

TURKMENISTAN LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

The legal system in Turkmenistan is a civil law system, with Islamic law influences. There is an established hierarchy of laws, with the Constitution being supreme and followed by Constitutional laws, codes, ordinary law, presidential decrees and resolutions by the National Assembly.¹ In practice, however, President Berdimuhamedow rules by decree and dominates legislative and judicial authorities; his decrees shape all walks of life, from politics and the economy to the social sphere. Despite the separation of powers being enshrined in the Constitution, the *de facto* power of legal governance rest purely in Berdimuhamedow's hands.

The independence of the judiciary is guaranteed by Article Six of the Constitution, with power exercised in the Supreme Court and of Turkmenistan and its lesser courts. Judges are declared independent and subject only to the Constitution and law, however in practice the judiciary has little independence, if any at all.² Berdimuhamedow appoints judges for five year terms and can dismiss them at will; thus, judges are continuously reliant on the President's favour for their job. The President can even modify previously delivered court decisions. Thus, the judiciary is effectively an extension and confirmation of the Berdimuhamedow's will.

Corruption is endemic within Turkmen courts and they are further undermined by deep clientelism and patronage networks. Even studying at a law school and obtaining a position as a judge or lawyer is rarely possible without financial payments to officials in the Ministry of Justice, which issues permits to engage in legal work using an opaque system. As such, foreign companies are advised to include arbitration clauses in contracts stipulating foreign venues, should disputes arise, although Turkmenistan is not a member of the 1958 New York Convention. Turkmen anti-corruption measures are symbolic and politically motivated. They provide Berdimuhamedow with a vector to portray himself as a fighter of corruption as well a mechanism to punish those who have fallen out of his favour, or have acted critically towards the state.³

The Turkmen Civil Code is based upon that of 19th Century Germany. The Code is drafted generally, meaning that academic and judicial interpretation is required to implement it, which Turkmenistan lacks owing to their underdeveloped judiciary.⁴ Article 1 of the Civil Code sets out the autonomy of parties to decide on their own contractual provisions, as long as these provisions do not contradict any aspect of law, whilst other articles define obligations, damages and unfulfilled contracts. Further key legislation includes the Law on Foreign Concessions, which defines the conditions of establishment and activities of foreign concessions in Turkmenistan, and the law on Hydrocarbon Resources, which states conditions concerning the exploration, extraction and transportation of Turkmenistan's hydrocarbon resources.

Turkmenistan is a signatory to many international treaties, including the Geneva Conventions, United Nations Convention Against Corruption, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which established the International Centre for Settlement of Investment Disputes. Turkmenistan is also a member of numerous international organisations, including the International Monetary Fund, the Organisation for Security and Co-

¹ http://www.nyulawglobal.org/globalex/Turkmenistan.html#_A_hierarchy_of_Turkmenistanlaws.

² <http://www.osce.org/odihr/262336?download=true>.

³ <http://www.bti-project.org/en/reports/country-reports/detail/itc/tkm/itr/pse/>; <http://www.business-anti-corruption.com/country-profiles/turkmenistan>.

⁴ <https://pages.law.illinois.edu/p-maggs/codes.htm>.

operation in Europe, the Commonwealth of Independent States and the World Health Organization. Article 9 of Turkmenistan's Constitution recognises 'the priority of the universally accepted norms of international law' and their primacy.⁵ Nevertheless, given the difficulties in enforcing domestic law consistently and equally, the implementation of international law remains problematic.

BUSINESS SECTOR

The Turkmen economy went into recession in 2014 as global energy prices fell, but has almost fully recovered and is expected to maintain a steady growth over the forthcoming years. Nevertheless, the reliance on hydrocarbon exports and the slowdown in the Chinese market, which is the destination for 78% of Turkmen exports, is a continuing cause for concern.

Turkmenistan is not included in the World Bank's Ease of Doing Business Index owing to the scarcity of reliable data. The main market challenges in Turkmenistan include the lack of consistent and transparent business legislation, the underdeveloped financial sector, systemic corruption and an unpredictable commercial environment where the state holds a monopoly over all strategic resources, infrastructure, banking and foreign trade, amongst other sectors. Furthermore, there are significant administrative hurdles to cross; there are onerous registration procedures which can be extremely time-consuming and unofficial 'payments' of up to US\$10,000 are often required.⁶

Turkmenistan's hydrocarbon sector and its related industries represent the greatest opportunity for investment or commercial activity: Turkmenistan has the fourth largest proven gas reserves in the world. Indeed, true direct investment is almost exclusively limited to the oil and gas industry. Given its importance in Turkmenistan's economy, the Turkmen government strives to maximise the hydrocarbon sector's potential. Natural gas production and refining are seen as best prospect industries; foreign technology and investment is needed for the Turkmenistan chemical and petrochemical industries; energy infrastructure is needed as new oil and gas fields are developed and the state has ambitious plans for overhauling Turkmenistan's transport infrastructure.⁷ Large-scale construction projects, such as that at Awaza and usually awarded to Turkish firms, have boosted imports of construction materials and technologies for a number of years; and if the Southern Gas Corridor project is extended to Turkmenistan it may provide significant commercial opportunities to Western firms. Over the last decade, Turkmenistan has increasingly opened up to international trade and foreign investment, however it is still advisable to work with a trusted local partner in order to manage political and bureaucratic hurdles.⁸

SECURITY SITUATION

Turkmenistan is largely a bastion of stability within Central Asia. President Berdimuhamedow retains a vice-like grip over Turkmenistan's political environment, and the government controls the press, media outlets and the internet. As such, there is no true political opposition and therefore a very low risk of internal political violence: even regime critics tend to be largely self-censored.⁹ There is traditionally a high level of security but often at the expense of individual rights. Petty crime is rare and the threat of terrorism is low.

Turkmenistan is a recognised neutral country, the principle of which is enshrined in their 2016 Military Doctrine. As such, the predominant security threats come from the Turkmen border regions,

⁵ <http://www.osce.org/odihr/262336?download=true>.

⁶ <https://www.taitwalker.co.uk/wp-content/uploads/2014/10/Doing-Business-Guide-Turkmenistan.pdf>.

⁷ <https://www.export.gov/apex/article?id=Turkmenistan-Market-Opportunities>.

⁸ <https://www.gov.uk/government/publications/overseas-business-risk-turkmenistan/overseas-business-risk-turkmenistan>.

⁹ <http://www.business-anti-corruption.com/country-profiles/turkmenistan>.

travel to which is often restricted, and the threat of non-state groups from neighbouring countries, such as the Taliban. The Turkmen state is vulnerable should external violence spill over its borders owing to its lack of military operational experience. Nevertheless, the Taliban and other regional Islamist groups either do not have aims of expanding into the greater region or the capability, and Turkmenistan repetitively asserts the stability of its border: 70% of its armed forces are deployed on the Turkmen-Afghan border.¹⁰ Further transnational issues focus on the demarcation of the Caspian seabed, and thus the hydrocarbon resources there, between Turkmenistan, Kazakhstan, Azerbaijan and Iran, although this is most unlikely to escalate.

COUNTRY OVERVIEW

Turkmenistan is located in Central Asia and is bordered by Kazakhstan, Uzbekistan, Afghanistan and Iran, as well as the Caspian Sea to the west. Turkmenistan has a population of 5.35 million, the 119th most populous country in the world, with around 50% of this population living in or around the capital Ashgabat owing to the vast Karakum Desert that covers over 70% of the nation; 746,000 live within the capital itself. The official language is Turkmen, but Russian and Uzbek are also commonly spoken amongst their respective ethnic minority groups. The majority religion is Sunni Islam, with a minority of Eastern Orthodox Christianity.¹¹

In terms of commercial risk, Turkmenistan is seen as a fairly high-risk country owing to a high risk political and economic situation.¹² In security terms Turkmenistan is relatively stable, particularly in relation to its Central Asian neighbours. Turkmenistan is a United Nations-recognised permanently neutral state and as such much of the security apparatus is focused on border and internal security. Thus, there is a high level of security along the border with Afghanistan, where Islamist groups are present. There is no recent history of terrorism in Turkmenistan, however, attacks in the future cannot be ruled out.¹³

Turkmenistan is a corrupt nation and is ranked in Transparency International's 2016 Corruption Index at 154 of 176 countries.¹⁴ There is widespread corruption in every public institution and across the entire economy. A law 'On Combatting Corruption' introduced a range of corruption offenses, but it is inadequately enforced and investigations are politically motivated.¹⁵

Turkmenistan is largely a mono-economy, as mineral products form over 90% of the export economy. The current GDP stands at US\$41.67 billion and growth is forecast around the 5-6% mark annually until 2020.¹⁶ The official currency is the Turkmenistan Manat.

The Turkmenistan Constitution defines the state as a democratic presidential republic, although in reality the state is highly authoritarian. President Gurbanguly Berdimuhamedow is the current head of government and wielder of executive power: the cabinet is appointed by the President. Presidential elections are held every seven years with the last elections held in February 2017: Berdimuhamedow was re-elected with 97.7% of the vote. The National Assembly makes up the Turkmen legislative branch, with members elected by absolute majority vote, although all member parties currently support President Berdimuhamedow.¹⁷

¹⁰ <https://www.riskadvisory.com/news/turkmenistan-moscow-courts-ashgabat-for-security-support.php>.

¹¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/tx.html>.

¹² <http://www.coface.com/Economic-Studies-and-Country-Risks/Turkmenistan>.

¹³ <https://www.gov.uk/foreign-travel-advice/turkmenistan/terrorism>.

¹⁴ https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table.

¹⁵ <http://www.business-anti-corruption.com/country-profiles/turkmenistan>.

¹⁶ <http://www.imf.org/external/datamapper/NGDPD@WEO/TKM>; <https://data.worldbank.org/country/turkmenistan>.

¹⁷ <https://www.cia.gov/library/publications/the-world-factbook/geos/tx.html>.