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# The Legal 500 Country Comparative Guides

## Turkey

# BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Turkey.

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## TURKEY

# BANKING & FINANCE



### 1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

#### Regulation and Supervision

Institutional structure of regulatory and supervisory institutions in financial sector is as follows:

- The Banking Regulation and Supervision Agency (“BRSA”) is responsible for the supervision, regulation, and establishment of banks, corresponding offices of foreign banks, financial companies and asset management companies operating in the Republic of Turkey. The Banking Regulatory and Supervision Board (“BRSB”) is the organ of the BRSA which is in charge of enforcement of BRSA decisions.
- The Central Bank of the Republic of Turkey (“CBRT”) aims to achieve price and financial stability and maintains the monetary and exchange rate policies in Turkey, together with the supervision of payment and settlement systems.
- The Capital Markets Board (“CMB”) is responsible for regulating and supervising capital markets and intermediary institutions.
- The Saving Deposits Insurance Fund of Turkey (“SDIF”) is responsible for the protection of the rights and interests of deposit holders, and resolution of banks.
- The Undersecretariat of the Treasury (“UT”) regulates public finance, fiscal policy, and is responsible for the regulation and supervision of insurance companies.

#### Resolution

The SDIF acts as the banking resolution authority in Turkey by assuming the management and supervision of the banks whose operating permission has been revoked, fulfilling the necessary operations regarding bankruptcy and liquidation, and carrying out necessary

transactions for restructuring, transfer, merger, sale and liquidation of banks.

### 2. Which type of activities trigger the requirement of a banking licence?

1. As per Banking Law numbered 5411 (“Banking Law”), the permission of the BRSB is required in order to engage in following activities in Turkey:

- a. Establishment of a bank.
- b. Opening the first branch of a bank established abroad.
- c. Establishment of a representative office of a bank established abroad.
- d. Establishment of a bank to be engaged exclusively in offshore banking or the opening of a branch in Turkey by such banks established abroad for such purposes.

2. As per the Banking Law, banks may carry out the following activities with a banking license:

- a. Accepting deposits.
- b. Accepting participation funds.
- c. Granting any sort of loan, either cash or non-cash.
- d. Carrying out any type of payment and collection transactions, including cash and deposit payment and fund transfer transactions, correspondent bank transactions, or use of checking accounts.
- e. Purchasing transactions of commercial bills.
- f. Providing safe-keeping services.
- g. Issuing payment instruments such as credit cards, bank cards and traveler’s checks, and executing activities relevant to such instruments.
- h. Carrying out foreign exchange transactions, trading of money market instruments, trading of precious metals

and stones and safekeeping of such.

- i. Trading and intermediation of simple or complex financial and capital market instruments.
- j. Purchasing and selling capital market instruments and repurchasing or resale commitments.
- k. Intermediation for issuance or public offering of capital market instruments.
- l. Engaging in transactions for trading previously issued capital market instruments for intermediation purposes.
- m. Engaging in guarantee transactions, such as undertaking guarantees and other liabilities in favor of other persons.
- n. Providing investment counseling services.
- o. Engaging in portfolio operation and management.
- p. Primary market dealing for purchase-sales transactions within the framework of liabilities assumed by contracts signed with TU and/or CBRT and associations of institutions.
- q. Engaging in factoring and forfeiting transactions.
- r. Making intermediating fund purchase-sale transactions in the inter-bank market.
- s. Providing financial leasing services.
- t. Providing insurance agency and individual private pension fund services.
- u. Engaging in other activities to be determined by the BRSB.

### **3. Does your regulatory regime know different licenses for different banking services?**

Permission for establishment and operation covers all activities listed in answer 2/II, above. However, deposit banks shall not engage in the activities cited in subparagraphs (b) and (s), participation banks shall not engage in activities cited in subparagraph (a) and development and investment banks shall not engage in activities cited in subparagraphs (a) and (b).

Furthermore, the BRSB or CMB may require different licenses for different activities. For example, the performance of investment services and activities or the establishment and operation of a portfolio management company, mortgage finance corporation, leasing

companies, or crowdfunding platforms requires authorization from the BRSB, while the establishment of exchange and market operators requires the permission of the President of Turkey and central clearing counterparties requires the permission of the relevant Minister.

### **4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?**

Banks may carry out all activities listed in answer 2/II, above. However, other financial institutions need to apply for a license for certain activities such as factoring, leasing, e-money issuance, payment and investment services.

### **5. Is there a “sandbox” or “license light” for specific activities?**

There is no regulatory “sandbox” under the Banking Law and its secondary legislation which can enable market participants to live test new products and services, or a “license light” mechanism allowing for deposit business up to a certain amount under facilitated conditions.

### **6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?**

Pursuant to the Regulation on the Prohibition of Crypto Assets to be used in Payment (“Crypto Regulation”) published in April 2021, crypto assets cannot be considered as a means of payment and they cannot be exchanged for services; electronic financial institutions cannot mediate trading platforms or engage in custody, transfer or issuance services for crypto assets. There is no provision of Turkish law that currently prohibits or otherwise regulates the issuance or custody of crypto currencies.

### **7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?**

Pursuant to the Crypto Regulation, crypto assets are now legally defined as intangible assets created with distributed ledger technology or a similar technology and distributed via digital networks. As crypto assets do not qualify as electronic money, nor can they be used as a

payment method, they are not administrable. Therefore, they are not covered by deposit insurance or segregation of funds.

## 8. What is the general application process for bank licenses and what is the average timing?

Any bank to be established in Turkey shall fulfill the following requirements:

- It should be established as a joint stock company.
- Its shares should be issued against cash and in the name of the holder.
- The founders should meet the requirements indicated in the Banking Law.
- Its members of the board of directors shall bear the qualifications set out in the corporate governance provisions.
- Its envisaged fields of activity shall be in harmony with planned financial, managerial and organizational structure.
- Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than 30 million Turkish Liras.
- Its articles of association shall not be in conflict with the provisions of the Banking Law.
- There should be a transparent and open partnership structure and organizational chart.
- There should not be any element that hampers its consolidated supervision.
- The work plans and projections regarding the financial structure for the envisioned fields of activity must be submitted.

As per the Banking Law, the decision on whether or not a permission is granted shall be notified to the applicant within three months following the application date.

## 9. Is mere cross-border activity permissible? If yes, what are the requirements?

Banks established in Turkey may open branches or representative offices abroad, including off-shore banking regions, on the condition that they comply with the corporate governance and protective provisions and other conditions to be imposed by the BRSB.

It should be noted that Decision numbered 32 on the Protection of the Value of Turkish Currency ("Decision

No.32") brings restrictions on the use of foreign currency loans by residents of Turkey. As per Decision No.32, corporations are subject to some requirements for foreign currency borrowing, such as having a certain amount of foreign income and a certain amount of foreign currency credit risk, while real person residents of Turkey cannot apply for foreign currency loans.

## 10. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Entities should be established as a joint stock company ("*anonim şirket*") in order to be established as a bank.

## 11. What are the organizational requirements for banks, including with respect to corporate governance?

Banks should be structured as follows pursuant to Banking Law and the Corporate Governance Principles issued by the CMB in June 2003 ("Corporate Governance Principles"):

- Board of directors
- Audit Committee
- Credit Committee
- General managers and deputy general managers
- Furthermore, banks are obliged to establish and maintain efficient internal control, risk management and internal audit systems.

## 12. Do any restrictions on remuneration policies apply?

BSRA's Best Practice Guideline on Compensation Practices of Banks ("Guideline") sets the best practices expected from banks in order to establish and manage remuneration policies. It should be noted, however, that the principles of this Guideline are not mandatory provisions. The Guideline is based on the principles of proportionality and objectivity, as well as ethical values. The aim of the Guideline is to match remuneration policies and practices consistently with the complexity of activities, individual risk profile and risk appetite of a bank.

## 13. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major

### deviations, e.g., with respect to certain categories of banks?

Turkey has gone through a compliance process with the Basel III criteria and its relevant regulations, and full compliance with Basel III requirements has been achieved. In 2013, the BRSA published Banks' Equity Regulation ("Equity Regulation") in which equity and consolidated equity calculations of banks are regulated.

A Bank must comply with 3 levels of minimum capital in line with Basel III criteria:

i. the common equity Tier I capital: 4.5% ii. additional Tier I capital: 6.0% iii. tier II capital: 8%

### 14. Are there any requirements with respect to the leverage ratio?

The Basel III leverage ratio framework is implemented in Turkey as per the Regulation on the Calculation and Evaluation of the Leverage Levels of Banks ("Leverage Regulation"). The regulation requires that the leverage ratio of banks shall not fall below the minimum leverage ratio of 3% calculated by dividing tier 1 capital by the total risk amount.

### 15. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

The Basel III liquidity framework is implemented in Turkey as per the Regulation on the Measurement and Evaluation of Liquidity Adequacy of Banks, and the Regulation on the Measurement and Evaluation of Banks' Liquidity Coverage Ratios (together "Liquidity Regulation"). The purpose of the Liquidity Regulation is to set down procedures and principles to ensure that banks hold adequate capital on consolidated and non-consolidated basis against losses that may occur due to their exposures to risks.

The liquidity level of a bank shall be determined as per the leverage coverage ratios of the bank and such ratio refers to the ratio of the high-quality liquid assets to net cash outflow. Pursuant to the Liquidity Regulation, consolidated and unconsolidated total LCRs shall not be less than 100%. Banks have to be in compliance with the LCR minimum requirements on an ongoing basis and report any non-compliance to the BRSA.

### 16. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

As per the Regulation on Principles and Procedures of Accounting Practices of Banks and of Retention of Documents in Banks ("Accounting Regulation") banks are obliged to keep their financial statements in accordance with the regulations of the BRSA and the Turkish Accounting Standards. Banks have to submit their year-end consolidated and nonconsolidated financial reports to the BRSA electronically by the end of April following the related year. Bank branches operating in Turkey have to submit their year-end financial position statements and profit and loss statements together with footnotes and financial position statements and profit and loss statements of their head offices, electronically, to the BRSA. Furthermore, Banks should announce in the Official Gazette their year-end consolidated and non-consolidated financial statements without footnotes until the end of April that follows the related year. Additionally, banks have to publish their year-end financial reports and interim financial reports on their official internet sites as of the date of publication of financial statements in the Official Gazette.

### 17. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

The implementation of consolidated prudential supervision over banks is crucial as stated under the Basel requirements. Under Turkish law, the parent undertaking, as well as their domestic and foreign subsidiaries, their jointly-controlled undertakings, their branches and representative offices shall be subject to consolidated supervision. These institutions should primarily keep their information and documents regarding their internal control, risk management and internal audit systems, accounting and financial reporting units, financial statements and reports as well as loans extended to risk groups, available and appropriate for consolidated supervision.

### 18. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Any acquisition of shares that results in the acquisition by one person directly or indirectly of shares representing 10% or more of a bank's total capital, or if shares held directly or indirectly by one shareholder exceed 10%, 20%, 32% or 50% of a bank's total capital, that transaction shall require the permission of the

Board.

Transfer of preferential shares with the right of promoting a member to the board of directors or to the audit committee or to issue of new shares with privilege shall be subject to the BRSB's authorization, regardless of their percentage over a bank's total capital.

### **19. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?**

Pursuant to the Banking Law, shareholders with qualified shares shall be required to meet the criteria applicable to founders. Shareholders with qualified shares who fail to meet the conditions required for founders cannot benefit from shareholder rights other than dividends.

Qualified shares are defined in the Banking Law as the shares that represent, directly or indirectly, at least 10% of the total capital or voting rights of an undertaking, or have the privilege to appoint members to the board of directors.

### **20. Are there specific restrictions on foreign shareholdings in banks?**

No, Turkish law does not restrict foreign shareholdings in banks.

### **21. Is there a special regime for domestic and/or globally systemically important banks?**

The Regulation on Recovery Plans to be prepared by Systemically Important Banks ("Recovery Regulation by SIB") regulates recovery plans prepared by banks within the framework of procedures and principles to be regulated by the BRSB, with the intention of pre-determining the measures and actions to be taken if and when any one of the events that may lead to an impairment in the bank's financial structure occurs, or may probably occur, due to any non-compliance with the protective provisions of the Banking Law or the secondary legislation.

### **22. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?**

The BSRA can apply administrative fines to institutions who are in breach of the Banking Law or further measures, such as revoking the operation license of a

bank or transferring the bank to SDIF in case any of the following occur:

- The bank fails to timely implement the measures imposed by the BSRA.
- The bank fails to recover its financial condition, despite the implementation of the measures and sanctions imposed by the BSRA.
- The financial status of the respective bank will not improve even if certain measures and sanctions are implemented.
- The continuation of the bank's operation jeopardizes rights of deposit and participation fund holders as well as reliability and stability of the financial system.
- The bank fails to fulfill its liabilities when such liabilities are due or the total amount of the liabilities of such bank exceeds the total amount of its assets.
- Controlling shareholders and/or directors of the bank make the bank's funds available to third parties in a manner that causes the bank to incur damages.

### **23. What is the resolution regime for banks?**

The BSRA may revoke or restrict the permission for banking activities in the following cases:

- If a bank has received the operating permission on the basis of a non-factual declaration or has failed to commence its activity within six months after getting the operating permission.
- If a bank has failed to perform the activity for an uninterrupted period of six months within one year following the start of activity.

In cases where the operating permission of any bank established abroad and having branches in Turkey has been revoked, its activities have been suspended, or it has been declared bankrupt or liquidated in its country of establishment, the BRSB shall revoke the operating permission of the branches of such bank in Turkey.

The BSRA is entitled to revoke the operating license or transfer to the SDIF in the cases listed below:

- The bank has not taken, either partially or completely, the measures requested by the BSRA.
- The continuation of the bank's activities will endanger the rights of the owners of depositors and participation funds as well as

the security and stability of the financial system.

- The bank has not fulfilled its obligations as they fall due.
- The total value of the liabilities of the bank exceeds the total value of its assets.
- The dominant partners or managers of the bank fraudulently use the resources of the bank directly or indirectly in their own or others' favor, causing a loss for the bank.

#### 24. How are client's assets and cash deposits protected?

Pursuant to the Banking Law, the savings deposit and participation funds belonging to real persons in financial institutions shall be insured by the SDIF. Financial institutions shall insure their savings deposit and participation funds belonging to real persons and shall pay the premiums on this basis. The coverage and amount of the savings deposit participation funds belonging to real persons which will be subject to insurance shall be set by the SDIF upon the approval of the CMB, and UT.

#### 25. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

Under Turkish Law, a bail-in tool where creditors and shareholders bear the cost of resolution so that customers are not exposed to loss is not explicitly regulated. However, to mitigate the default risk of the stressed institution and boost its capital, banks may convert their premiums into capital as per the Equity Regulation. Debts instruments to be issued for this purpose must be

- issued, registered by CMB and fully paid-in;
- subordinated to depositors, general creditors and subordinated debts of the bank;
- neither secured nor covered by a guarantee of the issuer or related entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis bank creditors;
- perpetual, and there are no step-ups or other incentives to redeem;
- may be callable at the initiative of the issuer only after a minimum of five years, provided that BRSA's approval is granted.

#### 26. Is there a requirement for banks to

#### hold gone concern capital ("TLAC")?

In compliance with the Basel III requirements, banks in Turkey are obliged to have Tier II capital to repay depositors and senior creditors in case the bank becomes insolvent. Tier II Capital consists of the sum of the following items which are subject to deductions laid down in Article 9 of the Equity Regulation:

- Capital calculated by deducting privileged shares that are not included in common equity.
- Share issue premiums of the share certificates mentioned in subparagraph "a" above.
- Eligible capital instruments and related share issue premiums that are approved by BRSA upon the application with a written declaration by the bank's board of directors.

#### 27. In your view, what are the recent trends in bank regulation in your jurisdiction?

On 29 December 2021, the Regulation on Operating Principles of Digital Banking and Service Model Banking ("Digital Banking Regulation") was published, effective as of January 2022, which facilitates digital banking activities and banking services to be provided electronically, without any branches. and introduces the banking-as-a-service ("BaaS") model. As per the Digital Banking Regulation, digital banks principally shall be able to participate in every activity that traditional banks do, and digital banks should comply with all legislation that credit institutions are obliged to comply with. One restriction is that the customers of a digital bank should qualify as financial consumers and/or small-medium sized enterprises. The minimum capital requirement to obtain a license is at least 1 billion Turkish Lira as paid-in capital. As for the BaaS model, the Digital Banking Regulation requires service banks to offer banking services to interface developers established in Turkey, but limits this to the scope of their operating licenses. In order for a service bank to provide services to an interface developer, the service bank should make a written notification to the BRSA regarding the scope of banking services to be provided to the interface developer and the parties must execute an agreement. The Digital Banking Regulation is an important development in terms of development of financial technologies in Turkey.

Tech firms and other non-traditional market participants bring a new level of competition to the market and traditional banking industry must become open to transition since traditional banking may suffer from the

era of digital banking and super-apps.

The CBRT announced that it will issue its own crypto and blockchain technology by the end of 2023. Additionally, the Financial Crime Investigation Board has amended the Suspicious Transaction Reporting Guideline for the banking sector in order to include crypto transfers, purchases and sales among the transaction types that should raise suspicion if an inconsistency is detected in the relevant transaction.

As per the amendments in the Communiqué on Asset-backed or Mortgage-backed Securities, which entered into force in October 2021, asset management companies can now issue asset backed securities with non-performing loans transferred from the banks.

## 28. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

Banks in Turkey have been operating in a significantly uncertain environment due to Covid-19 recovery,

frequent changes to the regulatory regime, and currency fluctuations of the Turkish Lira. However, they have managed to thrive despite crisis conditions. According to the Fitch Ratings, Turkish banks' asset quality is constrained by an operating environment which is challenged by the Covid-19 pandemic and Turkey's macro and political volatility and currency fluctuations. However, asset quality risks are still manageable since the banks continue to use all legal instruments, such as financial restructuring, to reduce the amount of non-performing loans and to perform strong risk management. Furthermore, the CBRT uses all instruments to stabilize prices and the BSRA applies measures such as delaying the collection of debts from distressed debtors in order to provide financial stability in banking.

There is still room for further growth in the Turkish banking system, however, with large investments in technology and fintech systems and strong capital and liquidity levels (capital adequacy ratio is %17 in Turkey as of September 2021), the Turkish banking system can remain resilient in the face of economic and regulatory uncertainties.

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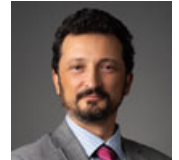
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