

# Turkey's revised Foundation Law and important amendments

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The most important legal basis in Turkey relating to foundations is the Foundation Law. The new Foundation Law was adopted and put into effect on February 20, 2008. It brought about many changes. It allows foundations established in Turkey to play an effective role in business life. While foundations were equivalent to charitable institutions in Turkish practice in the past, the revised Foundation Law aims to make foundations important participants in social and business life. The amendments in the Foundation Law were made to adjust to European Union rules and aimed to produce a new legal identity for foundations. We expect that the regulation required for practicing will be issued in the fall of this year. This regulation should be

waited for to have more information on the amendments.

The present article explains the organization and establishment of foundations by foreigners in Turkey, their foreign activities as well as their activities related to the said amendments.

## How foreigners establish foundations in Turkey

According to article 5 of the Foundation Law, foreigners can establish foundations in Turkey based on legal and actual reciprocity. The main framework of the reciprocity principle mentioned in the said article will be the international reciprocity principle according to article 2 of the Foundation Law.

The terms "foreigner", "reciprocity principle" and "new foundation" in article 5 of the Foundation Law, which regulates how foreigners may establish founda-

tions in Turkey, should first be analyzed and clarified:

*Foreigner:* The term mentioned in the law means natural persons residing outside Turkey as well as legal persons established in foreign countries. "Foreigner" includes foreign associations and foundations established in foreign countries as well as their business enterprises. Thus, business enterprises of foreign associations and foundations established in foreign countries will also be allowed to establish foundations in Turkey by using their assets and their rights existing anywhere around the world and in Turkey.

*Reciprocity principle:* This is a basic principle effective when countries practice sovereignty powers in international relations. According to this principle, citi-



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zens of different countries have equal rights and obligations.

The reciprocity principle was included in the Foundation Law's decree legally and actually to see whether this principle is practiced or not. For example, if natural Turkish citizens and legal persons incorporated in Turkey are allowed to establish foundations in a certain country and if they are allowed to actually exercise this right and may establish foundations in that country, the citizens of that country will also be allowed to establish foundations in Turkey under the same provisions.

*New foundation:* This term existing in article 3 of the Foundation Law means foundations established according to the Turkish Civil Code.

## Management of foundations established in Turkey

According to the 5th clause of article 6 of the Foundation Law, managerial bodies of foundations are put together



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according to the foundation deed. Most of the persons working for managerial bodies of foundations must reside in Turkey.

The status relating to residing in Turkey will be determined according to the decree of article 19 of the Turkish Civil Code. According to the decree of this article, the residence of a person is the address at which he intends to stay permanently. Therefore, a person is considered as residing in the country in which he has the most vital interests.

### **How foundations established by foreigners obtain real estate in Turkey**

The decrees of the Turkish Land Registration Law relating to real estate purchases by natural foreign persons are based on the reciprocity principle and will be applied to foundations whose founders are mostly foreigners.

### **International activities of foundations**

According to the decree of article 25 of the Foundation Law under the title of "International activities", all foundations can undertake the following international activities provided they are mentioned in their foundation deeds:

- Engaging in international activities and cooperation according to their objectives and activities
- Opening branches abroad
- Establishing senior associations abroad
- Affiliating with organizations established abroad

Foundations may acquire various assets to carry out their activities in Turkey as well as abroad and to enter into cooperations. Examples of such activities of foundations established in Turkey according to the decree of the 2nd clause of article 25 of the Foundation Law are the following:

- Foundations may receive grants or assistance in kind or in cash from natural persons, institutions and organizations existing at home or abroad.
- They may make available grants and assistance in kind or in cash to

foundations and associations with similar objectives existing at home or abroad.

Assistance in cash to foundations established in Turkey can be received or offered from or to abroad or home only through bank correspondence according to the decree of the law. With regard to the assistance in kind from abroad or home, there is no restriction on receiving or sending, because there is no corresponding regulation in the clause's decree.

### **How foundations establish business enterprises and companies**

The new Foundation Law aims to allow foundations to play a more active role in business life. Foundations are therefore allowed to establish organizations for achieving this goal. It is believed that business enterprises and companies established by foundations help foundations achieve their goals more rapidly.

Foundations whose founders are mostly foreigners will be allowed to establish business enterprises and companies and to participate in existing companies to achieve their goals and to provide income for the foundations, provided that the General Directorate for Foundations is informed according to the *argumentum a contrario comment* of article 26 of the Foundation Law.

### **Inheritance tax on real estate and movable goods granted to foundations established by foreigners in Turkey**

According to the 8th clause of article 77 of the Foundation Law, real estate and movable goods granted to foundations when they are established or after they were established are exempt from inheritance tax. This exemption is also valid for foundations established in Turkey by foreigners.

### **Organization of foreign foundations in Turkey**

There is no clear regulation in the Foundation Law about how foundations established abroad can act in Turkey, open branches or agencies, establish senior associations, affiliate

with a senior association or cooperate with foundations established in Turkey. International activities and organizational models for foundations established abroad should be specified with an appendix to be made to the law in the future.

### **Conclusion**

The amendments in the Foundation Law changed the foundation concept fundamentally in Turkey. Although foundations were charitable institutions in the past, they are about to become important organizations in business life. The corresponding amendments were expressed as a requirement for adaptation during the debates in the Justice Committee of the Turkish Parliament.

Due to these amendments, foundations are eligible to

- Open branches and agencies
- Engage in international activities and cooperation
- Establish senior associations at home and abroad
- Affiliate with institutions established abroad
- Establish business enterprises and companies
- Become partner of existing companies

Briefly, the legal amendment mentioned above eliminates any difference between a foundation and a trade company with respect to operating. In fact, this change has not been completed yet. However, a developing trend toward a modern view of foundations can be seen already. Because foundations are legally allowed to establish business enterprises and companies and because foreigners are legally allowed to establish foundations in Turkey, we believe that foreigners will monitor the further development of Turkish foundations closely in near future.

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