

Obtaining Work Permits for Foreigners in Turkey

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Over the last decade, Turkey has become a very appealing country for global investors, and with the changing economic environment in Turkey, there is now more room for global entrepreneurs. Many companies of foreign origin prefer to start direct investment in Turkey with their own foreign personnel. Accordingly, the government has taken the initiative to facilitate this and, as a result, the relevant legislation has been amended to make the procedure for obtaining work permits for foreigners easier, faster and simpler.

The Law on Work Permits for Foreigners no. 4817 (Yabancıların Çalışma İzinleri Hakkında Kanun) and the Application Regulation for the Law on Work Permits for Foreigners ("Regulation") (Yabancıların Çalışma İzinleri Hakkında Kanunun Uygulama Yönetmeliği) constitute the main legislation regulating the application procedure for work permits for foreign nationals whom companies intend to employ in Turkey. Furthermore, the Regulation on the Employment of Foreign Nationality Staff in Foreign Direct Investments ("FDI Regulation") (Doğrudan Yabancı Yatırımlarda Yabancı Uyruklu Personel İstihdamı Hakkında Yönetmelik) provides exceptional conditions for foreign direct investments which intend to employ a foreigner in a key position.

Unless otherwise provided for in bilateral or multilateral agreements to which Turkey is a party, foreigners have to obtain a work permit prior to starting to work in Turkey. However, those foreigners (i) who are granted work permits or employed based on authorization assigned by law, the Ministries, or public institutions and establishments and (ii) foreigners exempt from the work permit by the principle of reciprocity, international law or the law of the European Union do not have to obtain a work permit in Turkey.

The competent authority issuing work permits for foreigners is the Ministry of Labor and Social Security ("Ministry").

Types of Work Permits

Aside from exceptional cases, there are three types of permission; (a) a work permit for a definite period

of time, (b) a work permit for an indefinite period of time and (c) an independent work permit.

Work Permit for a Definite Period of Time: Unless otherwise provided for in bilateral or multilateral agreements to which Turkey is a party, a work permit which is restricted by a specific term is granted for work at a certain worksite or establishment and in a certain profession and is valid for a maximum of one (1) year. Following the legal working period of one (1) year, the validity term of the work permit may be extended by two (2) years and up to six (6) years at most.

Work Permit for an Indefinite Period of Time: Unless otherwise provided for in bilateral or multilateral agreements to which Turkey is a party, foreigners who (i) have been residing in Turkey legally and uninterruptedly for at least eight (8) years or (ii) have completed a total working period of six (6) years in Turkey may be granted a work permit without limits. The foreigner's fulfillment of the condition of having had a legal and uninterrupted residence of at least eight (8) years shall be evidenced by a certificate obtained from the police authorities in Turkey. This certificate shall be presented to the Ministry along with the other documents during the application for a work permit without limits.

Independent Work Permit: An independent work permit may be given by the Ministry to foreigners who will work independently on the condition that (i) they have resided in Turkey legally and uninterruptedly for at least five (5) years and (ii) their working shall have a positive effect on employment and eco-

conomic development. While evaluating the effects on employment, relevant authorities' opinions are also considered.

The foreigner's fulfillment of the condition of a legal and uninterrupted residence of at least five (5) years shall be evidenced by a certificate obtained from the police authorities. This certificate shall be presented to the Ministry along with the other documents during the application for an independent work permit. Any foreigner who is considered appropriate for an independent work permit shall be issued a "Certificate of Application for an Independent Work Permit" as his/her permission to work independently. The certificate of application for an independent work permit is valid for a period of three (3) months from the date it is issued. The foreigner may be granted an independent work permit after having established his/her worksite, if he/she submits his/her trade registry record to the Ministry.

Work Visa and Residence Permit

According to the Law on Work Permits for Foreigners, work permits issued by the Ministry are valid and effective if the relevant foreigner acquires a work visa and a residence permit. After obtaining the work permit, the foreigner is required to (i) apply for an entrance visa for Turkey within ninety (90) days from the date they obtained the work permit at the latest, and (ii) apply for a residence permit with the Ministry of Internal Affairs within thirty (30) days of the date they entered Turkey at the latest. On the other hand, foreigners who hold a valid residence permit in Turkey or the employers thereof may directly apply to the Ministry.

Application Process and Required Documents

Work permit applications shall be made either at the representations of the Republic of Turkey abroad or in Turkey domestically. All applications must be filed to the authority in paper or online, and the required forms and documents must also be attached to the petition. The documents specified in this section shall be obtained and submitted for the initial work permit application, except in the home service, health, education, tourism, entertainment and aviation sectors, by all small, medium or large scale enterprises that are not considered foreign direct investment.

Criteria for Work Permits for Foreigners

The evaluation criteria designated by the Ministry for

the evaluation of foreigners' work permit requests are briefly defined below:

- At the workplace for which a work permit is requested, at least five (5) persons who are citizens of the Republic of Turkey must be employed. If the foreigner requesting a work permit is a co-partner of the company, the aforementioned condition related to the employment of five (5) persons who are Turkish citizens will be required only for the last six (6) months of a one-year work permit granted by the Ministry. If requesting a work permit for more than one (1) foreigner at the same workplace, for each foreigner following the first foreigner who is granted a work permit the condition regarding the employment of five (5) persons who are Turkish citizens will be required individually.
- Paid-in capital of the workplace must be at least TL 100,000 or the lowest figure for its gross sales amount must be equal to TL 800,000 or its export amount in the last year must be at least USD 250,000.
- If the foreigner requesting a work permit is a co-partner in the company, he/she must own at least 20% of shares in the company, and this percentage shall correspond to at least TL 40,000.
- The salary amount declared by the employer to be paid to the foreigner must be at a level which complies with the position and competence of the foreigner.

Applications to be Filed Domestically or from Abroad

Work permit applications may be filed directly to the Ministry domestically (a) by foreigners who have obtained a residence permit of at least six (6) months duration and of which the term has not ended, or (b) their employers in Turkey. Domestic applications are considered by the Ministry in thirty (30) days at most.

Foreigners shall file their applications for work permits at the representations of the Republic of Turkey abroad, either in the country of their nationality or their legal residence. The representations of the Republic of Turkey, as well as the Ministry, conduct the transactions related to work permit applications filed from abroad electronically. The documents requested during the application shall be submitted to the Ministry by the employer of the foreigner within ten (10) working days of the date of the foreigner's application to the representation at the latest.

Documents to be Submitted by the Foreign Employee

A foreign national who intends to work in a sector other than the home services, health, education, tourism, entertainment, and aviation sectors may apply for a work permit or work visa by submitting the documents listed below to a representation office of the Republic of Turkey located in the country of which the foreign person is a national or in which the person is legally residing. However, foreign nationals can make applications for work permits within Turkey provided that they possess residence permits, which are in effect as of the application date and the duration of which are at least six (6) months, excluding residence permits granted for education in Turkey.

- A work permit application petition addressing the Ministry,
- The employment agreement or a document evidencing the partnership of the foreign national in a Turkish company,
- Foreign Personnel Application Form (The form shall be completed electronically in four (4) copies and shall possess the original signatures of the employer and employee. If the original signatures of both the employer and the foreign personnel are not included, the employment agreement executed between the parties shall be submitted.),
- Six (6) color passport photos of the foreign national taken within the last six (6) months (Four (4) of them shall be glued to the Foreign Personnel Application Forms.),
- Notarized/consulate approved Turkish translation of the passport,
- Notarized/consulate approved Turkish translation of the diploma or temporary graduation certificate, and
- For foreign nationals requesting a work permit for professional services; if the foreign person has studied abroad, the "Diploma or Temporary Graduation Certificate Equivalency Certificate" obtained in line with Articles 3 and 7(p) of the "Regulation on Foreign University Degree Diplomas Equivalency."

Documents to be Submitted by the Employing Entity

For applications other than those in the home service, health, education, tourism, entertainment and aviation sectors or small, medium and large scale companies considered foreign direct investments, the employer in Turkey shall deliver the documents specified below to the Ministry on or within six (6) business days of the application date of the foreigner to the relevant representation office abroad or the

Ministry. However, work permit applications made to the Ministry within six (6) business days prior to the application made to the representation office shall be taken into consideration as well.

- A work permit application petition addressing the Ministry of Labor and Social Security,
- The list of insureds which covers all Turkish and foreign staff (for the last month), and
- If the institution is a foreign capital company, an original copy of the Turkish Trade Registry Gazette showing the latest capital and partnership structure (or a copy approved by the institution).

Evaluation and Decision Process

Pursuant to the Regulation, following the submission of the required documents by the foreigner and the employer, the Ministry shall evaluate the application in thirty (30) days. The Ministry will inform the relevant authorities regarding the application and receive their opinions. If a document is missing, the Ministry shall request the applicant submit it.

Following the evaluation process, the Ministry makes its decision by considering the opinions of the relevant authorities. If any error of fact is determined later, the Ministry itself revises, corrects or modifies the decision. A justified decision is forwarded to the relevant parties. For applications abroad, the decision on the work permit is forwarded to the Turkish diplomatic representation through which the application was made. For domestic applications, the decision on the work permit application is directly declared to the foreigner or the employer who made the application. Decisions on work permits are also transmitted to the authorities. The Ministry considers applications with the opinions of the relevant authorities. Work permits are granted for those who are considered eligible.

Foreign Direct Investments

Work permits for key personnel of foreign nationality to be employed by companies, branches and liaison offices active in the framework of the Foreign Direct Investments Law ("FDI Law") (*Doğrudan Yabancı Yatırımlar Kanunu*) are regulated in the FDI Regulation. If special foreign direct investments intend to recruit a foreigner to be a key personnel in Turkey and such foreign direct investments meet the specified conditions in terms of their investments, the foreigner and his employer shall be subject to the FDI Regulation.

Requirements for a Key Personnel

A key personnel who intends to work at a foreign direct investment in Turkey is subject to the FDI Regulation. Pursuant to the FDI Regulation, a personnel of any company incorporated in Turkey and having a corporate body who meets at least one of the following conditions shall be considered "key personnel;"

Any person in charge of at least one of the following fields;

(i) working in the company's senior management or an executive position,
(ii) managing the entire or a part of the company,
(iii) supervising or checking the work of the company's auditors, administrative or technical personnel, or

(iv) hiring new personnel or terminating the employment of those previously hired or making suggestions on these subjects; or

Qualified in any of (a), (b), or (c) matters;

(a) acting in the place of the company's partner, chairman of the board of directors, member of the board of directors, general manager, general manager associate, company manager, managing partner or similar positions,

(b) any person featuring knowledge considered essential for the company's services, research devices, techniques or methods,

(c) a maximum of one (1) person in the liaison office who has been issued a letter of authorization by the principal company abroad.

Requirements for Special Foreign Direct Investments

A company or a branch must meet one of the following conditions to be considered a "special foreign direct investment:"

(i) the company or branch's last annual turnover must amount to at least TL 67.2 million, under the condition that the total capital share of the foreign shareholders amounts to at least TL 894,068,

(ii) the company or branch's last annual exports must amount to at least USD one million, under the condition that the total capital share of the foreign shareholders amounts to at least TL 894,068,

(iii) at least 250 personnel must be employed with the company or branch within the last year and be registered with the Social Security Institution, under the condition that the total capital share of the foreign shareholders amounts to at least TL 894,068,

(iv) if the company or branch makes an investment, the minimum fixed investment amount foreseen shall be at least TL 22.4 million, or

(v) the principal company must feature foreign direct

investment in at least one additional country apart from the country where its head offices are situated. It is important to mention that these figures are updated annually and the above figures are valid for the year 2011.

The foreign direct investments that meet the above-mentioned conditions shall be considered "special foreign direct investments" and such foreign direct investors may hire foreign nationals as key personnel in Turkey.

The Required Documents

The documents required to be submitted by the foreign direct investment and the key personnel are as follows:

1. The information and documents verifying that the company or subsidiary is a "Special Foreign Direct Investment" are;

a. Documents verifying that the total sum of share capital of the foreign shareholders is at least TL 894,068 (documents such as a copy of the share ledger certified by the company, a balance sheet certified by the company, or an original copy of the Trade Registry Gazette),

b. Documents verifying that the exportation in the last year was USD one million (documents such as a bank receipt showing the amount of exportation, bank letters, documents of foreign exchange purchase, or a statement of income authorized by the company),

c. Documents verifying that the turnover during the last year was TL 67.2 million (documents such as a statement of income authorized by the company),

d. Documents such as payrolls proving that the company has employed at least 250 personnel in the last year according to the records of the Social Security Institution,

e. If the company or subsidiary is going to make an investment, documents such as the Investment Incentive Certificate showing that the amount of the estimated minimum fixed investment should be at least TL 22.4 million,

f. A Certificate of Activity or Activity Report that verifies that the controlling company has an investment in another country other than the one where the registered office is located, or an assignment letter showing the key personnel is assigned by the controlling company which is located outside Turkey.

2. Documents proving that the foreigner is a key personnel,

a. Documents such as a circular of signature for a

personnel in an executive position, copy of the Trade Registry Gazette, or copy of the decision by the board of directors or the general assembly of shareholders or,

b. Testimonial and its translation and the copy and translation of the diplomas for the personnel managing the company wholly or partially, and other information and documents and their translations regarding the position that such personnel will be employed in.

3. Foreign Personnel Application Form (four (4) copies), filled out completely and legible and containing the stamp of the employer and the original signature and a passport photo of the key personnel,

4. If the Foreign Personnel Application Form does not contain the original signature of the employer and the key personnel, then the employment agreement executed by the parties or employment document or its certified copy showing the employment proposition of the employer has been accepted by the key personnel must be attached,

5. A copy of the unexpired passport of the key personnel and its translation, certified by the Turkish Consulate or a notary,

6. Curriculum Vitae, and

7. A work permit application petition addressing the Ministry of Labor and Social Security.

Pursuant to the FDI Regulation, the key personnel may make the work permit application to a representation office of the Republic of Turkey located in the country of which the key personnel is a national or in which the key personnel is legally residing. The required documents shall be submitted to the Min-

istry by the employer of the foreign key personnel within three (3) business days following the application of the key personnel to the representation office. The procedures regarding work permit applications shall be conducted by the Ministry via electronic mail. Pursuant to the FDI Regulation, the Ministry shall grant a work permit to the key personnel within fifteen (15) days of submission of the required documents if in compliance with one of the conditions stated above.

Conclusion

According to the Regulation regarding work permits for foreigners, work permit applications shall be made either at the representations of the Republic of Turkey abroad or in Turkey domestically. Although there have been amendments to the Regulation and the documents to be submitted and the procedure to be followed are regulated explicitly under the applicable legislation, the procedure for the application and obtainment of work permits for foreign nationals is quite time-consuming and exhausting in practice. In some cases, applications are rejected despite the fact that there seems to be no legal basis. In such cases, a new work permit application for the relevant foreign national can only be submitted the following year. To prevent this, all the documents attached to the application should be well prepared and the application(s) should not be rushed.

Furthermore, with the changing economic environment in Turkey, there have also been amendments in the legislation regarding key personnel to be employed in special foreign direct investments and liaison offices in Turkey to facilitate foreign direct investments. With all these amendments and regulations, foreign investors are more confident and better able to conduct their businesses in Turkey.