

TURKEY LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

Turkey possesses a civil law system based off a number of European legal systems. The Constitution is the supreme law of Turkey, followed by laws, law amending ordinances and international treaties, and consequently regulations and by-laws.¹ Nevertheless, under the current state of emergency, which was again extended for the sixth time in January 2018, President Erdogan has the ability to issue decrees with the force of law; emergency decrees cannot be reviewed by the Constitutional Court. As such, legislative power, in effect, currently lies with the executive. The Presidency will gain even greater power after the 2019 Presidential Election as a result of the 2017 Constitutional Amendments. These amendments severely weakened the National Assembly, limiting the means of parliamentary control over the executive whilst effectively granting the president a veto power over laws adopted by the National Assembly. Executive power will also rest solely with the President who will be able to freely pass decrees and declare emergency rule, allowing for the suspension of certain rights. Parliament and the Supreme Court constitutionally will have a degree of power in controlling these. However, given that the President will likely be the leader of the majority party in Parliament, thus dictating their policy, and given the lack of judicial independence the President will have *de facto* sole legislative and executive power.²

The judiciary's independence is guaranteed by the Constitution but in reality, there is no separation of powers. The judicial oversight board, which oversees appointments, disciplining and dismissal of judges, is appointed by the president and parliamentary majority, as is the Supreme Court. Thus, the entire judiciary is controlled by allies of the President, who is the leader of the majority party, and there is executive interference.³ Prosecutors who have opened anti-corruption investigations on senior officials have been subsequently suspended and accused of abusing their office by the government. Indeed, corruption is seen as a widespread issue, particularly within politics, public procurement and construction; bribes are regularly demanded. Structural weaknesses also result in often slow and inefficient case procedures, and courts are reportedly biased against foreigners. Nevertheless, few firms view the Turkish judiciary as a major obstacle to business.⁴

The Turkish Civil Code is the main contract law governing contracts, obligations and family law, whilst the 2011 Code of Civil Procedure forms the primary arbitration and litigation law. The Turkish Commercial Code regulates business life, including aspects such as trading companies, commercial documents, transport, maritime trade and insurance law.⁵ Meanwhile, the Labour Act determines employer-employee relations such as types of labour contract, conditions of termination, occupational health and safety, wages and the principle of equality of treatment.⁶ In regard to trade, the Customs Code is the primary legislation. Anti-corruption laws, alongside other crimes, can be found in the Turkish Criminal Code. This Code also includes the infamous Article 301, which declares that criticising the Turkish Nation or institutions of the state may be prosecuted and imprisoned.

¹ http://www.nyulawglobal.org/Globalex/Turkey1.html#_Regulations.

² http://www.nyulawglobal.org/globalex/2017_Turkey_Constitution_Amendments.html#ThePowersandDuties.

³ *Ibid.*

⁴ <http://www.business-anti-corruption.com/country-profiles/turkey>.

⁵ http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=88936&p_country=TUR&p_count=763&p_classification=01.03&p_classcode=14.

⁶ http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=64083&p_country=TUR&p_count=763&p_classification=01.02&p_classcode=10.

Turkey is a signatory to a number of international treaties and conventions. These include the Geneva Conventions, the Framework Convention on Climate Change, the New York Convention and the Agreement on Strategic Partnership and Mutual Support with Azerbaijan. Turkey is also a member of a number of multinational organisations, including NATO, the Organisation of Islamic Cooperation, World Trade Organisation and the Organisation for Security and Cooperation in Europe. Once ratified, international laws and treaties have the same force of law as domestic legislation. Nevertheless, international agreements concerning human rights and freedoms prevail over domestic laws in the case of a conflict, but remain inferior to the Constitution.⁷

BUSINESS OVERVIEW

Following several years of decline in nominal GDP, owing to the depreciation of the Lira, the IMF forecasts steady nominal and real growth in Turkey's GDP. Whilst inflation remains relatively high compared to advanced economies, at 9.3%, it has remained significantly lower and more stable than under the old Turkish Lira and is forecast to gradually decrease in the near future.⁸ The Turkish market, and export market, has a diversified services sector and large industrial sector. However, the informal sector has previously been estimated between 60-85% of the economy, with an 80% productivity gap when compared to the formal economy.⁹

Turkey ranks 60 of 190 in the World Bank's Ease of Doing Business Index, and 80 of 190 in the World Bank's Ease of Starting a Business index.¹⁰ This is owing to a competition based market, the EU Customs Union, excluding agricultural products, and fairly liberal investment laws which do not discriminate. Nevertheless, challenges do exist. Notably, the current state of emergency and a series of major terror attacks have negatively affected investor sentiment. Corruption, a lack of transparency and the reduced judicial independence also pose further challenges.¹¹

A great number of opportunities exist, however. Turkey straddles a key geostrategic location along vital energy corridors for the EU; Turkey has the youngest and fastest growing educated population in Europe; Istanbul's economy alone is larger than the collective economies of 12 EU nations; Turkey also has the world's second largest contracting sector alongside vast infrastructure investments.¹² In particular the construction sector has vast scope for investment and exports. Although Turkish companies usually win contracts, many outsource high-tech products and services. Major projects include TANAP, Turkish Stream, Kanal Istanbul and PPP Health Campuses.¹³ Smart city, transportation and medical technologies are all in high demand owing to such projects. Further leading sectors for export and investment include defence and aerospace, the security sector, education, mining and telecommunications. The latter is particularly reliant on imports.¹⁴

COUNTRY OVERVIEW

The Republic of Turkey is located predominantly in south-western Asia, and partially in south-eastern Europe, and borders Georgia, Armenia, Azerbaijan, Iran, Iraq, Syria, Greece and Bulgaria. Turkey has a population of 80.85 million people, a large proportion of which inhabit the area around the Bosphorus, including Istanbul's 14.16 million inhabitants. The Turkish capital, Ankara, has 4.75 million residents whilst further major urban areas include Izmir, Bursa, Adana and Gaziantep.

⁷ https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en.

⁸ <http://www.imf.org/external/datamapper/PCIPCH@WEO/TUR/ADVEC>.

⁹ https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Turkey.pdf.

¹⁰ <http://www.doingbusiness.org/data/exploreeconomies/turkey>.

¹¹ <https://www.state.gov/e/eb/rls/othr/ics/2017/eur/269962.htm>.

¹² <https://www.export.gov/article?id=Turkey-Market-Overview>.

¹³ <https://www.export.gov/article?id=Turkey-Construction-Equipment-and-Services>.

¹⁴ <https://www.export.gov/article?id=Turkey-Information-and-Communication-Technology>.

The official language is Turkish, although a number of minority languages are also spoken, the most notable of which is Kurdish. Although the state is officially secular, 99.8% of Turks identify as Muslims, the majority following Sunni Islam, and there are small Christian and Jewish minorities.¹⁵

Turkey is rated as a nation with acceptable levels of business and political risk. Although, the Turkish economy and banking system have remained relatively stable and increasingly liberalised, the deterioration of the rule of law, security environment and regional geopolitical environment remain causes for concern.¹⁶

Corruption is a wide scale issue in Turkey's public and private sectors, as well as judicial system. Turkey has a range of laws which criminalise corrupt practices, but these are poorly enforced and the relevant authorities are ineffective. As such, Turkey is ranked 75 of 176 Transparency International's 2016 Corruption Index.¹⁷

Turkey's GDP currently stands at US\$841.21 billion and has steady growth forecasts of 3.5% annually through 2022.¹⁸ The official currency is the Turkish Lira, although it has depreciated sharply in recent years, having lost over half of its value compared to the US Dollar over the last five years.¹⁹

Turkey is currently a parliamentary republic, although is due to become a presidential republic in 2019. President Recep Erdogan is the current head of state, whilst Prime Minister Yildirim is the head of government. The president is elected by absolute majority popular vote, over two rounds if required, and the prime minister is appointed by the president from the Grand National Assembly of Turkey. This unicameral assembly forms the Turkish legislative branch and its 550 members are directly elected in multi-seat constituencies by proportional representation vote; the next election is scheduled for 3 November 2019.²⁰ In April 2017, however, the Constitution was amended to make Turkey into a presidential republic. From the 2019 election, the position of prime minister and the Council of Ministers will cease to exist, the National Assembly will increase to 600 members and the president will be granted wide ranging new powers.

¹⁵ <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

¹⁶ <http://www.coface.com/Economic-Studies-and-Country-Risks/Turkey>.

¹⁷ https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

¹⁸ <http://www.imf.org/external/datamapper/NGDPD@WEO/TUR>; http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/TUR.

¹⁹ <http://www.xe.com/currencycharts/?from=TRY&to=USD&view=5Y>.

²⁰ <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.