guarantee is forfeited to the Export Promotion Fund.

2.3) Validity Period

The validity period of import is six months from the date on which the intermediary bank receives the guarantee and issues the relevant import documents. This period may be extended up to twelve months by the intermediary bank. For every additional month, however, it is required to deposit in the Export Promotion Fund 0.1% of the TL equivalent of the value of the imports (with a maximum of TL 1 million).

2.4) Change of Country

Requests for a change in the country of origin or in the destination of payment, must be made to the Central Bank. No changes in the importing firm are permitted.

2.5) Export Regime

Exports are governed by the export regime decree. Like the import regime, the export regime decree is no longer valid for only one year, but has been made permanent. According to the export regime, UTFT is the authority on all matters pertaining to exports. All goods the export of which is not prohibited by law or decree, may be exported without restriction within the framework of the export regime. However, in the case of exports of some goods, a licence or registration of exportation with the UTFT is required.

2.6) Types of Exports Requiring Authorization

- Temporary exports
- Transit trade
- Re-export trade
- Term sales of commodities

2.7) Exports Based on Registrations

The following types of exports are subject to registration with the UTFT.

- Credit term exports,
- Exports realized via free trade zones, either in Turkey or abroad via bonded warehouses
- Exports realized within the framework of special credit agreements
- Exports based on licences.

3. Foreign Exchange Credits

Persons domiciled in Turkey may obtain credits in cash or in kind from abroad as follows:

- Through the banks
 - - maximum one year term credits provided directly
 - - as intermediaries prefinancing merchandise and acceptance credits
- Maximum two years term credits provided by the major foreign trading companies approved by the UTFT and related to their operations
- Credits for business operations abroad

- Acceptance credits, prefinancing, credits on merchandise and the like and maximum two year term credits to be provided by the persons domiciled in Turkey who anticipate receiving credits within the framework of incentive certificates.

Obtaining foreign credits other than those mentioned above is subject to the prior permission of the Ministry of Finance. Interest and other expenses related to the said credits shall be dealt with freely between the parties concerned and their transfers and the instalments of the principal shall be met by the banks out of their own resources.

Favourable and unfavourable changes which may occur in the exchange rate are for the account of the parties concerned.

Medium-term investment credits in foreign exchange are available to the private sector (including foreign investment companies) from the Industrial Development Bank of Turkey and the Industrial Investment and Credit Bank on special terms in so far as approved projects are concerned. The volume of such credits is limited but they have the attraction of fixed exchange and interest rates.

CHAPTER VI

FREE TRADE ZONES

1. Legal Framework

The Law concerning the Free Zones was passed in June 1985 and published in the Official Gazette. The Council of Ministers Decree and the Decision of the Supreme Coordination Committee for Economic Affairs and Regulations which are referred to in this Law, were published in September 1985, thus completing the legal infrastructure concerning the Mersin and Antalya Free Zones.

2. Location of the Free Zones

The Free Trade Zones (FTZ) of Mersin and Antalya are within easy access of the largest and best equipped Turkish ports on the Mediterranean. Both ports play a vital role in Turkish trade with Europe and the Middle East. Mersin Port, in particular, is a major entry point for products destined for Iran, Iraq and the Arabian peninsula. The Mersin FTZ occupies 763, 500 m² of land consisting of roughly 115 plots. The Antalya FTZ encompasses 573, 500 m² of land in approximately 130 plots. The FTZ's of Adana (Yumurtalık) and Izmir (Nemrut), the latter being, located in a particularly advantageous location on the Aegean Sea, will be opened as Free Industrial Zones in the not too distant future.

3. Objectives of the Free Zones

The objectives of the FTZ in Turkey are the promotion of export and export oriented investments and production; the augmentation of employment opportunities; the acceleration of the foreign capital and technological inflow; the procurement of input needs of the economy at a cheaper rate; the exploitation of foreign finance and trade opportunities on a large scale, and attainment of new dimensions in international economic relations.

4. Subjects of Activity

Article 4 of the FTZ Law No: 3218 dated 6 June 1985, which is related to the subject of activity; stipulates that "all kinds of activities related to industry, commerce, and services, deemed appropriate by the Supreme Coordination Council of Economic Affairs (SCEA) may be undertaken".

Consequently, on the one hand, it is implied that all kinds of proposals aimed at serving the realization of the objectives given in Section 3, above and which are forwarded by those wishing to enter into activity the FTZ, will be considered and evaluated; on the other hand, the determination of subjects of activity in the free zones is due to its importance, assigned to the SCEA.

5. Major Activities

5.1) Commercial Activities

Commercial activities such as warehousing; arrangement and classification; sampling; combination and segregation of stored goods; re-packing items from bulk and volume into smaller volumes and quantities; labelling; display for advertisement and sales purposes; and purchases and sales etc.

5.2) Service Activities

Service activities such as banking; insurance; engineering; architecture; consultation; investigation; agency operation and maintenance and repair and ect.

5.3) Industrial Activities

Industrial activities in fields such as electronics; petroleum and petro-chemicals; medicines; cosmetics; metals; assembly; packing; spare parts; yarn spinning and weaving; textiles; paint; paper; glass-ware; construction materials; rubber; food supplies; printing; plastics; kitchenware; leather garments and ready to wear clothing; optics; ceramics; X-ray equipment and films; micro-electronic spare parts; micro-circuits; long life cable; bicycles; footwear; cassettes; transistors; machinery production; ships; locomotives, and aircraft etc.

6. Expectations of Entrepreneurs' Interest

For the reasons detailed here-below entrepreneurs are expected to show a great interest in Turkey's Free Zones:

- The conclusion of FZ transactions in foreign currency
- The possibility of obtaining foreign currency credits under favorable conditions: and ease of repayment because revenues are in foreign currency
- The big overall volume of investment
- Low cost labour and high workers' productivity
- The possibility of obtaining inputs at attractive prices due to the fact that the goods brought into the Free Zones from other parts of Turkey are considered as Turkish exports
- The completion of infrastructure, and the variety of facilities that may be granted by the Council of Ministers
- The expeditious repair of Free Zone infrastructure and the development of the Zones with finance from the special Fund
- The possibility of shipping goods to and from Free Zones easily, without being subject to the Foreign Trade Regime
- Exemptions from tax, duty and charges
- Users of Free Zones do not pay dues to the Fund for the raw materials and other inputs they buy from Turkey
- Entrepreneurs will deal with a single authority only, while obtaining their activity Permit, establishing their facilities and performing their sales and other activities. No bureaucracy or formalities in the Zones.

7. Application

Application should be made in Turkey or abroad for the allocation of space in Mersin and Antalya free zones. Although, the first and the second application periods

closed a new and the third period is opened for application for the allocation of space in Mersin and Antalya free zones for both domestic and foreign firms.

All applications made for entering into business in the Free Zones within the application periods announced by the State Planning Organization (SPO), based on the principles determined by the Council of Ministers and SCEA, will be evaluated collectively and Activity Permits will be granted to those projects which promise the best contribution to The Turkish economy and are most suitable to the objectives of the Free Zones.

8. Administrative Structure

The central administration of the FTZ is conducted by the Prime Ministry State Planning Organization (SPO), while local administration is the domain of the Regional FTZ Directorate. The Free Trade Zones Directorate (FTZD) of the SPO is the responsible authority for planning, coordination and all policy decisions pertaining to the development of Free Zones.

The Regional Free Trade Zone Directorate (RFTZD), staffed by the SPO, is established for the local administration of each separate FTZ. These local Directorates are attached to the Governor's office of the province in which the respective FTZ operates.

9. Activity Permits

Long term Activity Permits, for 15-20 years, will be issued to those who rent land for the purpose of entering into business in Free Zones, and who build infrastructures on this land. This means that the owners (holders) of such permits will benefit from the facilities provided in the Free Zones at least for the said period. Any changes in the scope of activities, in rentals or in the transfer of titles are subject de FTZD approval.

A separate Activity Permit (Operating Licence) must be obtained for each of the (Mersin and Antalya) Free Zones, in which the applicant wishes to operate. The FTZD has sole discretion in the granting of activity permits for operations within the free zones. Where the situation warrants, the FTZD may revoke any such licences that have been previously issued. In cases where an applicant fails to observe the conditions enumerated in his application documents, the FTZD may revoke his permit prior to its expiration.

In order to obtain an Activity Permit, applicants must submit a prefeasibility report in accordance with the format issued by the SPO. In addition to this an application fee of \$1,000 must be paid.

10. Foreign Capital in Free Zones

There is no limitation on the proportion of foreign capital participation within the FTZs where the Foreign Investment Laws (Law 6224 & Decree 30) are not applicable.

11. Transfer of Profits and Capital

Dividends and profits, as well as the proceeds derived from the full or partial sale and/or liquidation of capital shares by foreign domiciled persons or entities operating within the FTZs may be added to their existing capital, or transferred to entities or sectors encompassed by the Law for the Encouragement of Foreign Capital No: 6224; or to other FTZs within Turkey, or to other countries, provided always that the RFTZD is given due notification and that ownership of the funds can be fully documented.

12. Incentives for Foreign Capital

Foreign capital entities operating within the FTZs may benefit fully from all the incentives described below.

These incentives may be categorized as Incentives for the Investment Stage and Incentives for the Production Stage.

Turkish and foreign entities possenssing an Activitiy Permit for the FTZs may benefit from the following incentives in both the investment and the production (operation) stages of their activities.

13. Incentives for the Investment Stage

a) Exemptions from Taxes, Duties and Tolls

Investors may bring into the FTZs any inputs they require from foreign locations without being subject to any taxes, duties or tolls.

b) Export Treatment of Turkish-origin Inputs

In cases where investors decide to obtain their necessary inputs from the host country, they will be able to obtain these at attractive prices, due to the fact that such goods entering the FTZs will be treated as exports from Turkey.

c) Exemption from Export Formalities

If desired by the investor, and subject to prior approval, goods of less than \$ 500 value may be obtained from the host country without their being subject to export procedures.

d) Income Tax Exemption

The salaries of persons working within the FTZs are not subject to Turkish income taxes.

e) Payment in Local Currency

During the investment phase, payments in respect of rents, salaries, services and goods may be made in Turkish currency (TL).

14. Incentives for the Production Stage

a) Exemption from Taxes, Duties and Tolls

All necessary production inputs may be transported from foreign locations into the FTZs without their being subject to any taxes, duties or tolls whatsoever.

b) Export Treatment of Turkish-origin Inputs

In cases where production inputs are procured from the host country, because of the fact that such transactions will be considered as exports, they will be obtained at attractive prices.

c) Income Tax Exemption

No Turkish income tax will be levied upon the salaries of those working within the FTZs during the production stage.

d) Exemption of Profits from Income and Corporate Taxes

The FTZ-originated profits of those entities operating within the FTZs are not subject Turkish income or corporate taxes or charges; nor will their accounts within the FTZs be merged, for fiscal or any other purposes, with their accounts within Turkey. FTZ-origin profits and incomes of corporate and real entities who are subject to full or limited liability in Turkey will also be exempted from the income and corporate taxes, provided that it can be documented in accordance with the foreign exchange regulations, that such profits and income have been brought into another location within Turkey.

e) Right to Benefit from New Incentives

In the event that new incentives are deemed necessary to enhance the competitive position of the FTZs, existing users will also be able to benefit from any such additional benefits.

15. Conditions Pertaining to Production and Flow of Goods

The FTZs are outside the jurisdiction of the Turkish customs. The controls and restrictions provided for by the Customs Law are not applicable within the FTZs.

Only those goods which cross FTZs customs borders and are destined for use by Turkey are subject to customs regulations and the relevant taxes, duties and tolls. These goods will be subject to normal import formalities, and wharf dues will be levied upon those which arrive by sea.

The procedures described above are not applicable to goods which arrive from or are destined for other FTZs, or for foreign locations. Nor are they applicable to goods destined from Turkey to the FTZs. These exemptions apply both the investment and the production stages of FTZ operations.

Goods despatched to the FTZs from Turkey are subject to normal export procedures as specified in the relevant decrees and regulations.

No "FTZ Establishment and Development Fund" (E&D Fund) contribution will be levied on goods arriving in the FTZs from Turkey.

16. Establishment & Development Fund

As its name implies, the Fund has been established to help finance the formation and the continued development of the FTZs. The maintenance and repair of facilities, the training of workers, the provision of special incentives designed to encourage new entrants into the FTZs, as well as projects involving modernization and research are some of the areas which the Fund is designed to support.

The Fund operates under the direct authority of the Prime Minister, and can be utilized only through his instructions. The Fund is audited by the Prime Ministry's Superior Audit Council.

With the exception of (a) goods which are Turkish made and which originate from Turkey, and (b) goods brought in for the investment stage and for maintenance and repair which remain within the FTZs for a maximum of six months, 0.5% of the CIF value of all goods brought into the FTZs, and 0.5% of the FOB value of all goods leaving the FTZs will be paid into the Fund by the parties concerned.

Four percent of gross revenues derived from activities within the FTZs by the company managing them, and by banks operating within the FTZs, must also be paid into the Fund.

17. Employment & Working Conditions

The minimum wage rates determined for Turkey in general are also applicable to the FTZs. The current rates, as of 31 January 1987, is TL 41,000 or approximately \$ 54 per month.

The 45 hour work-week and 270 hour yearly overtime limits apply too, to the FTZs.

The employment of foreign managers and specialists by entities operating within the FTZs is not restricted.

Within the general framework of Turkish labour laws the unionization of labour and collective bargaining agreements are permitted in the FTZs too.

For a period of ten years following establishment of a FTZ, the strike, lockout and arbitration provisions specified by Turkish Law are not applicable. However, any disputes arising from labour agreements during this period are subject to the decision of the Supreme Arbitration Council which is an independent state organization, established to act as a mediator of last resort in labour relations.

CHAPTER VII

FINANCIAL MARKET

1. Banking System

The Turkish Banking system, with its wide variety of private and public banks (some of which were created under special laws and decrees) has developed largely over the last 60 years. Basically it today comprises.

- The Central Bank
- Banks founded by special laws (State-owned banks)
- Commercial Banks (private banks)
- Foreign Banks
- Investment & Development Banks

The banking system is still evolving in Turkey, and some important changes have been initiated by the government in recent years:

- Foreign banks have been allowed to operate freely
- Interest rates have become more market-oriented
- Attempts have been and are being made to strengthen Turkey's underdeveloped capital and money markets
- Banks have started to operate in the Stock-Exchange within the Islamic Banking Principles

2. Central Bank

The focal point of the Turkish Banking System is the Central Bank of Turkey. The Central Bank was founded in 1930, is technically a private bank (that is to say it is a public company) and banker to the government.

The Central Bank of Turkey administers government monetary policy, holds the foreign exchange reserves, and acts as lender of last resort to other banks and to the Treasury. It controls the Turkish Lira note issue and fixes imperative exchange rates for the Turkish Lira with other currencies.

The Central Bank's principal powers are:

- To issue bank-notes (it has the sole right to do this)
- To determine discount rates
- To recommend interest rates for lending and deposits (including bank charges and their maximum level) to be charged by the commercial banks
- To recommend minimum liquidity ratios, and deposit reserve requirements for the commercial banks

- To control the credit volume and to issue directives as to credits by sectors
- To establish interest rates on bonds issued by private sector
- To establish the terms of credit sales
- To grant working permits for Special Finance Houses.
- To represent and control Savings Deposits Insurance fund.
- To carry out foreign exchange and precious metal transactions in stock market within the framework of governmental decrees.
- To determine exchange rate between national currency and foreign currencies and gold, within the framework of governmental decrees.

3. Money & Credit Council

In January 1980 the Money & Credit Council was established to co-ordinate monetary and fiscal policies. The members of the MCC are representatives of the Ministry of Finance and Customs, the Ministry of Commerce and Industry, the State Planning Organization (SPO), the Under-Secretariat of Treasury and Foreign Trade (UTFT), and the Central Bank. Depending on the nature of the case, representatives of (other) concerned ministries are co-opted.

4. Association of Banks

All banks must be members of the Association of Banks, founded in 1958 with the objective of maintaining collaboration and preventing unfair competition between the banks.

Currently, the Turkish Banking System comprises 51 banks; several more foreign banks have applied to the FID to obtain a permit to operate here.

Owner	Commercial Banks	Investment Banks
— State-owned	13	2
— Privately-owned	19	2
— Foreign-owned	18	2
— Joint-venture	1	—
Total	51	4

5. Banking Legislation

The basis of the Turkish Banking System is to be found in three fundamental laws:

- The Banking Law No: 3182
- The Central Bank Law No: 1211
- Money Lending Transactions Law

These laws have been developed from a series of legal provisions and regulations as part of a lengthy process which continues today. The Banking Law's development has also been through a series of Circulars issued by the Central Bank and outlining the rules which it is mandatory for all registered banking establishments to observe. The principal provisions of the laws relating to private banking and the establishment of a new bank, to the opening of a branch and to investing in an existing bank are briefly summarised below.

The objective of the Banking Law is to regulate the foundation and management, the operational procedures, the assignment, the merger, liquidation and overall con-

trol of the banking sector. Banks founded in Turkey and to be founded in the future, and banks established in foreign countries which operate or may operate in Turkey in the future through branches established by them are all subject to provisions of this law.

The specific authority of the Council of Ministers is necessary for the establishment of a bank (including a joint-venture enterprise, for the opening of a branch in Turkey by a foreign-based bank, and for an investment by a foreign-based bank in a bank already existing in Turkey.

6. Establishing a New Bank

- It must have corporate form
- The number of its shareholders should not be less than 100
- Its total shares must be registered and issued against cash and quoted on the stock exchange.
- Its net worth should not be less than TL 2.5 billion, excluding the amount it is required to have for each branch excluding the main branch
 - TL 250 million for each branch opened and to be opened in cities whose population is over one million,
 - TL 125 million for each branch opened or to be opened in cities whose population is above 500 thousand and less than 1 million,
 - TL 62.5 million for each branch opened and to be opened in the cities whose population is less than 500 thousand.

7. Opening a Branch

A foreign bank operating in Turkey by opening a branch must:

- Have the status of a corporation, or similar entity under laws of the country of which they are established; this does not apply to banks in which capital is entirely owned by a foreign state.
- Have paid-up capital allocated to Turkey of not less than TL 2.5 billion, and additional capital for each branch according to the population.
- Have Articles of Incorporation which are free of any provisions contrary to the Banking Law.
- General managers, branch managers and their assistants should be domiciled in Turkey or be Turkish nationals.
- The founders must not have been bankrupt or convicted or committing serious crimes.

8. Application

The following must be enclosed with the application to the UTFT in order to found a bank in Turkey, or to open a branch of a foreign bank, or to invest in an existing bank in Turkey:

- Declaration signed by the founders before a Notary Public
- Articles of Incorporation of the bank
- A report giving in detail the reasons for opening a branch
- Balance Sheet and Income Statement of the bank for the previous five years
- A statement to the effect that the founders have not been prohibited from undertaking banking operations in their own country
- Such other documents as may be requested by the Council of Ministers

All the above must be certified by the competent authorities of the country concerned and the application must be accompanied by a favourable report from the State Planning Organization in so far as the provisions of Law No.6224 are concerned.

In the event that the application is approved by the Council of Ministers, the Authorization Decree under Law No.6224, The Law for the Encouragement of Foreign Investments, will be published in the Official Gazette.

Of the banks authorised to be founded or to open branches in Turkey, the authorization decrees granted to those banks failing to begin operations within one year from the date of publication of their Decree, or which discontinue their operation for a period of one year, uninterruptedly will be cancelled by the Council of Ministers upon the proposal of the UTFT.

9. Reserve Funds

Banks are obliged to set aside 5% of their annual net profits as a "Contingency Reserve" until such time as the Reserve reaches an amount equal to the their paid-up share capital. The Contingency Reserve may be used to off-set losses but, thereafter, 5% of annual net profits must be set aside until the Reserve again equals the amount of the bank's paid-up capital. The Contingency Reserve is additional to the reserve funds compulsorily set aside in accordance with the Turkish Commercial Law and the bank's own Articles of Incorporation. The Contingency Reserve must be deposited in a Treasury Bond Account as the cover of statutory reserves with the Central Bank. Transfers to the Contingency Reserve are not tax deductible and must be set aside after tax.

10. Interest Rates

Interest on Deposits

The Council of Ministers is authorised to fix the minimum and/or maximum interest rates to be paid and other benefits to be provided for deposits and to liberalise the determination of interest rates, in part or in full, and to fix effective rates. Banks may not pay any interest on deposit in advance nor may they take any action which results in providing additional benefits in a manner contrary to the decisions and measures taken by the Council of Ministers.

Interest on Credits

The Council of Ministers is authorized to set the interest rates to be collected and the descriptions and maximum limits of Banks may not, in any manner whatsoever, collect interest or charges above the limits and rates established by the Council of Ministers.

Rediscount Rates

The Central Bank is authorized to set the rediscount rate and the global rediscount ceiling. The Central Bank establishes individual rediscount limits for each bank.

11. Lending Limits

The Banking Law stipulates certain limits for credits destined to a bank's clients, equity participations, and own share holders. A discussion of the limits and modes of such transaction are given below.

General Limits

The total amount of cash credits in forms other than cash to be extended, bonds and similar securities to be purchased, along with letters of credit, guarantees, avals; endorsements and acceptances by a bank may not exceed 20 times its equity. Overdue cash credits and the value of the credits other than cash which are converted into cash shall be considered as credits by disregarding the account in which they are shown.

A bank may not provide credits to, accept guarantees from, or purchase bonds or other securities from any one real person or legal entity for an aggregate amount in excess of 10% of its own equity. However, in the case of sectors specified in the annual Development Plans and Programmes, and in finance for exports or contracting abroad, this percentage is 25%.

Credits to Participations

The total amount of the credits to be opened by a bank to its equity participations and institutions in whose capital it owns 15% or more and the partnerships and institutions 25% of whose capital is owned by these participations and institutions, separately or jointly, or to real persons and legal entities against the guarantee of the partnerships and institutions may not exceed three times the bank's equity and in no case 15% of the total amount of the bank's credits at any one time.

Credits to Shareholders

The total amount of credits to be opened by a bank to those of its shareholders who hold 5% or more of the shares of the capital of the bank or to real persons or legal entities falling within the scope of an indirect credit relationship with them may not exceed the bank's total equity and in no case exceed 5% of the bank's total credits at any one times.

12. Regulations and Supervision

The regulatory bodies controlling banking operations in Turkey are the UTFT and the Central Bank. These two bodies work closely together in performing their duties. The Money & Credit Council has authority to issue regulatory circulars regarding banking operations. The UTFT and the Central Bank supervise the operations of banks in Turkey in order to protect the public from unsound banking practices.

13. Reserve Requirements

Among the liabilities subject to reserve requirements a distinction is made between (i) Saving Deposits, (ii) Commercial Deposits, (iii) Interbank and (iv) Official Deposits. There are no minimum reserve requirements on Interbank deposits. The required reserves are determined by applying the percentages fixed by the Central Bank. The present ratio is 15%. If any bank's actual reserves fall short of its required reserves, the bank must pay penalty (45% p.a.) on the deficiency.

14. Cash Requirements (Disponibilite)

The minimum cash requirement is 15% of resources at any one time. Should actual cash holdings fall short of this percentage, the bank concerned is subjected to a penalty (at the rate of 66% p.a. of the amount of the shortage) until such time as the minimum is secured.

15. Savings Deposits' Insurance Fund

A "Savings Deposits' Insurance Fund", which is a legal entity, has been established in order to safeguard savings' depositors. All banks accepting deposits are obliged to cover their sight and time savings deposits by this insurance (deposit accepting agencies of the Turkish banks operating abroad are exempted from this obligation.) On the other hand, foreign banks in Turkey are subject to insurance fund. Individual savings deposits (including deposit certificates) up to a maximum of TL 6 million at any one bank are covered by this insurance. (Up to TL 3 million is covered 100%, where as the remaining TL 3 million portion is only covered by 60%). The fund is fed by premiums payable by the banks (the tariff is fixed by the UTFT and based on their total savings deposits' as shown in their most recent balance sheet.

The insurance scheme does not apply to a bank's chairman, general managers, shareholders holding more than 10% of the equity, auditors, or to their respective spouses or children.

Penalties for Reserve Requirement, Cash Requirement and Premiums for Deposit Insurance are tax deductible.

16. Special Finance Houses

General principles concerning the application, and legislation for the establishment and operations of Special Finance Houses (SFH) have been determined by Decree. These enterprises may be set up in the form of joint stock companies having a minimum 100 shareholders and a capital of at least TL 5 million, of which one quarter must be paid up in advance and another one-third within six months.

SFH may accept deposits in TL and/or in foreign currency in

— Current Accounts

An account opened either in Turkish Liras or in foreign currency being payable, partially or totally on demand for which account the holder receives no interest, profit or other proceeds under whatsoever name and which does not fall within the scope of the Saving Deposit Insurance Fund.

— Participation Accounts

Funds deposited with a SFH by real person or legal entity against a "Contract for Profit or Loss Participation Account" entitling the holders to participate in the profits and losses to be accrued from the utilization of such funds. SFH may also offer the under mentioned services:

- Rental safe deposit boxes
- Make remittances and transfer money
- Prepare feasibility studies
- Render other services approved by the bank
- Provide letters of guarantee
- Leasing
- Participate in other enterprises
- Buy and sell properties for commercial purposes
- Establish and operate in agricultural industries
- Collect funds in special accounts for placement in special projects.

The organizational structure of the SFHs consists of the General Assembly of shareholders the Board of Directors and the Committee of Auditors. The Board of Directors consists of seven members elected by the General Assembly.

Each share of TL 1,000,000 has one vote. Shareholders possessing shares of less than TL 1,000,000 - in value, have the right to vote by joining their shares and delegating authority to one of their number.

17. The Insurance Industry

The Turkish insurance market is loosely controlled by the government; it exercises this control through several different authorities although it does not itself deal directly in insurance. In the first place, the establishment of an insurance company is regulated by the Turkish Commercial Law, as well as by the Insurance Law. Secondly, under this latter there is a control office which regulates day-to-day operations through tariff committees, which are partly managed by a national reinsurance company; this company exercises a monopoly on the government's behalf, to the extent it participates with a certain percentage in every insurance policy written in Turkey, other than life insurance.

The insurance market is small in relation to Turkey's national product. There are 20 Turkish direct insurance companies, one mutual company, and 4 reinsurance companies. The premiums per capita are smaller than in comparable countries around the world, although Turkish companies are capable of dealing with and writing policies for all the types of insurance practised in Western Europe. Numerous foreign companies are represented in the market, through agents or subsidiaries.

The Insurance Law is currently being reviewed and it is understood that when it is amended foreign companies will be able to register themselves or form new companies in Turkey.

18. Capital Market

The Capital Market Law was passed in 1981 giving the then established Capital Market Commission (CMC) authority to regulate the market and take the necessary measures regarding its functioning. The Law also includes provisions for the establishment and operation of public companies and financial intermediaries brokers.

Traditionally, the bond market, and specifically the primary bond market, has been relatively active in Turkey and bond issues have increased rapidly in recent years. Currently, issues of bonds are controlled by the Central Bank and the Capital Market Commission. According to the Turkish Commercial Law, only corporate entities may issue bonds, up to the amount of their equity.

Compared with the bond market, the stock market in Turkey is markedly smaller. Recently, a stock exchange has been opened in Istanbul and this promises gradually to bring about an overall rise in share trading.

CHAPTER VIII

LEASING REGULATIONS IN TURKEY

1. Introduction

Financial leasing is a new and promising instrument in so far as the Turkish economy is concerned. It will become more important in future years, as more entrepreneurs accept leasing as an alternative means of acquiring assets.

2. Legal Matters

The main legal provisions concerning financial leasing contractors are contained in Law No.3226 (June 28, 1985), and Decree No.85/9860 dated September 28, 1985. Ministry of Finance & Customs Communiqué No.146 of September 28, 1985 governs the Customs duty and investment allowance aspects of leasing operations. Enforcement of the Leasing Law is the responsibility of the Council of Ministers and the principles governing the implementation of the Law are published by the Office of the Deputy Prime Minister (Treasury) and/or the Ministry of Finance & Customs. These regulations concern the establishment of financial leasing companies, the opening of foreign companies' branches in Turkey and matters relating to their administration, field of activities, operations, fiscal obligations customs duties, investment allowances, etc.

3. Status of Leasing Companies

The Turkish Leasing Law makes it necessary to obtain the Treasury's authority in order to establish a financial leasing company in Turkey, or to establish a branch of a leasing company which is based abroad.

a) To establish a leasing company

- It must be in corporate form
- All its shares must be registered and issued against cash, and quoted on the Stock Exchange
- Its nominal capital must not be less than "TL" 1 billion
- The founders must not have been bankrupt or convicted of serious crimes

b) To Open a Branch in Turkey

- The foreign based company must have corporate or similar status under the capitalization laws of the country where it is established,
- A paid-up capital of not less than US \$ 2 million must be allocated to the Turkish branch,
- The foreign company's Articles of Incorporation must not contain any provisions which run counter to Turkey's own Leasing Law,
- The branch manager and his assistants must be Turkish nationals or be domiciled in Turkey,
- The foreign based company must complete an application in the format provided by the UTFT,
- A feasibility study must accompany the application to open a branch.

The approval of the Foreign Investment Department (FID) in accordance with the provisions of Law No.6224 and Decree No.30 must be obtained by foreign-based companies desirous of opening a branch in Turkey. If it is intended to employ foreign nationals, applications for work permits must also be made to the FID at the outset.

There are no territorial restrictions but both domestic companies and foreign based leasing companies desirous of opening a branch in Turkey must obtain the prior approval of the Treasury.

Banks (domestic and foreign) are precluded from conducting leasing operations directly but they may establish separate leasing companies, in accordance with the relevant legislation. Violation of the terms of the Leasing Law may incur fines ranging from TL. 500,000 to TL 5 million and managers and other staff members may be sentenced to prison terms of from three months to one year.

4. Types of Leasing Agreements

Leases must relate to tangible assets - movable property and real estate - which the lessee uses exclusively for business purposes. Intangible assets, such as patent rights, goodwill, ect., may not be made the subject of a leasing agreement. Special authority is required for the leasing of secondhand, used or defective machinery, plant, etc.

All leasing contracts must be registered with the UTFT. The terms of the lease (duration of the contract) must be not less than 4 (four) years although a lesser period may be approved if -

- If the depreciation period of the leased assets is less than 4 years
- If the economic-life (useful-life) of the leased asset is less than 4 years, (This to be proven to the UTFT)
- Of the lease will be subject to renewal on termination of the contract.

The lessee and lessor may agree to defer the transfer of ownership until the end of the contract but this deferral may not be invoked against third parties. Under the leasing agreement, the lessor may grant a purchase option to the lessee at the end of contract. The lessee may not transfer possession of the leased assets to a third party.

5. Tax and Financial Matters

The lessor will be regarded for tax and accounting purposes as the owner of the assets leased. Consequently, he will be entitled to record and deduct depreciation allowances tax-wise and accounting-wise. As the lessor remains the owner of the equipment during the contract period, the equipment must be recorded on the balance sheet of the lessor and may be depreciated each year.

The lessee records in his profit and loss account the expenses corresponding to the payments due to the lessor each year.

The total indebtedness to equity ratio of the Lessor may not exceed 15:1.

Equity is defined as the total of the paid-in capital or the capital allocated to foreign owners branches in Turkey and reserves, after deducting losses, if any.

The Undersecretariat of Treasury and Foreign Trade is authorized to reduce the total indebtedness to equity ratio stated in Article 2 to 1:1 for companies determined to be

financially weak or becoming financially weak, and for companies who are violating the regulations.

The rent receivables of lessor from one legal entity or individual may not exceed 25% of the equity.

This ratio may be 40% for rentals used in sectors specified in the annual program of the (Turkish Governments Five Year) development plan, export activities, and overseas contractors. Provided that the positive opinion of the Undersecretariat of Treasury and Foreign Trade is obtained, this percentage may be increased to allow for large single rental contracts as long as an individual contract does not exceed 75% of the lessor's equity and the total rent amount five times equity.

6. Depreciation

Leasing companies are entitled to depreciate their equipment in the same way as any other company. The Turkish Tax Procedure Law provides two methods of depreciation:

- Straight-line method
- Declining-balance method:

The percentage of the declining-balance method may be as high as twice the percentage on the straight-line method. However, the applicable rate may not exceed 25% when straight-line depreciation is used, and in the case of the declining balance method it may not exceed 50%. Accelerated depreciation method may be applied by the lessor. The tax-paying company may change the method of depreciation from declining-balance method to straight-line (but not the other way around) at any time during the life of the leased assets.

The leased assets should be depreciated over their estimated useful life. In principle, the term of the lease does not influence the depreciation period. The ministry of Finance published standard maximum depreciation rates according to the estimated useful life of assets, but is prepared to consider advance requests for higher rates provided these can be justified by the taxpayer company on the basis of special circumstances.

7. Rentals

The rentals and terms of payments may freely be determined by lessor and lessee. Rental may be determined as "fixed" or "variable" and payments may be made in Turkish Liras and/or foreign exchange.

Lease payments made by a lessee in respect of leased assets used by him for the purposes of his trade are tax deductible. They are treated on the same basis as any other business expenses, i.e., they must meet the requirement of having been incurred wholly and exclusively for the purposes of this trade. Proper accounting records must be maintained as must all supporting documents.

8. Incentives

In the case of investments based on an incentives certificate issued by the State Planning Organization, the investment goods may partially or wholly be leased, and the leased assets may be imported entirely Customs free.

— Corporation Tax

This is a fixed tax levied on the earnings of corporations or other legal entities within a given year. Income Tax and Corporation Tax apply to business firms and are generally based on declarations made in March and April of the following year.

— Property Tax

This tax levied on buildings and land on the basis of their annual value.

— Vehicle Tax

This is a tax levied annually on motorized vehicles and boats according to a specific schedule. It varies depending on the age and type of the vehicle/boat

— Inheritance and Transfer Tax

This tax is levied on bequests and inheritances and varies between 3% to 44% depending on the size of the capital amount/value concerned.

— Vehicle Purchase Tax

This is a tax paid at the time of the purchase of a motor vehicle or boat. It is parallel to motor vehicle tax and is also based on a specific schedule.

— Bank and Insurance Transaction Tax

This is levied on all transaction carried out by banks and insurance companies. The tax-rate is 3% of the value of transaction, although the Council of Ministers may reduce it to 1% or subsequently increase it again to 3%.

— Value Added Tax (VAT)

This tax levied on all goods delivered and services rendered in connection with commercial, industrial and agricultural activities and self-employment in Turkey, as well as on all imported goods and services. Those who deliver the goods or perform the services stated in the law are liable for VAT. IN general, the tax arises when a receipt or similar document is drawn up prior to delivery of goods or performance of services, or, in the case of imports, when the actual import takes place, or a customs document is prepared. Exemptions and exceptions are as follows:

- Delivery of exports
- Diplomatic immunity
- Exemption for international transport
- Exemption applied to imports specified in certain articles of the Customs Duties Law
- Exemptions for social, military and certain other purposes.

Tax rate is 10% on every taxable transaction; however, the Government will be able to increase VAT up to 15% or to decrease it down to 5% for various items. It is also empowered to lower VAT to zero or to raise it to the maximum limit in the case of basic foodstuffs, agricultural products and leasing and delivery of goods subject to financial leasing.

The government recently raised to 12% from 10% the generalised VAT rate. According to the government decree effective 1 December 1986, basic foodstuffs continue to be exempted from the VAT. The rate for books and magazines is maintained at 5% and that for financial leasing at 1%. The VAT on medicaments and health services, pesticides and tractors has been cut down to 5 percent.

Taxpayers may deduct the taxes they have paid on goods delivered to them, or services rendered for themselves, from the VAT they collect on their own sales/services.

2. The Concept of Liability

No distinction is made in Turkey between Turkish citizens and foreigners as regards taxation; that is, Turkish citizens and foreigners are accorded "equal treatment" in so far as taxes are concerned. Nevertheless, structural differences between "income tax" and "corporation tax" do involve certain discrepancies between the taxation of persons and legal entities domiciled in Turkey, and the taxation of those domiciled abroad.

Income and corporation taxes in Turkey are based on the principles of "full" and "limited" liability. In the case of "full liability"; the total income and earnings received by persons and legal entities in Turkey and in foreign countries are taxed. Under "limited liability" on the other hand, only the earnings and incomes secured in Turkey are taxed, while those earned and received outside the country are not subject to tax.

3. Income Tax Liability

According to Article 6 of the Turkish Income Tax Law, persons not domiciled in Turkey are taxed only on the earnings and income they receive in Turkey. According to Article 4 of the Law, persons whose residence is in Turkey and persons who have lived in Turkey for more than six months of a given calendar year are regarded as being domiciled in Turkey: However, the following persons are regarded as not being domiciled in Turkey:

- Persons who come to Turkey for a specific, and temporary duty or employment, correspondents and journalists and similar persons; persons who come for education or medical treatment, rest or travel; and,
- Persons who stay in Turkey for over six months for reasons beyond their control such as imprisonment, litigation or illness.

4. Corporation Tax Liability

According to the Corporation Tax Law (CTL), of those legal entities liable to Turkish taxation, corporations whose legal or business headquarters are in Turkey have full liability. Legal headquarters is interpreted as being the location indicated in the taxpayer's Articles of Association. Business headquarters means the place where business transactions are actually concentrated or carried out. All foreign investment companies established under the Turkish Commercial Code are subject to full liability.

Limited liability is of considerable importance in so far as the implementation of Law 6224 and Decree 30 is concerned, because foreign companies establishing themselves in Turkey have corporate status abroad and their legal, and business headquarters are outside of Turkey. For this reason, in the case of foreign companies or foreign-Turkish joint venture companies, the foreign partners are regarded as having limited liability under the Turkish Corporation Tax Law.

5. Earnings and Incomes Regarded as Being Derived in Turkey

Under the Turkish Income and Corporation Tax Laws, whether or not income is regarded as having been derived in Turkey depends on the conditions, which are briefly summarised below:

5.1) Commercial Earnings

For commercial earnings to be regarded as having been derived in Turkey, the individual or company must have a place of business or a permanent representative in Turkey and the earnings must have been secured either at this place (s) of business or through this representative (s). Even if these conditions are fulfilled, those whose business headquarters are not in Turkey, who sell to other countries but do not sell in Turkey the goods, they either purchased or manufactured in Turkey for export purposes, are not taxed on the earnings derived from this business. On the other hand, all the commercial earnings derived in Turkey (in a place of business or through permanent representatives) by foreigners or foreign legal entities, having a place of business or liaison offices or permanent representatives in Turkey are taxable here.

5.2) Agricultural Earnings

The earnings derived from agricultural activities carried on in Turkey are regarded as having been earned in Turkey.

5.3) Wages

In order for wages to be taxable in Turkey, the services in question have either to have been performed, or to have been used in Turkey; either the payment was made in Turkey, or, if it was made in a foreign country, it was transferred to the account of a company in Turkey.

The monies received by personnel sent to Turkey by companies with headquarters outside Turkey in order to carry out assembly work or to perform any other specific tasks to cover those persons' expenses whilst in Turkey are taxable. On the other hand, the remuneration which such personnel receive at their company headquarters outside Turkey is not regarded as having been earned in Turkey and is not, therefore, subject to Turkish taxation. However, monies (in the form of wages, salaries, attendance or other fees) received outside Turkey by the Chairman, directors or other officials, by the auditors or, in the case of liquidation, the receivers of companies located in Turkey and which have been charged in the accounts of a company or individual established in Turkey are considered to have been earned in Turkey and are therefore liable to Turkish taxation.

6. Corporation Tax

Foreign-investment companies are subject to the CTL on their profits calculated under normal Turkish rules. For Corporation Tax purposes, profits are calculated in accordance with the provisions of the Income Tax Law. This latter specifies that all business-related expenditures and incomes must be included at historical cost, using the accrual method of accounting. Proper accounting records must of course be maintained, and these must be backed by all the relevant documentation. The current (1987) rate of Corporation Tax is 46% of net profits but there are some contributions to various special fund which total 5% of the amount of the corporation Tax that brings the effective tax rate on companies to 48.30%.

6.1) Capital Gains

There is no special provision for capital gains. Profits resulting from the sale of fixed assets subject to depreciation are taxed at the normal rate, but may be deferred for three years and are not taxable to the extent that the proceeds are reinvested in new fixed assets. However, only 30% of the gains on the sale of real estate and securities (shares of limited liability companies) are taxed at normal rates if sold in 1987 and 40% in 1988 (unless the asset is withdrawn from the business or the enterprise is liquidated before 1990).

6.2) Deductible Expenses

Under the CTL, certain expenses specific to the corporate form are tax deductible. These are formation expenses, including expenses of issuing capital stock, start-up costs of business operations, and expenses of general meetings of shareholders.

6.3) Non-deductible Expenses

Since the historical cost method of accounting is strictly applied, unrealised exchange profits and losses are not taken into account in determining taxable income. Conversely general provisions against account receivables and inventories are not tax deductible.

6.4) Loss Carry-overs

Losses may be carried forward for five years, but may not be carried back. If the company suffers such losses that its share capital becomes impaired, or it becomes insolvent, the shareholders may recapitalise it but FID approval is required for this.

6.5) Tax Period

Tax procedure is governed by the Tax Procedure Law (TPL). The period of income assessment is normally the calendar year. Companies may have twelve months' fiscal periods other than the calendar year, appropriate to their business, subject to the prior approval of the Ministry of Finance.

6.6) Payments of Taxes

Corporation Tax returns must be filed within four months from the end of a company's own accounting period. Corporation Tax is payable in three equal installment starting from the month in which the tax return is filed. If the accounting periods coincides with the calendar year (as the vast majority do) the tax return must be filed in April, and Corporation Tax paid in April, July and October.

Delays in the payment of taxes due involve a penalty of 10% of the amount due for the first month and of an additional 4% for each subsequent months' delay; however, the Council of Ministers is empowered to reduce/increase these statutory rates by up to 80% and the current (1987) rates are 10% for the first month, 7% for each of the next five months and 5% for each month thereafter.

If a taxpayer fails to file a return, the authorities may assess tax liability on the basis of their own estimates. In this event, a penalty of three times the tax due is also payable, immediately; but if the authorities' assessment is not challenged and settlement is made within one month, the penalty may be waived.

7. Calculation of Corporation Tax

A foreign company may declare to the tax office and pay tax on its gross profits earned in Turkey. In this event, the tax rate is 48.3% (46% plus 5% - see 6., above) and, thereafter, dividends distributed to shareholders will not attract an Income Tax charge.

Under Article 24, of the CTL, all income obtained by foreign companies, other than commercial, agricultural and sundry incomes, is subject to Corporation Withholding Tax. Non-resident companies which are thus subject to Withholding Tax have, however, the option of accepting the Withholding Tax as the final tax on this type of income and not then filing an annual tax return. However, this option is not applicable to income received from any type of debentures and government bonds.

Currently, certain non-residents' income are subject to Withholding tax at the following rates:

- Salaries: 25%
- Professional and technical services: 15%
- Rents: 20%
- Interest income on deposit accounts: 10%
- Interest income on foreign exchange deposit accounts: Zero %
- Interest income on government debentures and Treasury bonds: Zero %
- Interest income on all types of bonds: 10%
- Interest income on loans obtained from foreign government, banks and international institutions: Zero %
- Interest income on other type of loans: 10%
- Dividends: Zero %
- Sales proceeds of copyright, patents and other intangible rights: 25%

With a government decree dated June 19 th, 1986 non resident's leasing charges under the Financial Leasing Law are taxed at 5%

Corporation Tax exempted income, such as investment allowances and export revenues, are subject to Withholding Tax. Currently (1987), the Withholding tax rate is 10% and this will be the final tax liability.