

FOREIGN DIRECT INVESTMENTS IN TURKEY - “ELECTRONIC NOTIFICATION SYSTEM” HAS BEEN ESTABLISHED

This Legal Alert seeks to provide information regarding the amendment of “Regulation for Implementation of Foreign Direct Investment Law” and the rules relating to the newly established Electronic Notification System.

What is Foreign Direct Investment in Turkey?

Foreign Direct Investment in Turkey is regulated by Foreign Direct Investment Law numbered 4875 published in the Official Gazette dated 05/06/2003 (the “**Law**”), and the Regulation for Implementation of Foreign Direct Investment Law (“**Regulation**”), published in the Official Gazette dated 20/08/2003 which is more about the implementation of the Law.

Under the Law, “foreign direct investment” in Turkey is defined as,

- i)** Incorporating a new company or a branch of a foreign company in Turkey, or
- ii)** Acquiring off-exchange any percentage of shares in a company established in Turkey, or
- iii)** Acquiring on-exchange - 10% or more of the shares or voting power of a company established in Turkey

by Foreign Direct Investors that may be:

- a)** Real persons who are citizens of other countries other than Turkey,
- b)** Turkish citizens who are resident abroad,
- c)** Legal entities and international institutions that are incorporated abroad.

The sources of the above-mentioned investments may be cash, equities and other financial sources sustained either from Turkey or from abroad.

Recent amendment under the Regulation

Recent amendment has been made by an amendment regulation published in the Official Gazette dated June 1, 2018. With this amendment, a web-based application named **Electronic Information System on Incentive Implementation and Foreign Capital** (“E-TUYS” or the “**System**”) has been established and the companies subject to the Law (the “**Company**”) have been held liable to submit the company information required by Law through this System.

We would like to note that prior to the recent amendment of the Regulation, the *trade registries* were responsible for the circulation of the required information of the Companies with the relative Ministry of the Republic of Turkey.

With the amendment, the procedures that shall be followed by Foreign Direct Investors are as follows:

1. The Companies are required to apply to the “General Directorate of Incentive Implementation and Foreign Capital”, a unit under Ministry of Economy, to appoint their authorized users (“**Representative**”) who will use the System in the name of the Company.
2. The Representatives are required to maintain an eligible electronic certificate from the authorized service providers. As per Article 9 of the Regulation, if the Representatives already possess an eligible electronic certificate, that would be valid for use under the System.
3. The Representative, within 1 (one) month following the authorization by the above-mentioned Directorate, by way of using the electronic certificate, is required to upload the required information under the System that appear with the below-stated headings.
 - Foreign Investor
 - List of Shareholders, and
 - Subsidiaries

We would like to note that the details of such requested information under these sections may be seen when the System has been accessed by the Representative.

4. The Representative is required to update information relating to its operations in the “Activity Report for Foreign Direct Investments” section of the System on an annual basis before the expiry of May.
5. In cases the Company increases or decreases its capital, or if there is an amendment in its shareholding structure, the “List of Shareholders” section of the System is required to be updated within 1 (one) month following the share transfer and capital increase/decrease. We would like to further note that the amendment of such shareholding structure is applicable for both of the following scenarios: **i)** transfer of the shares among the current shareholders, and **ii)** transfer of the shares to third parties.
6. Information relating to the payments received by the Company in case of capital increase and share transfer is required to be updated in the “Capital of the Company” section of the System within 1 (one) month.

Conclusion

As a final note, the newly established System brings practicality and a statistical advantage in recording and monitoring the information relating to Foreign Direct Investments in Turkey in connection with their operations, shareholding structure and other legally requested information via a web-based application.

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