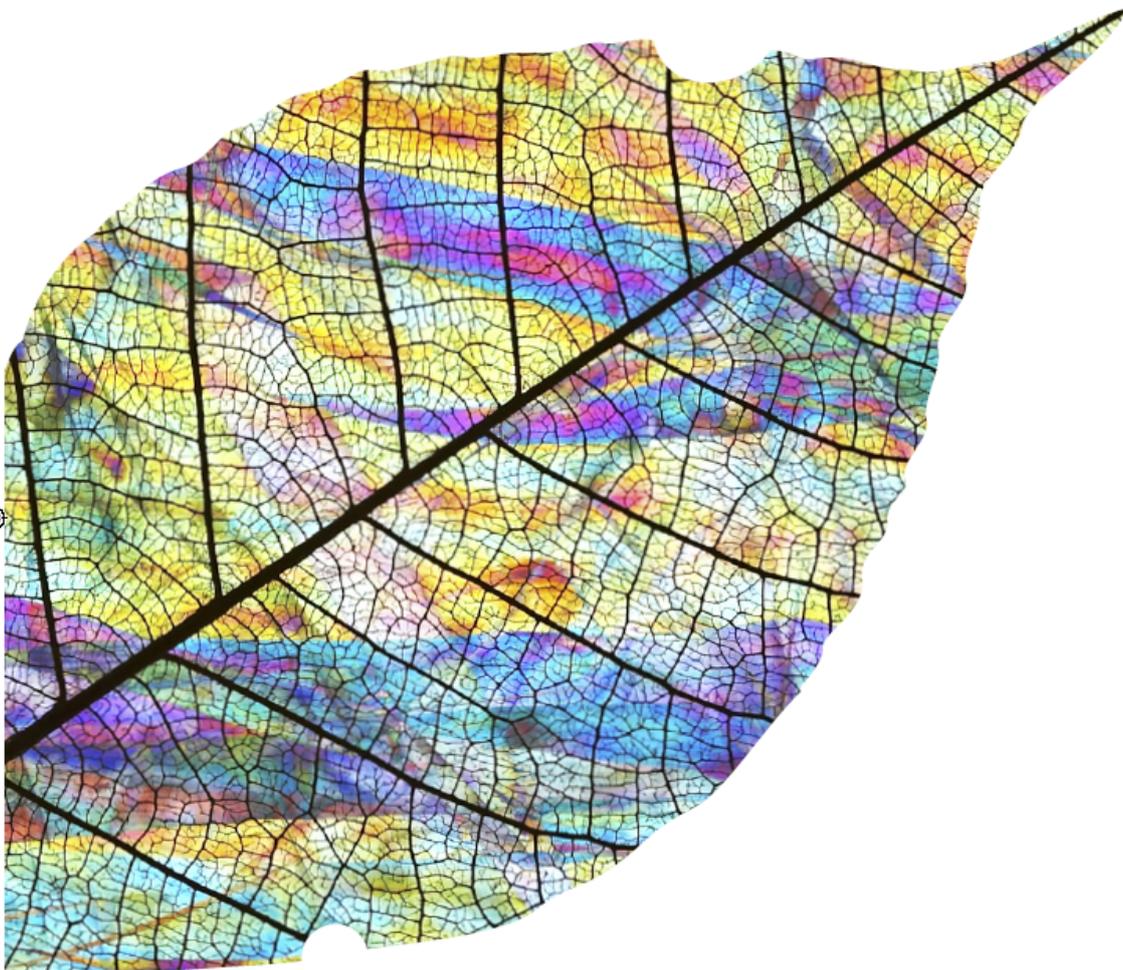


World Universities Comparative Law Project

Legal rating of Turkey

A production of the Allen & Overy Global Law Intelligence Unit



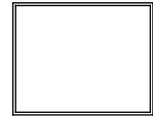
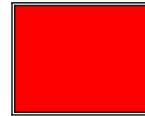
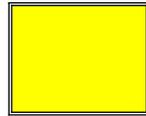
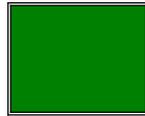
May, 2016

World Universities Comparative Law Project

Legal rating of Turkey

carried out by students at Istanbul University

May, 2016



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Turkey was carried out by students at Istanbul University.

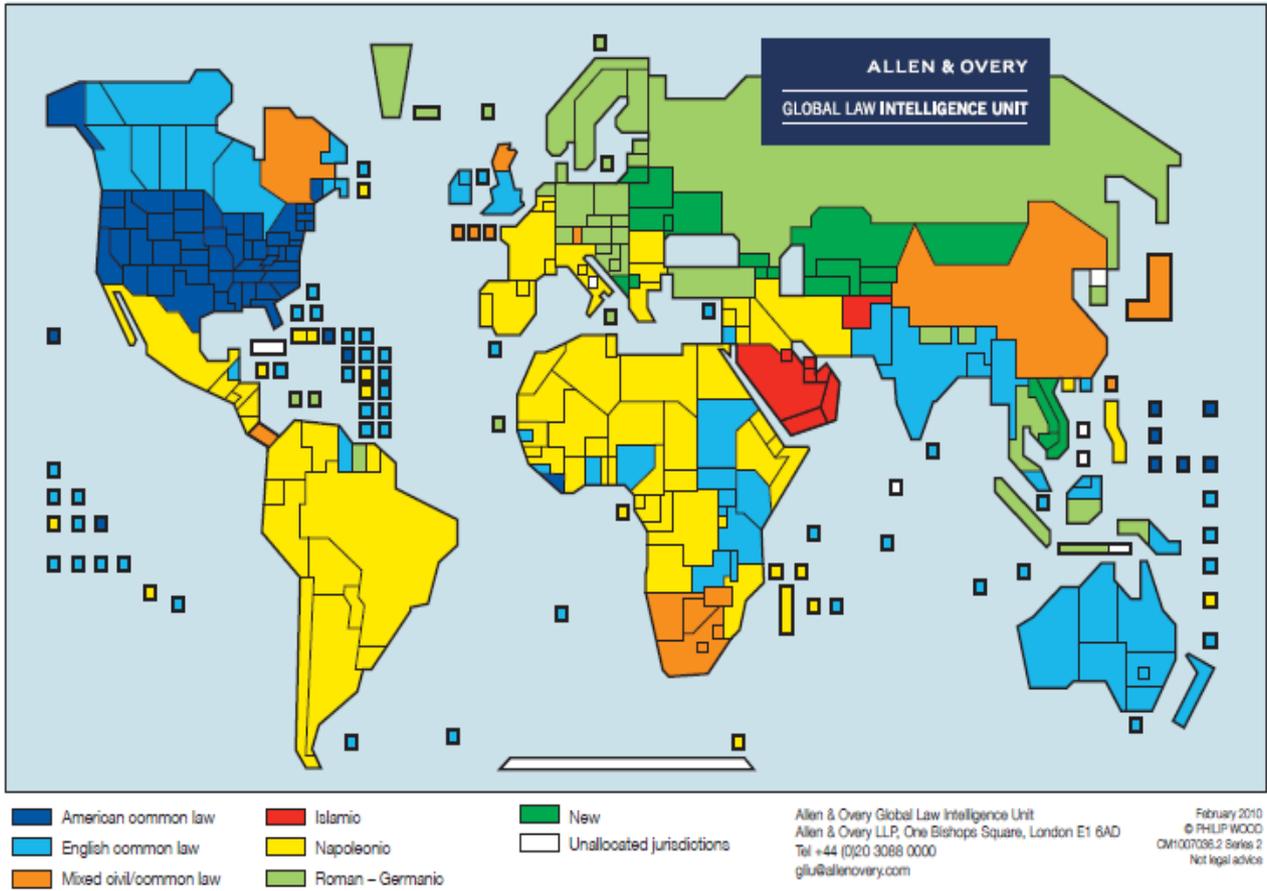
The members of the Faculty of Law at Istanbul University who assisted the students were:

- Associate prof Dr H. Burak Gemalmaz
- Assistant prof Dr.Fatih Aydoğan

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

As members of University of Istanbul, Faculty of Law, which is one of leading law schools in Turkey, we are very pleased to carry out this project together with our students.

It is very important for Turkey to attract investors from all over the world as a country which has a growing economy. As law is one of the most important elements to gain investor confidence, we hope that this work gives an insight to readers regarding Turkish Law System and its approach.

We would like to thank all the participants in this Project for their valuable contributions

Sincerely,

Associate Professor Dr.
H. Burak Gemalmaz

Assistant Professor Dr.
Fatih Aydođan

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Turkey with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

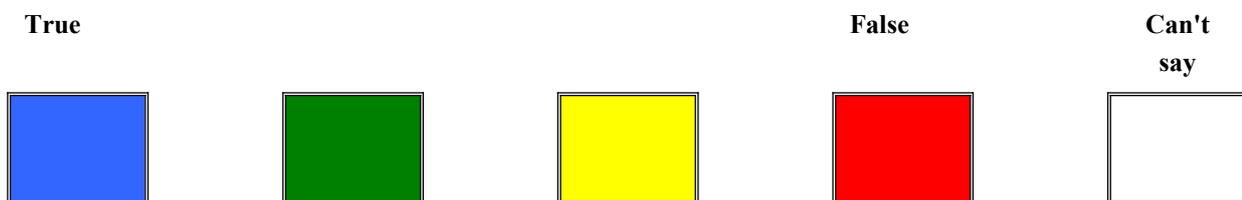
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at Istanbul University. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of Istanbul University, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Turkey. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

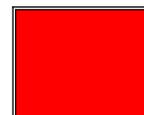
Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Turkey, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



Comment:

Under Article 200 of Turkish Code of Bankruptcy, creditors can set off mutual debts on the conditions that they incurred before adjudication of bankruptcy. In cases where the owed debt is based on a bearer note, there can be no set off.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

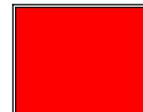
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Turkey, the law offers a security interest which is highly protective of the secured creditor.

True



False



Can't say



Comment:

In Turkey, security interests can be granted as mortgage, vessel mortgage over immovable property and pledge, commercial enterprise pledge over movable property.

Security interests requires fulfillment of several different legal formalities. For mortgage, the owner of immovable property must submit a written application to the Title Deed Registry to register a mortgage in favor of the lender. Registry is a requirement for validation of mortgage. Vessel mortgage and commercial enterprise pledge, becomes valid with written agreement between lender and borrower. To establish a pledge, possession of the movable property must be transferred to the lender or reliable third party agreed on by the parties.

There are some type of assets over which security cannot be granted or is difficult to grant, in particular; future assets, intangible assets, fungible assets.

It is possible to establish a pledge over future receivables and movable property. However, it is not possible to establish a mortgage over future immovable property since a mortgage agreement must be registered with the Title Deed Registry for that, which requires the borrower to have title to the property at the time of registration. It is possible to establish a pledge over intangible assets such as trademarks and intellectual property rights. The object of a pledge must be determinable. Therefore, due to the changeable and

indeterminable nature of fungible assets, they cannot be pledged unless they can be identified and segregated. However, bank accounts are not deemed fungible assets under Turkish law and can be pledged.

Trustee can hold the possession of the property if the parties so agree and the rights of a security trustee would be enforced in local courts. Private enforcement is not possible under Turkish judicial system.

A secured creditor can enforce its security if a debt has become due and payable and the borrower has defaulted. The security is enforced through foreclosure, which is handled by the Execution Office. If the borrower becomes bankrupt, all of the borrower's properties constitute one estate when bankruptcy is declared and secured creditors cannot enforce their security independently. Enforcement must be carried out by the Bankruptcy Directorate

If all required formalities have been complied with, the debts of an insolvent business are paid in the following order from the proceeds of sale of the business's assets: certain government and employee claims, secured lenders (The first security holder ranks before the second (and so on) in the chronological order that securities were created), unsecured creditors.

Universal trusts

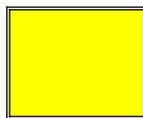
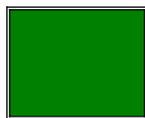
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Turkey has a universal trust for all assets.

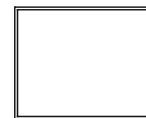
True



False



Can't
say



Comment:

Universal trust as a concept is not dealt with in Turkish law.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market

abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

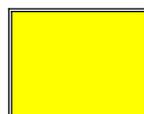
Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Turkey the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True



False



Can't say



Comment:

In Turkey the law does impose personal liability on directors for deepening the insolvency and there are rules regulating what directors shall do in case the company is over indebted.

According to article 369 of Turkish Commercial Code (TCC) which regulates the scope of the director's liability, directors must first of all act with care and loyalty.

As for the situation of insolvency, according the article 376 of TCC, in case of loss of capital of the company or company is over indebted, directors shall apply to the court for insolvency.

In case above mentioned liabilities are not fulfilled, then directors are liable to the company, shareholders and creditors according to article 553 of the TCC.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

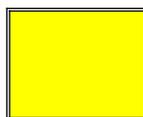
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

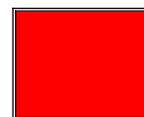
A contravening transaction is usually a criminal offence and void.

Q5 Turkey permits a company to grant financial assistance for the purchase of its own shares.

True



False



Can't say

**Comment:**

In Turkish Law, in accordance with article 379 of TCC, companies can purchase its own shares but limited to 10% of its total capital.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

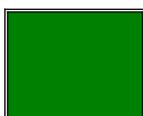
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Turkey is open and has few restrictions.

True

False

Can't
say



Comment:

Public takeovers and mergers are regulated mainly by the Capital Markets Board. The following are the main regulations regarding public takeovers and mergers:

Capital Markets Law generally applies to all capital market activities and is typically implemented in more detail via communiqués issued by the CMB, including:

- Communiqué on Principles Regarding the Acquisition of Company Shares by Public Bid;
These are the CMB’s set of principles that regulates mandatory and voluntary public offers. The principles contain provisions that aim to protect the interests of minority public shareholders in takeover bids, including provisions concerning the offer price, offer period, exemptions from the requirement to make a mandatory offer and disclosure and filing requirements;
- Communiqué on Principles Regarding Public Disclosure of Material Events;
The Disclosure Principles and its accompanying guidelines generally regulate public disclosure of material events which may affect investment decisions and the prices of capital market securities. There is also a separate Communiqué on Principles Regarding Public Disclosure of Material Events for Non-Listed Public Companies which regulate the disclosure requirements in connection with non-listed public companies;
- Communiqué on Principles of Merger Transactions.

If a party to a merger is a public company, the merger is regulated by the Merger Principles.

The Turkish Commercial Code does not specifically cover public offers, but all mergers and acquisitions are affected by its general corporate law provisions. These apply to areas such as mergers and acquisitions of companies, board actions, a company’s articles of association and any amendments to the articles, a company’s shares and shareholders’ meetings.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to

quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

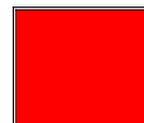
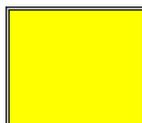
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Turkey, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't
say



Comment:

In Turkey parties can put everything on the contracts based on freedom of contract as long as it is not against to ethic, public order, compulsory legal rules, and personal rights.

Termination clauses

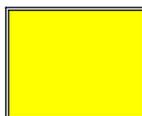
Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Turkey, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True

False

Can't say



Comment:

A termination clause between merchants is usually upheld because of the concept of freedom of contracts that prevails in Turkish Law.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Turkey, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True

False

Can't say



Comment:

As a general rule, freedom of contract is accepted in our contract law unless; if contract is inconsistent with ethic, public order, compulsory legal rules, personal rights.

However, according to article 115 of Turkish Code of Obligations, the agreements on exclusion liability for gross negligence in advance are definitely void.

Also if the obligor's business is subject to a special license then the agreement on exclusion of obligor's liability even for slight negligence in advance are definitely void.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

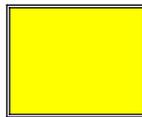
The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

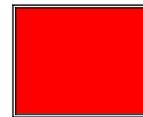
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Turkish courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Turkish public policy and mandatory statutes.

True



False



Can't
say



Comment:

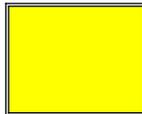
According to the article 24 of International Private and Procedure Law, the parties are free to choose which law to be applied to their contract subject to public policy, mandatory statutes and only in circumstances where there is an element of foreignness

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Turkish courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True



False



Can't say



Comment:

The Turkish courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

According to Article 47 of International Private Law and Procedural Law, parties may agree that a foreign court will have jurisdiction to resolve disputes which carry a foreign element and arise from a private law relationship.

The parties may agree that a foreign court will have jurisdiction to resolve any disputes which carry a foreign element and arise from a private law relationship, where the domestic courts do not have exclusive jurisdiction. Such an agreement must be made in writing. Such a case may only be brought before a competent Turkish court, provided that the foreign court has deemed itself incompetent, or no plea of jurisdiction have been raised in the Turkish court.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Turkey, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Turkish courts.

True



False



Can't say



Comment:

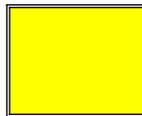
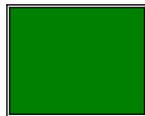
The Convention on the Recognition and Enforcement of Foreign Arbitral Awards also known as the New York Convention entered into force in 1959. Turkey ratified the convention and this convention officially came into force in 1991. Thus Turkey is one of adhered countries and accordingly in Turkey the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal

Class actions

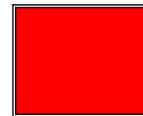
Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In, class actions where the class is bound if they do not opt out are generally not allowed.

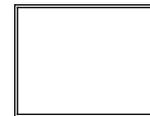
True



False



Can't
say



Comment:

In all countries of the world from USA to Continental Europe are in the mainstream of class action. This action extended back on 1960's and 1970's in common law and today sophisticated firms are faced with the risk of high statutory demands. Disputes can arise from torts or contracts and plaintiffs can be real or legal person.

Differently from others Turkish Civil Procedural Law proclaimed this action for the very first time in civil procedure code in 2011. Apparently this code allows the class action if only the plaintiff is an association or a legal entity. Besides, legal entities have right to sue in the framework of their establishment and operational purposes.

With regard to Turkish Civil Procedure Code article 113, the law has not permitted compensation demands. Class actions can be subject only for declaratory lawsuits or restraining orders.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

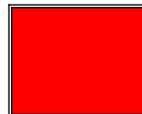
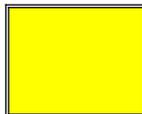
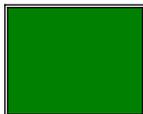
Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Turkey nationals and local corporations are entitled to own land absolutely.

True

False

Can't say



Comment:

According to the Turkish judicial system, ownership is an absolute and permanent right that enables the owner to use, exploit and dispose of the land. Owner should use ownership right in good faith. Yet there are still some minor restrictions arising from law (leasing, bequeathing etc.) and good faith.

Sale of properties does not depend on any fundamental restrictions. Parties who have juridical capacity can sell, buy or donate properties with their free will. It requires no official consent. But there some exceptions sourced from civil law (like collusional agreements, prohibition of disposition before divorce etc.)

Legator also may bequeath properties with testamentary dispositions without any restrictions under the condition avoiding violation of inheritors reserved portions.

In case of violation of reserved portions, with a reduction law suit, violated portions are valued or properties may be reduced or be taken back from the owner.

Namely, in Turkish law nationals and local corporations are entitled to own land.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

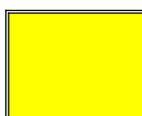
Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Turkey is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True

False

Can't say



Comment:

Turkey nearly completed the registration of its land. The Government's last expressions stated 98% of land is registered. Turkey plans to finish the rest in a small amount of time. Also there is an "Urban Transformation Project" going on in leading cities (mostly in Istanbul). Within this project a few numbered illegal and unregistered properties will become registered and suitable for mortgage.

Land development restrictions

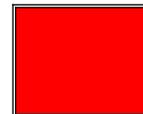
Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Turkey, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True



False



Can't say

**Comment:**

It is rather a controversial issue. However it might be said that it is not that light, quick and cheap.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

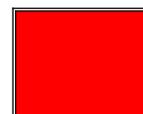
Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Turkey, there are few controls on hiring and firing employees or on the terms of employment.

True



False



Can't say

**Comment:**

In accordance with the Article 18 of TLC, employers that employ more than 30 cannot terminate the unlimited contracts of their employees with a seniority of 6 months without justified legal causes. Therefore

termination notice shall be in writing and should depend on a legal ground. If such employees terminate their employees without just cause, in addition to the above stated compensation amounts, the employers will be subjected to a ‘Re-appointment Compensation’ which is awarded by the Courts to filing employees that are terminated. The amounts awarded for re-appointment could be over one year salary of the employee. However it should also be noted that re-appointment compensations are not awarded to ‘employer representatives’, who are employees acting on behalf of the employers such as general managers etc. and who are authorized to manage the workplace and to hire and terminate employees.

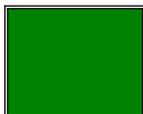
According to the Article 19 of TLC, employers are obliged to notify their employees with written notifications containing clear and definite justifications for their termination. In parallel with the principles of ILO (International Labor Organization), employers cannot terminate an unlimited contract in the absence of a previous defensive statement obtained from the employee. It should be noted that the employers should also produce documentation to prove the justified termination grounds before the Courts.

In addition to the above, the majority of Turkish wage and hour law is governed by Turkey Labor Law No. 4857. Turkey’s Ministry of Labor sets the minimum wage for Turkish employees. The standard work week 45 hour with the usual Schedule of seven and one-half hours per day, six days a week.

Environmental restrictions

Q18 In Turkey the rules governing the environment and liability for clean-up are very light and relaxed.

True



False



Can't say



Comment:

Turkey has its Environmental Law but it is not accepted strict and disciplined as it should be by the authorities.

Environmental law entered into force in 1983 and it considered fundamental law about ecological harm. It’s regulated on territorial, aerial and nautical areas.

There are also subsidiary laws on nautical area such as Sea Pollution Law and International Convention about pollution in seas arising from tankers.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

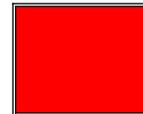
Foreign direct investment

Q19 In Turkey foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True



False



Can't say



Comment:

Turkish Foreign Direct Investment Law contains a regulation regarding “Freedom to Invest and National Treatment” and “Transfers” under Article 3. Unless stipulated by international agreements and other special laws, foreign investors are free to make foreign direct investments in Turkey and foreign investors shall be subject to equal treatment with domestic investors.

Foreign investors can freely transfer abroad: net profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or special financial institutions.

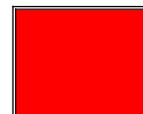
Exchange controls

Q20 In Turkey, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True



False



Can't say



Comment:

There are no exchange controls in Turkey on inward or outward investment. Foreign currencies can be bought and sold freely and there are no restrictions on the maintenance of foreign currency bank accounts in Turkey.

Apart from that there are foreign investment incentives implementations such as reducing corporate taxes, free tax zones (FTZ), value added tax treatments at FTZs, stamp taxes exemption, VAT exemption etc.

Alien ownership of land

Q21 In Turkey, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

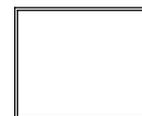
True



False



Can't say



Comment:

Recent amendments to Turkish law now allow real persons of many nationalities to purchase real estate in Turkey for the first time. The recent amendments to the Land Registry Law do not affect the rights of foreign companies to purchase real estate in Turkey. It remains that only foreign companies which operate in certain industries may purchase real estate in Turkey. The most important consideration here is the company's nationality, not the nationalities of its partners.

According to the Land Registry Law, companies which are duly established in foreign countries (in accordance with their own country's laws) are entitled to acquire real estate in Turkey, provided that they operate within the scope of the following Turkish laws:

(i) The Petrol Law numbered 6326; or

(ii) The Tourism Encouragement Law numbered 2634; or

(iii) The Industrial Regions Law numbered 4737

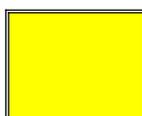
Other restrictions also apply to foreign companies where national interests or military zones are involved. In regarding to 4875 numbered law article 3 foreign investors have equal rights with domestic investors.

Application of the law

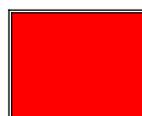
Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Turkey, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True



False



Can't say

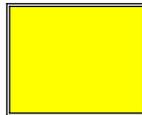
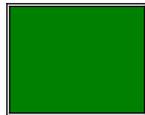
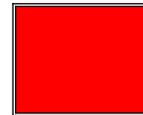


Comment:

As the Foreign Direct Investments Law No: 4875 dated June 5, 2003, Article 3 clearly provides that foreign investors are to be treated the same as the local investors (unless an international treaty exists to the contrary), foreign investors are free to choose any of these two types for their operations in Turkey.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Turkey are not considered materially greater than in other comparable countries.

True**False****Can't
say****Comment:**

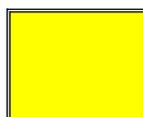
The costs and delays in Turkey are not to be considered materially greater than in other comparable countries.

Overall ranking

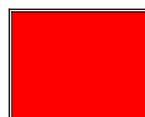
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

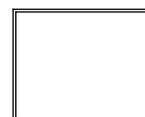
True



False



Can't say



Profiles

The survey was carried out by the following students:



Deniz Okuyucu is a lawyer practising in İstanbul specialized mainly on transportation, maritime, commercial, corporate and contract Law.

She graduated with a LL.B from University of İstanbul with a high grade. She then continued her postgraduate studies at Queen Mary University of London, specialized and deepened her knowledge in commercial law, particularly in international commercial law, international commercial arbitration and corporate governance and graduated with a LL.M.

Deniz is currently doing her P.HD at University of İstanbul.



Ahmet Kökçam is a senior student at İstanbul University Faculty of Law. He was born and raised in Turkey. As an entrepreneurial young law student, he has been actively involved in numerous organizations. Through his moot court experience and following publications, he was able to master his research skills. He concentrated on the economic and legal aspects of market regulation and competition law. He is looking forward to pursuing his Master's Degree in Europe, focusing on the unification of digital market in the European Union.



Cem Özkan Sarışen is currently in the fourth year of his LL.B. at the İstanbul University. Born and raised in Turkey. He is particularly interested in international trade and commercial law. Due to his interest, he is hoping to have a good grasp on aspects of contract law and litigation to become well-known practitioner in his business field. In upcoming years, he aims to get academic titles in business, finance and commercial law major starting with LL.M degree at prestigious universities.



Hande Gürel has just started her final year in İstanbul University Faculty of Law. Her main fields of interest are corporate, M&A, civil law, competition law, contract law, human rights and European Union law. She participated in internship programmes especially on commercial concentrations and litigation. Moreover, she is hoping to build her career as lawyer on commercial law with an international scope and can be reached at fhandegurel@gmail.com.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

Philip R Wood QC CBE, (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

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Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary College, University of London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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