

# FRANCHISE

## Turkey



# Franchise

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Quick reference guide enabling side-by-side comparison of local insights, including franchise market overview; key considerations when forming and operating a franchise; offer and sale of franchises; franchise contracts and the franchisor/franchisee relationship; and recent trends.

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## MARKET OVERVIEW

### Franchising in the market

How widespread is franchising in your jurisdiction? In which sectors is franchising common? Are there any economic or regulatory issues in the market that are more or less hospitable to franchising or make it economically viable in your jurisdiction?

Foreign franchising in Turkey started in 1986 with McDonald's and it continues to grow to this day. There are no official statistics available; however, according to the Turkish Franchising Association, as of 2020, the country's franchise sector employs 250,000 personnel and offers an estimated market share of 43 billion dollars.

Turkey's geographic location and wide market appeal provide it with recognition among foreign franchisors all around the world. Franchising is likewise the preferred form of business in a vast range of industries in the country. The most common sectors for franchising are fast food, coffee chains, retail, cosmetics and transportation.

Turkey does not have a specific franchise regulation, and the majority of franchise agreements are freely executed. The market is generally quite hospitable to franchising, owing to the country's efforts to strengthen its economy, its approach to foreign investors and a dynamic, young population.

*Law stated - 22 May 2022*

### Associations

Are there any national or local franchise associations? What is their role in franchising, including any impact on laws or regulations? Are there any rules of conduct or membership requirements?

There is the Turkish Franchising Association which was founded in 1991. Since its foundation, it has contributed to sectoral development, promotion of local brands, the country's integration into the international markets, and the protection of the rights of franchisees and franchisors.

The Turkish Franchising Association adopts the European Franchise Federation's European Code of Ethics for Franchising, however it has no force of law. The association accepts permanent and supporting members, but membership is not mandatory for franchisors and franchisees.

*Law stated - 22 May 2022*

## BUSINESS OVERVIEW

### Types of vehicle

What forms of business entities are relevant to the typical franchisor?

Franchisors are free to form partnerships with any type of company. There are only a few forms of business entities under the Turkish Commercial Code No. 6102: joint-stock companies; limited liability companies; collective partnerships; en commandite partnerships; and partnerships limited by shares, joint ventures, branches or liaison offices.

The most common types of business entities in Turkey are joint-stock companies and limited liability companies. Tax obligations and other legal liability matters differ based on the nature of business entities.

Foreign franchisors do not have to establish a business entity in Turkey to grant franchise rights. However, foreign franchisors may establish a business entity of their choice or prefer to establish a branch in Turkey.

*Law stated - 22 May 2022*

## **Regulation of business formation**

### **What laws and agencies govern the formation of business entities?**

The Turkish Commercial Code No. 6102 governs the formation of business entities, which must be registered with the trade registry of the city where the company has its headquarters, pursuant to the Trade Registry Regulation. The country's Ministry of Trade is the governing body of business entities.

*Law stated - 22 May 2022*

## **Requirements for forming a business**

### **Provide an overview of the requirements for forming and maintaining a business entity.**

Companies in Turkey must be registered at the trade registry. To do this, they need a company name, an address, one shareholder and an authorised person or entity. They must also draft and sign an article of association. There are tax and social security notification duties for newly established companies.

The requirements for forming and maintaining a business entity vary depending on its type. The most common business entities – joint-stock and limited liability companies – can be formed by a single shareholder. For limited liability companies, there is a maximum shareholder limit of 50. Shareholders of a business entity can be natural persons or business entities. Whereas joint-stock companies require a minimum capital of 50,000 Turkish lira (approximately US\$3,260), the minimum capital required for forming limited liability companies is 10,000 Turkish lira (approximately US\$650). Limited liability companies can pay their capital within 24 months; however, joint-stock companies must deposit 25 per cent of their capital during the formation process and pay the remainder within 24 months. Shares of joint-stock companies can be assigned through a written contract, while shares of limited liability companies can only be assigned through a written contract signed before a notary.

There are certain sectors – banking, insurance, financial leasing, etc – where it is required for a business entity to be formed as a joint-stock company. Only joint-stock companies can make a public offering.

Companies are required to hold an annual ordinary general assembly meeting within the first three months of formation, starting from the conclusion of each financial year, and submit the meeting minutes to the trade registry. They are also required to register any changes to the company structure.

*Law stated - 22 May 2022*

## Restrictions on foreign investors

### What restrictions apply to foreign business entities and foreign investment?

The main regulation in this instance is the Foreign Direct Investment Law No. 4875, which adopts equal treatment of foreign investors. Foreign investors can freely establish an entity, open a branch and acquire shares of an existing company – except in the case of certain regulated sectors, such as energy, telecommunication, banking, insurance and mass media – and conclude know-how or technical assistance agreements with domestic companies.

Since Decree No. 32 on the Protection of the Value of Turkish Currency, broad restrictions have come to force on the use of foreign currencies in transactions in Turkey. Therefore, it is important to determine the conditions for exemptions to these restrictions before conducting any transaction that includes a foreign currency.

*Law stated - 22 May 2022*

## Taxation

### What aspects of the tax system are relevant to franchisors? How are foreign businesses and individuals taxed?

Turkish tax legislation can be classified under the three main categories of income tax, tax on expenditure and tax on wealth.

Individual and corporate incomes are subject to the income tax. Turkey taxes its residents on their worldwide income, whereas non-residents are taxed on Turkish-source earnings only. Individual income tax rates vary from 15 per cent to 40 per cent. The corporate income tax rate for 2022 is 23 per cent.

Taxes on expenditure consist of:

- Value added tax (VAT) – commercial, industrial, agricultural and independent professional goods and services, imported goods and services, and deliveries of goods and services as a result of other activities are all subject to VAT, which varies at the rates of 1 per cent, 8 per cent and 18 per cent.
- Special consumption tax (SCT) – petroleum products, automobiles and other vehicles, tobacco and tobacco products, alcoholic beverages and luxury products are subject to SCT, which is collected only once.
- Banking and insurance transaction tax – transactions and services performed by banks and insurance companies are subject to this tax.
- Stamp duty – applies to a wide range of documents including contracts, notes payable, capital contributions, letters of credit, letters of guarantee, financial statements and payrolls, varying from 0.189 per cent to 0.948 per cent depending on the value of the document.

There are three kinds of taxes on wealth:

- property tax;
- motor vehicles tax; and
- inheritance and gift tax.

In Turkey, tax on royalties paid to foreign entities must be withheld at the source, and royalty payments arising from franchise agreements are subject to a 20 per cent withholding tax. However, where the franchisor is a non-resident, withholding tax percentage may be reduced depending on the terms of the double taxation treaty between Turkey and the franchisor's country of origin.

Royalty payments are also subject to VAT if the franchising operations take place in Turkey. Where the franchisor is a non-resident, the franchisee must declare and pay the VAT. There is also stamp tax duty for signing a franchise agreement.

*Law stated - 22 May 2022*

## **Labour and employment**

Are there any relevant labour and employment considerations for typical franchisors?

The main factors of general service agreements are service, payment and dependency, as regulated under the Turkish Code of Obligations No. 6098. Even though these three elements may be part of a franchise agreement, the franchisee is legally independent from the franchisor. The fact that the franchisee is dependent on the franchisor's instructions has indeed generated discussion in the doctrine on the nature of the employment relationship between the parties. However, the dominant opinion is that dependency on the franchisor's instructions does not affect the independency of the franchise, as potential risks belong to the franchisee who acts on its own behalf and account.

*Law stated - 22 May 2022*

## **Intellectual property**

How are trademarks and other intellectual property and know-how protected?

In Turkey, trademarks and other intellectual property rights are mainly protected under the Industrial Property Law No. 6769 and the Law on Intellectual and Artistic Works No. 5846, alongside international agreements such as the Paris Convention and the Madrid Protocol.

Industrial Property Law No. 6769 stipulates that any sign (word, letter, number, design, logo, etc) that distinguishes the goods or services of a company from others may be registered as a trademark. This provides an exclusive right for the trademark holder to use the trademark on the registered goods and services for 10 years, which can be renewed for an unlimited number of times. Well-known trademarks within the scope of article 6-bis of the Paris Convention benefit from additional protection even if they are not registered. Trademark applications are submitted to the Turkish Patent and Trademark Office. There are no requirements regarding residency, headquarters or nationality for trademark holders. Turkey is also a member of the Madrid Protocol; therefore, national registration can be supplemented by an international registration via the World Intellectual Property Organization.

No proof of use is required for trademark registration; however, if the trademark holder does not use the trademark for five years following registration, their right may be forfeited and action may be taken to cancel the registration if the reason for non-use is not presented.

The application for the registration of an industrial design should also be filed with the Turkish Patent and Trademark Office. An industrial design can be registered if it is novel and has an individual character. Registered design protection starts from the application submission date and lasts for five years. It can be renewed for four consecutive periods of five years each, meaning that an industrial design can be registered for a total of 25 years. Unregistered industrial designs are protected under unfair competition provisions and the Industrial Property Law, provided that they are novel and individual in character, and that they are made available to the public for the first time in Turkey. Such protection starts from the moment the design is made available to the public and lasts for three years.

An invention is patentable in Turkey if it is novel, involves an inventive step and is capable of industrial application. Patent applications are filed with the Turkish Patent and Trademark Office, and protection starts from the date of the application. The term of protection is 20 years and is not renewable. The rights provided by a patent cannot be claimed against bona fide third parties, unless registered in due form.

Copyrights are mainly protected under the Law on Intellectual and Artistic Works No. 5846. Registration is not required to establish rights. Copyright protection is obtained automatically when the work is created and lasts for 70 years after the author's death. Cinematographic and musical works and video games – the latter which is categorised under cinematographic works by the State Council – must be registered with the General Directorate of Copyrights, which is part of the Ministry of Culture and Tourism, to exploit related rights and facilitate proof of ownership, but not for the creation of the rights themselves.

Turkish law provides an effective enforcement procedure for the protection of intellectual property rights. Once an infringement has been committed, sending a cease-and-desist letter from a notary public is usually the first step to an easier and faster relief for the intellectual property owner. Furthermore, it is possible to enforce intellectual property rights before the criminal law courts and civil law courts.

Protection against an infringement concerning an unregistered mark is offered under the unfair competition clauses of the Turkish Commercial Code No. 6102.

Outside the scope of copyrights pertaining to entities such as software, in Turkey know-hows are not protected by an explicit legislation. They are, however, protected under the unfair competition clauses of the Turkish Commercial Code No. 6102, and unfair competition acts are subject to imprisonment or monetary fines.

*Law stated - 22 May 2022*

## **Real estate**

**What are the relevant aspects of the real estate market and real estate law? What is the practice of real estate ownership versus leasing?**

An individual or a legal entity may own property in the forms of full ownership, co-ownership or joint ownership. The land registry records are kept in an electronic centralised system known as the Land Registry and Cadastre Information System and in physical title books maintained by the relevant land registry directorate.

As a general practice, acquisition of real property by non-Turkish nationals in or nearby military zones and other

security zones is not allowed. There are also some restrictions specific to the total land area individual, non-Turkish nationals may acquire. With some exceptions, acquisition of real property by Turkish legal entities with foreign shareholding requires the prior written consent of the relevant governorship where the real property is located, if the foreign shareholders own 50 per cent or more of the shares or have the privilege to appoint or dismiss the majority of the members of the board of directors of such company.

Lease relationships are governed under the provisions of the Turkish Code of Obligations No. 6098. There is no statutory format for lease agreements; however, the general practice is to have written lease agreements. Parties are entitled to conclude lease agreements with a fixed or indefinite term at their own discretion. If a lease agreement is concluded for a fixed term, it shall automatically terminate following the expiry of the term. However, a fixed-term agreement may turn into an indefinite-term agreement if the tenant continues to use the leased property following the expiry of the term without there being an explicit agreement between the tenant and the landlord. Where a residence or workplace is leased, the lease agreement shall be automatically extended for consecutive one-year periods, unless the tenant notifies the landlord of their intention to terminate the lease agreement at the end of the term with at least 15 calendar days' prior notice. The only exception to this general rule is the landlord's right to terminate any fixed-term lease agreement after 10 years of renewals by serving the tenant with a three-month prior written notice before the expiry of a subsequent lease term after the tenth year.

A lease agreement can be annotated with the records of relevant land registry directorate. Such annotation would grant the lessee the right to enforce the terms of the lease agreement against the future owner of the leased property.

It is more common for franchisors and franchisees in Turkey to lease than to purchase real estate for franchising operations, considering the conditions foreigners are expected to adhere to when purchasing real estate. There is no legislation regarding real estate specific to franchising. In practice, franchisors usually require franchisees to add in their lease agreements with the third-party landowner an extra clause where the property will be assigned to the franchisor upon the termination of the franchise agreement.

*Law stated - 22 May 2022*

## Competition law

What aspects of competition law are relevant to the typical franchisor in your jurisdiction? How is competition law enforced in the franchising sector?

Under the country's main legislation governing competition – the Law on the Protection of Competition No. 4054 (the Competition Law) – vertical agreements apply to franchising.

The Competition Law's aim is:

- to inhibit agreements, decisions and practices that prevent, distort or restrict competition in the goods and service markets;
- to prevent the abuse of dominance by undertakings that dominate the market; and
- to ensure the protection of competition by making the necessary regulations and inspections.

Accordingly, inter-undertaking agreements, concerted practices, and such decisions and actions of associations that

aim to, whether directly or indirectly, prevent, distort or restrict competition in a particular goods or service market, or that have or may cause such an effect, are illegal and prohibited.

Having said that, the Competition Law authorises the Turkish Competition Board to issue communiques that provide block exemption to certain agreement types bearing specific conditions. Vertical agreements are the primary agreements that are exempted from the main restrictions of competition rules. The conditions for this exemption are regulated under the Communiqué on Vertical Agreements (Communiqué No. 2002/2) issued by the Competition Board. The communique determines those matters that will be evaluated by the Competition Board with regard to block exemptions, and is accompanied by the Guidelines on Vertical Agreements.

Where the franchisor's market share is less than 30 per cent, the franchise agreement may benefit from block exemption if all other conditions are fulfilled. Where the franchisor's market share is more than 30 per cent, the franchise agreement can only benefit from individual exemption provided that all other conditions are fulfilled.

Pursuant to the Communiqué No. 2002/2, vertical agreements are considered to be outside the scope of block exemptions (hence, non-compliant with the Competition Law) if they mainly, but non-exhaustively, include:

- determination of resale prices;
- restriction on regions and customers;
- selective distribution systems;
- non-compete obligations;
- single branding restrictions; or
- exclusive supply provisions.

Under Communiqué No. 2002/2, the franchisor is prohibited from fixing resale prices. However, non-binding price recommendation and determination of maximum prices is permissible.

As a rule, to benefit from block exemption, the duration of a non-compete clause cannot exceed five years. However, the non-compete obligation in a franchise agreement may be determined for a term longer than five years so long as this is deemed reasonable. Additionally, a post-term non-complete obligation can be imposed, provided that:

- it does not exceed one year after the expiry of the franchise agreement;
- the prohibition is for goods and services subject to the agreement and limited to the facility or land where franchise operations took place during the agreement; and
- it is considered to be necessary for the protection the transferred know-how.

Online sales are evaluated as passive sales and, therefore, general prohibition of online sales is considered a hardcore restriction pursuant to the Communiqué No. 2002/2.

The Turkish Competition Board is the authority that enforces competition rules in the franchising sector. Violation of competition law may lead to the invalidation of the franchising agreement and may result in an administrative fine of up

to 10 per cent of the annual gross income (in practice, applied as income generated in Turkey only) at the end of the fiscal year.

*Law stated - 22 May 2022*

## OFFER AND SALE OF FRANCHISES

### Legal definition

What is the legal definition of a franchise?

There is no legal definition of franchise under Turkish legislation, due to a lack of specific regulation. Even so, the Turkish Franchising Association defines franchise as:

The franchisee undertaking the right and obligation to use the franchisor's trade name, service trademark, know-how, business and technical methods, system and other industrial or intellectual property rights in return for a direct or indirect price, with the commercial and technical support it will receive continuously within the term and scope of the written franchise agreement made between the parties.

And according to the Communiqué No. 2002/2:

Franchise agreements contain licences related to know-how and intellectual property rights such as trademarks and signs, which will be used in the distribution of goods or services. The franchisor usually provides commercial and technical assistance to the franchisee during the term of the agreement. Licences and assistances are integral parts of the business method in the franchise package. The franchisee pays the franchisor a franchise fee in return for these services. Franchising allows the franchisor to establish a uniform distribution network for their products with a limited investment.

*Law stated - 22 May 2022*

### Laws and agencies

What laws and government agencies regulate the offer and sale of franchises?

The offer and sale of franchises are not controlled by any law or government agency in Turkey.

Franchising agreements are considered as sui generis agreements and are executed freely by the parties on condition that they are in compliance with the general legal principles and competition rules. Different laws may apply to different subjects (and sectors) related to franchising. In general, the Turkish Code of Obligations No. 6098, the Turkish Commercial Code No. 6102, the Law on the Protection of Competition No. 4054 and the Industrial Property Law No. 6769 apply to offer and sale of franchises.

There are no exemptions to or exclusions from these laws, because a specifically governed franchise law does not exist in Turkey.

*Law stated - 22 May 2022*

## Principal requirements

What are the principal requirements governing the offer and sale of franchises under the relevant laws?

There are no principal requirements governing the offer and sale of franchises in Turkey.

*Law stated - 22 May 2022*

## Franchisor eligibility

Must franchisors satisfy any eligibility requirements in order to offer franchises? Are there any related practical issues or guidelines that franchisors should consider before offering franchises?

No. Having said that, the Turkish Franchising Association adopts the European Franchise Federation's European Code of Ethics for Franchising. By their Principle of Honesty , franchisor must have successfully run its business for a reasonable period of time and at least in one example business; and by their Principle of Clarity , the franchisor should state how long they have been selling their name right with the franchising system in their field of activity, and the last five year's work experience of the franchisor's executives. Additionally, the Turkish Franchising Association, in its 2022 Franchising Guide , references American Associated of Franchisees & Dealers' rules regarding franchisor eligibility. However, these Principles and Guides do not have any force of law.

*Law stated - 22 May 2022*

## Franchisee and supplier selection

Are there any legal restrictions or requirements relating to the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers? What practical considerations are relevant when selecting franchisees and suppliers?

No. Having said that, the Turkish Franchising Association adopts the European Franchise Federation's European Code of Ethics for Franchising and by their Principle of Honesty , a franchisor should select and accept an individual franchisee, upon reasonable investigation, by their possession of the basic skills, education, personal qualities and financial resources sufficient to carry on the franchise business. However, this principle does not have any force of law.

*Law stated - 22 May 2022*

## Pre-contractual disclosure – procedures and formalities

What procedures and formalities for pre-contractual disclosure are required or advised in your jurisdiction? How often must the disclosures be updated?

There are no pre-contractual disclosure requirements related to franchising in Turkey.

*Law stated - 22 May 2022*

## Pre-contractual disclosure – content

## What information is the disclosure document required or advised to contain?

There are no pre-contractual disclosure requirements related to franchising in Turkey.

*Law stated - 22 May 2022*

## Pre-sale disclosure to sub-franchisees

In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

There are no pre-sale disclosure requirements related to sub-franchising in Turkey.

*Law stated - 22 May 2022*

## Due diligence

What due diligence should both the franchisor and the franchisee undertake before entering a franchise relationship?

The franchising parties are under no specific due diligence obligations. However, according to the general principles of the Turkish Civil Code, a pre-contractual trusting relationship requires the parties to diligently disclose any information material to the business. All facts material to the franchisee's decision to enter into the franchising agreement must be disclosed by the franchisor.

*Law stated - 22 May 2022*

## Failure to disclose – enforcement and remedies

What actions may franchisees or any relevant government agencies take in response to a franchisor's failure to make required disclosures? What legal remedies are available? What penalties may apply?

There are no disclosure requirements related to franchising in Turkey.

Pursuant to the general principles of the Turkish Civil Code and to the culpa in contrahendo principle under the Turkish Code of Obligations, parties are responsible to each other and act trustworthy until the signing, which includes disclosing facts and not providing false information. If acting contrary to these principles shall cause a damage to a party, such as making an investment or expenses, or both, these damages shall be compensated.

Additionally, pursuant to the Turkish Code of Obligations, if one of the parties deliberately deceives the other parties of a contract, this injures their willpower and will result in invalidity of the contract upon the claim by the deceived, within one year of the date of learning about the deceit. Additionally, the deceiving party will be responsible for providing compensation for damages.

The damages are generally calculated based on negative interest and positive interest, that is, based on the difference between the wealth of the franchisee as a result of the injury and the wealth they would dispose of without the damaging event (missing opportunities of executing other franchising agreements). Either way, the franchisee would need to prove the damage is suffered as a result of the franchisor's failure to provide required or correct information.

*Law stated - 22 May 2022*

### **Failure to disclose – apportionment of liability**

In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

There are no disclosure requirements related to franchising in Turkey.

In principle, the damage claims can be made to the parties of a contract and therefore, unless agreed otherwise, the franchisor would not be liable for the sub-franchisor's acts regarding disclosure violations.

The liability of officers and directors is limited if the entity is formed as a joint-stock or limited liability company. These executives would be able to be held liable in cases of intentional or negligent breach of duty of care. For damages caused by employees in the performance of their work, liability is generally borne by their employers. For infringement of criminal provisions, (eg, unfair competition clauses), officers, directors and employees may be liable directly.

*Law stated - 22 May 2022*

### **General legal principles and codes of conduct**

In addition to any laws or government agencies that specifically regulate offering and selling franchises, what general principles of law affect the offer and sale of franchises? What industry codes of conduct may affect the offer and sale of franchises?

Pursuant to the Turkish Code of Obligations, for a contractual relationship to be established, the main elements of an agreement – that is, factors that would affect the other party's decision to enter into the agreement – shall be disclosed and the parties' wills must be coherent and compatible.

Pursuant to the principle of 'culpa in contrahendo', a party's reliance on the relation arising from contractual negotiation is protected by law, and the concerning party shall have the right to claims of damages related to it.

There are no formal requirements that apply to franchising agreements; either written or oral franchising agreements are binding and valid. However, pursuant to the Industrial Property Law, legal transactions related to trademark and patent must be in written form to be valid, and as franchising agreements mainly include trademark and patent licence clauses, they are executed in written form.

If the franchise agreement includes standardised terms that are used in agreements with other franchisees, the franchisor is obligated to inform the franchisee of such terms. These terms cannot be unilaterally changed by the

franchisor, especially to the disadvantage of the franchisee.

Under the Turkish Civil Code, every individual must exercise their rights and fulfil their obligations according to the principles of good faith.

*Law stated - 22 May 2022*

### **Fraudulent sale**

What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises?

Pursuant to the Turkish Code of Obligations, if a party has entered into a contractual relationship as a result of fraudulent acts carried out by the other party, they shall not be bound by the contract.

*Law stated - 22 May 2022*

## **FRANCHISE CONTRACTS AND THE FRANCHISOR/FRANCHISEE RELATIONSHIP**

### **Franchise relationship laws**

What laws regulate the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

There are no specific laws regulating the ongoing relationship between franchisor and franchisee. The terms of the franchising agreement usually define such a relationship. For the cases where the relationship is not determined in the franchising agreement, the general rules of the Turkish Civil Code, the Code of Obligations and the Commercial Code apply.

*Law stated - 22 May 2022*

### **Operational compliance**

What mechanisms are commonly incorporated in agreements to ensure operational consistency and adherence to brand standards?

Franchising agreements usually include clauses granting the franchisor the right to inspect and audit the franchisee's books and records for compliance with operational obligations. It is more common for foreign franchisors to require audits on technology and reports (eg, financial, operational, sales and expenses) than physical inspection and audit. There are also practices where franchisors have key employees working with the franchisee to ensure compliance.

*Law stated - 22 May 2022*

### **Amendment of operational terms**

May the franchisor unilaterally change operational terms and standards during the franchise relationship?

The franchisor may reserve the right to change operational terms and standards during the franchise relationship. However, under the Turkish Code of Obligations, a party cannot unilaterally change any standard term during a

contractual relationship, especially if these changes place the other party at a disadvantage.

*Law stated - 22 May 2022*

### **Policy affecting franchise relations**

**Do other government or trade association policies affect the franchise relationship?**

Not directly.

*Law stated - 22 May 2022*

### **Termination by franchisor**

**In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?**

There are no specific termination conditions regarding franchise relationships. However, under the general principles of law, unless determined otherwise in the franchising agreement, definite-term franchising agreements can only be terminated with a just cause or in return for compensation, while indefinite-term franchising agreements can be terminated at any time with a termination notice.

*Law stated - 22 May 2022*

### **Termination by franchisee**

**In what circumstances may a franchisee terminate a franchise relationship?**

There are no specific termination conditions regarding franchise relationships. However, under the general principles of law, unless determined otherwise in the franchising agreement, definite-term franchising agreements can only be terminated with a just cause or in return for compensation, while indefinite-term franchising agreements can be terminated at any time with a termination notice.

*Law stated - 22 May 2022*

### **Renewal**

**How are renewals of franchise agreements usually effected? Do formal or substantive requirements apply?**

There are no specific requirements concerning renewals of franchise agreements in Turkey.

*Law stated - 22 May 2022*

### **Refusal to renew**

**May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?**

There are no specific requirements concerning renewals of franchise agreements in Turkey. Principally, pursuant to the contractual freedom of the parties, parties are free to refuse to renew an agreement, without any justification.

## Transfer restrictions

May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

Franchising agreements are principally transferable, unless otherwise agreed by the parties.

Law stated - 22 May 2022

## Fees

Are there laws or regulations affecting the nature, amount or payment of fees?

No. The parties of a franchise agreement are free to determine such conditions.

Apart from common franchise fees, the 'portfolio compensation' should be paid to franchisees where claimed. The portfolio compensation is regulated under the Turkish Commercial Code for commercial agency agreements, where the agent has the right to compensation after the relationship expires or is terminated but the principal continues to benefit from the customer base and market reputation developed by the agent.

The Supreme Court and the Turkish doctrine agree that certain provisions regarding commercial agency agreements, including portfolio compensation, apply to franchise agreements. The portfolio compensation, therefore, shall be paid to franchisees; however, the compensation cannot exceed the average value of the franchise fees or limit the other party's liability arising from gross fault or gross negligence.

Law stated - 22 May 2022

## Usury

Are there restrictions on the amount of interest that can be charged on overdue payments?

Pursuant to the Turkish Commercial Code No. 6102, commercial business interest rates can be determined freely by the parties. Where there is no provision determining the interest rate for overdue payments, the Law on Legal Interest and Default Interest No. 3095 shall apply, according to which, where there is no rate determined by the agreement, the default legal interest rate will be 9 per cent per annum. There is also an option to apply the rate determined by the Central Bank of the Republic of Turkey, if this rate is higher than the legal interest, which is 15.75 per cent at the time of writing.

For overdue payments in foreign currency, the Law on Legal Interest and Default Interest No. 3095 regulates that in cases where a higher contractual or default interest is not agreed on, the highest interest rate paid by the state banks to a one-year deposit account in that currency is recognised as the interest rate of the foreign currency debt.

Law stated - 22 May 2022

### Foreign exchange controls

Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

No.

*Law stated - 22 May 2022*

### Confidentiality covenant enforceability

Are confidentiality covenants in franchise agreements enforceable?

Yes. The common practice is to determine a penalty in case of a breach of confidentiality. However, in case of a dispute, penalties exceeding the damage as a result of a breach may be reduced.

*Law stated - 22 May 2022*

### Good-faith obligation

Is there a general legal obligation on parties to deal with each other in good faith during the term of the franchise agreement? If so, how does it affect franchise relationships?

There is a general principle governed under the Turkish Civil Code No. 4721 which stipulates that every person must act in good faith when exercising their rights and performing their obligations. This principle may apply to the bargaining process in circumstances where the more powerful party (often franchisors) must act in good faith while bargaining with the less powerful party (often franchisees). Moreover, in principle, Turkish law does not protect the party who is acting maliciously.

*Law stated - 22 May 2022*

### Franchisees as consumers

Does any law treat franchisees as consumers for the purposes of consumer protection or other legislation?

No.

*Law stated - 22 May 2022*

### Language of the agreement

Must disclosure documents and franchise agreements be in the language of your country?

Pursuant to the Law on the Mandatory Use of the Turkish Language in Commercial Enterprises No. 805, agreements between commercial enterprises must be in Turkish. If there is a foreign entity involved, the agreement can include another language, provided that the Turkish version prevails. Even though agreements executed in another language are not deemed to be invalid, it is recommended to draft agreements bilingually to avoid any conflicts arising from claims against unclear terms and conditions.

*Law stated - 22 May 2022*

## Restrictions on franchisees

What types of restrictions are commonly placed on the franchisees in franchise contracts?

Common franchise agreements include clauses on grant of rights, exclusivity, right to sub-franchise, term and renewal, fees and taxes, operations, territory, obligations, advertisement, marketing, audits and reports, intellectual property, confidentiality, non-competition, management and ownership, transfers, termination and remedies, indemnification, governing law and dispute resolution.

*Law stated - 22 May 2022*

## Courts and dispute resolution

Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

Under the Turkish legal system, courts are either categorised as judicial or administrative. Judicial courts, which constitute the broadest section of the Turkish judicial system, are subdivided into two branches consisting of civil courts and criminal courts, whereas administrative courts are sub-divided into administrative courts and tax courts.

Turkey's judicial system has a multipartite structure. All courts consist of three levels: first instance courts; district courts; and supreme courts.

A franchise dispute may be subject to arbitration if mutually agreed upon by the parties, and the mediation application is mandatory for commercial disputes that are related to monetary claims. Voluntary mediation is also available as an alternative dispute resolution method for the parties of franchise agreements.

*Law stated - 22 May 2022*

## Governing law

Are there any restrictions on designating a foreign governing law in franchise contracts in your jurisdiction? How does the governing law affect the contract's enforceability?

The parties of an agreement are free to choose the governing law of the franchise agreement. However, pursuant to the International Private and Procedural Law No. 5718, certain mandatory laws will apply notwithstanding the choice of jurisdiction. The same law requires that demands concerning prevention of competition are subject to the regulations of the state whose market is directly affected by such prevention (ie, Turkish competition legislation applies to franchising agreements taking effect in Turkey).

*Law stated - 22 May 2022*

## Arbitration – advantages for franchisors

What are the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction? Are any other alternative dispute resolution (ADR) procedures particularly favoured or disfavoured in your jurisdiction?

In Turkey, in large commercial disputes, especially where one party is foreign, the most favoured manner of resolution is arbitration. For foreign franchisors, the principal advantages of arbitration are: the procedures are more flexible; the process is faster, costs less than court proceedings and remains confidential; and arbitrators can be selected among experts. The principal disadvantage could be that, in practice, arbitration costs more than litigation where the disputed amount is high.

On 11 March 2021, Turkey ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention). As an alternative dispute resolution, this allows commercial international mediation settlement agreements to be enforced in member states without the need for full court proceeding, which are more time-consuming and costly. It also promotes mediation as an alternative dispute resolution measure in international commercial disputes and fills the void for international mediation within the international trade law.

Lastly, in Turkey, the mediation application is mandatory for commercial disputes which are related to monetary claims before filing commercial lawsuits. In addition to mandatory mediation, voluntary mediation is also regulated under Turkish law, which offers a fast-paced and economically advantageous resolution to contractual disputes or other private law conflicts of any type.

*Law stated - 22 May 2022*

## National treatment

In what respects, if at all, are foreign franchisors treated differently (legally, or as a practical matter) from domestic franchisors?

Foreign franchisors are not treated differently from domestic franchisors. Although there are legal conditions – such as owning an immovable property, owning 100 per cent shares in certain sectors or use of foreign currency in specific situations – that may apply to foreign franchisors, especially if they have no presence in Turkey.

*Law stated - 22 May 2022*

## UPDATE AND TRENDS

### Legal and other current developments

Are there any proposals for new legislation or regulation, or to revise existing legislation and regulation? Are there other current developments or trends to note?

There are no proposals for new legislation or regulation, and no proposals for revising existing legislation and regulation.

In November 2021, the Turkish Competition Authority lowered the market share threshold that applies to vertical block

exemptions with Communiqué No. 2021/4 on the Amendments on the Block Exemption Communiqué on Vertical Agreements No. 2002/2. Following this change, vertical block exemptions will apply on the condition that the market share held by the supplier does not exceed 30 per cent of the relevant market, instead of the previous 40 per cent.

*Law stated - 22 May 2022*

## Jurisdictions

	<b>Australia</b>	Norton Rose Fulbright
	<b>Canada</b>	Lapointe Rosenstein Marchand Melançon LLP
	<b>China</b>	Jones & Co
	<b>Finland</b>	ADVOCARE Law Office
	<b>France</b>	Bersay
	<b>Germany</b>	Taylor Wessing
	<b>India</b>	G&W Legal
	<b>Israel</b>	Gilat Bareket & Co, Reinhold Cohn Group
	<b>Italy</b>	Rödl & Partner
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Malaysia</b>	Wong Jin Nee & Teo
	<b>Mexico</b>	Gonzalez Calvillo SC
	<b>Netherlands</b>	Parker Advocaten
	<b>New Zealand</b>	Stewart Germann Law Office
	<b>Norway</b>	CLP
	<b>South Africa</b>	Spoor & Fisher
	<b>South Korea</b>	Lee & Ko
	<b>Switzerland</b>	Kellerhals Carrard
	<b>Turkey</b>	Özdağıştanlı Ekici Attorney Partnership
	<b>United Kingdom</b>	Ashtons Legal
	<b>USA</b>	Lathrop GPM