

Establishing Tobacco Products Production Facility under Turkish Law

by Bahar Vicdan & Onur Alper

Turkey is one of the oriental tobacco-leaf producing countries and has important implementations for processing tobacco and producing tobacco products under Turkish Law. Until its recent privatization, tobacco had been produced by the Turkish government owned company, TEKEL. Beginning in the 1990s, multinational tobacco companies have increasingly become important players in Turkey's tobacco market and the privatization of TEKEL was completed in June 2008. Following the completion of the privatization period of tobacco sector, related legislations are adopted to the Turkish Law and private companies started to operate in the tobacco sector in Turkey. In this article, you may find legal information regarding the tobacco market for the purpose of establishing a tobacco products production facility in Turkey under the headings of (i) general information on tobacco and tobacco products markets, (ii) conditions to establish a tobacco products production facility and (iii) required licenses to establish a tobacco products production facility.

General Information on Tobacco and Tobacco Products Markets

The Law regarding the Organization and Duties of the Tobacco and Alcohol Market Regulatory Authority (published in the Official Gazette dated January 01, 2002 and numbered 24635) ("**Law No. 4733**") regulates the general principles applicable in four (4) markets in Turkey, which are (i) tobacco market, (ii) tobacco products market, (iii) alcohol market and (iv) alcoholic beverages market. The Tobacco and Alcohol Market Regulatory Authority (the "TAPDK"), as the regulatory authority established by the Law No.4733, is granted an absolute monitoring and regulatory power over the companies operating in the said markets. Article 2 of the Law No.4733 stipulates that the TAPDK shall be authorized to order any company, who produces, markets, sells or distributes goods and/or services in the aforementioned markets, to provide it with any information/document at any time.

The TAPDK establishes regulatory and supervisory systems in areas dealing with tobacco and tobacco products and the main responsibilities of the TAPDK regarding the said markets are:

- regulating and supervising the tobacco produc-

tion; granting permission for the import of tobacco seeds; issuing authorization to trade in tobacco market; regulating, monitoring, and supervising tobacco producers on the basis of a written contract; and buying and selling tobacco by public auctions;

- granting permissions for the establishment of tobacco processing plants, controlling their processing, movements, handovers, and closures; monitoring tobacco stocks and warehouses; and granting compatibility permissions to tobacco warehouses;
- supervising the operation of companies in the tobacco sector;
- granting production and sales permits, and granting permission to establish factories aimed at producing tobacco products.

As stated above market relating to tobacco is divided into two sections: (i) tobacco market and (ii) tobacco products market. The activities in the tobacco market are regulated mainly under the Regulation on the Principles and Procedures Regarding the Production, Processing, Domestic and Foreign

Trade of Tobacco (published in the Official Gazette dated July 10, 2010 and numbered 27637) (the “**Tobacco Regulation**”), which covers the principles and procedures relating to the production, sale, purchase, processing, warehousing, domestic and foreign trade of tobacco, establishment of tobacco processing facilities and the rights and obligations of the tobacco producers and tobacco purchasers. On the other hand, activities in the tobacco products market are regulated mainly under the Regulation on the Principles and Procedures Regarding the Production and Trade of Tobacco Products (published in the Official Gazette dated November 04, 2010 and numbered 27749) (the “**Tobacco Products Regulation**”), which covers the principles and procedures relating to the establishment and activities of tobacco products production facilities, production, domestic and foreign trade, pricing and destruction of the tobacco products and the supervision of such activities.

According to the above mentioned regulations, establishment of a tobacco processing facility and establishment of a tobacco products production facility are separate licensable activities. This article, however, only includes the information regarding the required licenses to establish a tobacco products production facility (the “**Facility**”), which are governed under the Tobacco Products Regulation. Under the Tobacco Products Regulation, the “tobacco product” has been defined as all products produced through using the tobacco leaves and/or the pieces of tobacco plant, in whole or in part, as raw material for the purposes of smoking, sniffing, sucking or chewing, and each one of cigarette, cigar, cigarillo, water pipe tobacco, pipe tobacco and cut filler tobacco constitutes a tobacco product (each a “**Tobacco Product**” and collectively “**Tobacco Products**”). Furthermore, Tobacco Products other than cigarette have been defined as other tobacco products (the “**Other Tobacco Products**”) since certain conditions required for the establishment or the activities of such a Facility are regulated differently for cigarette and Other Tobacco Products. The Tobacco Products Regulation requires certain conditions to be fulfilled and certain permits and licenses to be obtained for the establishment and operation of a Facility. Requirements and Procedures to establish the Facility have been summarized below.

Conditions to Establish a Tobacco Products Production Facility

According to Article 5 of the Tobacco Products Regulation, the conditions to be fulfilled by the persons who wish to establish such Facility (the “**Investor**”) are as follows;

- **Capacity of the Facility:** The Facility shall (i) have minimum two (2) billion for cigarette and fifteen (15) ton for Other Tobacco Products, annual production capacity in one shift and (ii) be equipped with full and new technology and unused machines and equipment, including the tobacco preparation sections.
- **Specialty of the Facility:** Storages for the (i) raw material, (ii) materials other than tobacco and (iii) the products shall be separate in the Facility and the product storage shall be located within the extent of the Facility.
- **Conformity with the Technical Specification:** (i) Production flow and (ii) machines and equipment shall be designed for the production of the Tobacco Products planned to be produced (water pipe).
- **Other Facilities:** No other facilities that may have an adverse effect on the quality of tobacco shall be established near the Facility.
- **Compulsory Permissions:** The Investor shall (i) apply to the relevant department of the Ministry of Environment and Forestry and (ii) take all necessary precautions, licenses and permits in accordance with the Environment Law (published in the Official Gazette dated August 11, 1983 and numbered 18132) (the “Law No.2872”) and other relevant legislations in order to prevent environmental pollution before the Facility starts to operate.

It should be noted that there is no explicit requirement regarding the location where the Facility should be established under the Tobacco Products Regulation or other relevant legislation. However, the officials of the TAPDK advise that the Facility should be established either in an industrial area or an Organized Industrial Zone, as this would ease the obtainment of the below mentioned establishment permit from the TAPDK taking into account the nature of the Facility and be advantageous to the Investor taking into account the operations of the Organized Industrial Zones.

Required Licenses and Permits to Establish and Operate a Tobacco Products Production Facility

According to Article 6 of the Tobacco Products Regulation, the Investor shall apply to the TAPDK individually or through an authorized representative, to obtain its permission to establish the Fa-

cility together with an application letter and the following documents in a set of dossier (the “**Application Dossier**”).

- articles of association (an original or the notarized copy of the articles of association published in the Turkish Trade Registry Gazette),
- signature circular of the authorized person of the company,
- certificate of activity (an original or the certified copy of the certificate of activity obtained from the Chamber of Commerce and/or Industry within the last six (6) months) and a private statement describing the background of its activities and the targeted activities,
- a written statement of the applicant for the real persons and of the chairman and members of the board and of the authorized persons for the legal entities stating that they have not been convicted due to violation of the Law No.4733, Spirits and Alcoholic Beverages Monopoly Law (published in the Official Gazette dated June 08, 1942 and numbered 4250) (the “Law No 4250”), Fighting Against Smuggling Law (published in the Official Gazette dated March 21, 2007 and numbered 5607) (the “**Law No 5607**”) and that the certificates issued by the TAPDK have not been suspended and the T.R. identity numbers of such persons,.
- a feasibility report that is prepared according to the content and format to be determined by the TAPDK,
- a layout plan of the Facility and machines and equipment that will be operated in the Facility,
- a work flow chart containing the planned production capacity and the explanation of the production management,
- a technical information list of machines and equipment (including one electronic copy),
- a document that will be acquired in accordance with zoning legislation in effect and that denotes the zoning status of the area where the Facility to be established,
- a document providing that the Investor has applied to the relevant legal authorities with

the purpose of obtaining all compulsory permissions (the “**Other Compulsory Permits and Licenses**”) and an undertaking stating that all missing documents will be completed before the application to be made for the Production and Activity Conformity Certificate,

- a document proving that the application fee that is currently in the amount of 15,000.- TL (fifteen thousand Turkish Lira) for cigarette Facilities and 1,000.- TL (one thousand Turkish Lira) for Other Tobacco Products Facilities has been transferred to the account of the TAPDK by the applicant.

The Application Dossier shall be examined within thirty (30) days by the TAPDK and in case the missing documents are determined, such missing documents have to be completed within ninety (90) days by the Investor following the notification date of the missing documents, otherwise the application shall not be put in process and the application fee shall not be returned.

According to Article 7 of the Tobacco Products Regulation, completed Application Dossier shall be examined within sixty (60) days by the TAPDK. Upon such examination in case the TAPDK decides to grant the requested permit for the establishment of the Facility, it issues a Facility Establishment Conformity Certificate, if the Facility Establishment Conformity Certificate fee is deposited by the Investor to the account of TAPDK within ninety (90) days following the notification date of such permit, otherwise the permit shall be cancelled and the conformity certificate fee shall not be returned. Please note that currently, the Facility Establishment Conformity Certificate fee is 9,495.-TL (nine thousand four hundred and ninety five Turkish Lira) per one hundred million cigarette production capacity for the cigarette Facilities and 117.- TL (one hundred and seventeen Turkish Lira) per one ton production capacity for the Other Tobacco Products Facilities.

After the Facility Establishment Conformity Certificate is issued, the Investor may revise the project, if necessary, until the grant of the Production and Activity Conformity Certificate which is needed to operate the Facility as mentioned below and the revision made in the project shall be examined and determined within sixty (60) days by the TAPDK. In case such revision is approved by the TAPDK and there is a capacity increase in the project, the Facility Establishment Conformity Certificate is up-

dated if the Facility Establishment Conformity Certificate fee difference is transferred to the account of the TAPDK.

The Investor has to obtain the below mentioned Other Compulsory Permits and Licenses as well before applying to the TAPDK to obtain the below mentioned Production and Activity Conformity Certificate:

- **Operation Permit** (regulated under the Operation Permit Regulation published in the Official Gazette dated December 04, 2009 and numbered 27422).
- **Business and Operation License** (regulated under the Business and Operation License Regulation published in the Official Gazette dated August 10, 2005 and numbered 25902).
- **Environmental Impact Assessment Report** (regulated under the Environmental Impact Assessment Regulation published in the Official Gazette dated 17 July 2008 and numbered 26939).
- **Relevant Environmental Permits** (regulated under the Regulation on the Licenses and Permits Required to be Obtained in Accordance With the Environment Law published in the Official Gazette dated April 29, 2009 and numbered 27214).
- **Capacity Report** (to be prepared by the Chamber of Industry or the Chamber of Trade)

- **Industry Registration Certificate** (regulated under the Industrial Registry Law published in the Official Gazette dated April 24, 1957 and numbered 9553).

It should be noted that the above mentioned licenses and permits are necessary only for the establishment of the Facility. However, a production and activity permit shall also be obtained from the TAPDK for the operation of such Facility. According to Article 8 of the Tobacco Products Regulation, after the above said Facility Establishment Conformity Certificate and all Other Compulsory Permits and Licenses are obtained, the TAPDK shall be notified in writing that the Facility is ready to operate and an inspection shall be executed by a committee of TAPDK in the Facility which shall prepare a report within thirty (30) days. In case such report is approved, the TAPDK issues a **“Production and Activity Conformity Certificate”** if the Production and Activity Conformity Certificate fee (which is in the amount of twice of the Facility Establishment Conformity Certificate fee) is deposited to the account of TAPDK within ninety (90) days following the notification date of such approval, otherwise the permit shall be cancelled and the application fee shall not be returned.

Depending on the activities to be conducted to operate the Facility, there may be need to obtain certain other permits and licenses as well, such as authorization certificate to trade or import tobacco, industry supply permit to place the Tobacco Products on the market, importation certificate to import Tobacco Products etc.

ROAD MAP REGARDING ESTABLISHMENT OF THE TOBACCO PRODUCTS PRODUCTION FACILITY

STEP I NECESSARY CONDITIONS IN ORDER TO ESTABLISH A TOBACCO PRODUCTS PRODUCTION FACILITY

- 1.Capacity of Tobacco Products Production Facility
- 2.Specialty of Tobacco Products Production Facility
- 3.Conformity with the Technical Specification
- 4.No Other Facilities that may have an Adverse Effect on the Quality of Tobacco
5. Application to the Compulsory Permissions

STEP II PREPARATION OF APPLICATION DOSSIER

1. Articles of Association
2. Signature Circular
3. Certificate of Activity
4. Written Statement Regarding Criminal Record
5. Feasibility Report
6. Layout Plan of Machines and Equipments
7. Work Flow Chart
8. Technical Information List of Machines and Equipments
9. The Document Providing the Zoning Status
- 10.Undertakings
- 11.Receipt Regarding the Payment of Application Fee

STEP III APPLICATION TO THE COMPULSORY PERMISSIONS

No.	PERMISSION CERTIFICATE	RELATED REGULATION	RELATED MINISTRY / INSTITUTION / ORGANISATION
i.	Operation Permit	Labor Law No.4857	Ministry of Labor and Social Security
		Regulation on Operating Permit	
ii.	Business and Operation Permit	Law No.1593 on General Hygiene	Authorized Administration (related provincial special administration, municipality or organized industrial zone legal entity)
		Regulation on Business and Operation Permit	
iii.	EIA Required or EIA not Required	Law No.2872 on Environment	Ministry of Environment and Urban Planning
iv.	Relevant Environmental Permissions or Temporary Activity Certificate	Law No.2872 on Environment	Ministry of Environment and Urban Planning
		Regulations on Required Permit & Licenses	
v.	Capacity Report	Law No.5590	Chamber of Industry and Trade
vi.	Industry Registry Certificate	Law No 6948 on Industry Registration	Ministry of Science, Industry and Technology Commissary

STEP IV PROCESS TO ESTABLISH THE TOBACCO PRODUCTS PRODUCTION FACILITY

- Examination of Application Dossier by TAPDK (within 30 days)
- Completion of Missing Documents by the Investor, if any (within 90 days)
- II. Examination of Application Dossier by TAPDK (within 60 days)
- Deposition of the Establishing Facility Conformity Certificate fee following approval of the Application Dossier (within 90 days)
- **Obtainment of the Establishing Facility Conformity Certificate**
- Revision of Project, if necessary (within 60 days)
- **Obtainment of all Compulsory Permissions**
- Notification to the TAPDK by the Investor in order to obtain the Operation Permit
- Investigation of the Factory to be executed by the committee of TAPDK
- Preparation of the Report by the committee of TAPDK (within 30 days)
- Decision of the TAPDK on Report (within 60 days)
- Deposition of the Production and Activity Conformity Certificate fee following approval of the Report (within 90 days)
- **Obtainment of the Production and Activity Conformity Certificate**