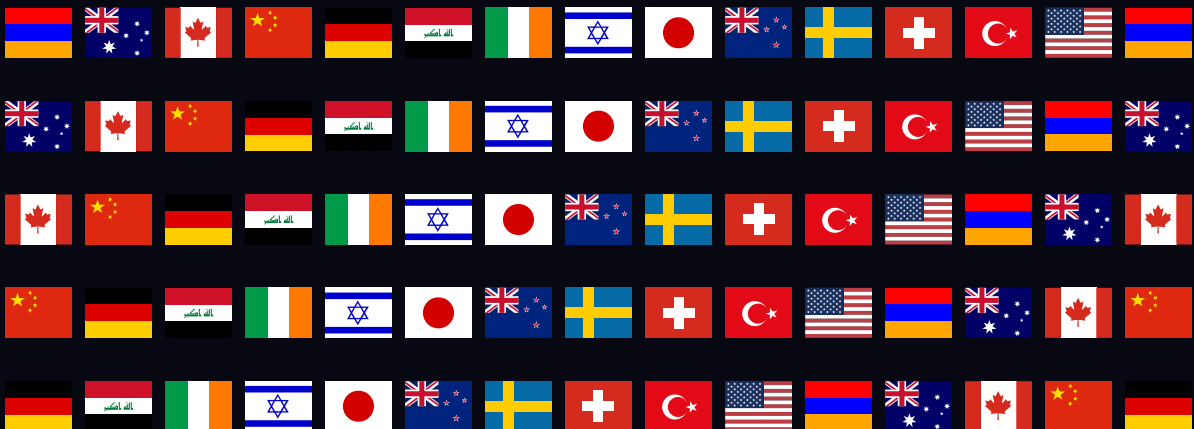


CONSTRUCTION

Turkey



Construction

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Quick reference guide enabling side-by-side comparison of local insights on foreign entry into the local market; licensing procedures; competition and bribery considerations; contract and insurance matters (including PPP and PFI; joint ventures; tort claims and indemnity); labour and closure of operations; rights to payment; force majeure and acts of God; dispute resolution mechanisms; environmental law; applicable investment treaties, tax treaties, currency controls, and revenue, profit and investment removal controls; and recent trends.

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LOCAL MARKET

Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market, what are the key concerns they should consider before taking such a step?

Foreign designers or contractors wishing to establish a local presence in Turkey can do so in one of three ways:

- by establishing a company as defined under the Turkish Commercial Code, typically a joint-stock or limited liability company);
- by establishing a branch office (the chief representative of which must be resident in Turkey); and
- by establishing a liaison office (although a liaison office cannot engage in any commercial activity, nor generate income).

Most foreign designers or contractors establishing operations in Turkey do so through a commercial company pursuant to Foreign Direct Investment Law No. 4875.

Law stated - 01 June 2023

REGULATION AND COMPLIANCE

Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?

Foreign contractors wishing to work locally are not subject to any specific licensing requirements, although project specifications may stipulate qualifying criteria based on financial adequacy or competence. Contractors must also comply with general regulation and practices governing the opening and operation of a business or workplace. Architects and engineers responsible for project management and technical oversight (specifically for the preparation, approval and sign-off of project drawings and plans) must be registered with the Union of Chambers of Turkish Engineers and Architects.

Law stated - 01 June 2023

Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Designed to encourage inbound investment, Turkey's Foreign Direct Investment Law No. 4875 stipulates that (unless otherwise determined under international agreements or specific legislation) foreign entities investing in Turkey shall be subject to the same treatment as domestic investors. Certain local laws can give domestic contractors some advantages under public contracts, however.

For example, Public Procurement Law No. 4734 (the Public Procurement Law) stipulates that the government has the right to restrict a tender to domestic bidders only where the approximate cost is below a certain threshold. Domestic bidders can also benefit from price advantages of up to 15 per cent, which may mean a price discount in certain materials.

Competition protections

What legal protections exist to ensure fair and open competition to secure contracts with public entities, and to prevent bid rigging or other anticompetitive behaviour?

The principles of transparency, competition and equal treatment in public tenders are stipulated under article 5 of the Public Procurement Law, with specific prohibited actions and behaviour outlined under article 17. On this basis, any collusive tendering or bid rigging, bribery, restraint or other anti-competitive behaviour is strictly prohibited, and anyone convicted under article 17 may, depending on the offence, be barred from participating in public tenders for a minimum of one and a maximum of two years.

Anti-competitive behaviour (including bribery and corruption) in public tenders is governed by the Turkish Criminal Code (TCC), as is embezzlement or fraud committed during a tender process or in fulfilling obligations for any government entities thereafter. The maximum penalty for such offences under the TCC is imprisonment for up to 12 years.

The Law on the Protection of Competition No. 4054 further stipulates that any agreements intended to restrain or distort competition (either directly or indirectly) in any market are illegal and shall be subject to a fine of 10 per cent of the annual gross revenue (income) of the project in question.

Law stated - 01 June 2023

Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

Any party (or potential party) to a tender suffering loss of rights due to unlawful procedures or actions during a tender process can file a complaint or submit an appeal to the Public Procurement Authority (PPA); such parties are required to do so prior to launching any legal proceedings. The PPA can order corrective action where this is likely to remedy any issue, and where the offence does not necessitate interrupting the procurement process or terminating the tender (in which case any contract would not be enforceable).

Under article 252 of the TCC, anyone convicted of offering or accepting a bribe is subject to a prison term of between four and 12 years. Facilitation payments are deemed to be a form of bribery under Turkish law.

Law stated - 01 June 2023

Reporting bribery

Under local law, must employees of the project team members report suspicion or knowledge of bribery of government employees and, if so, what are the penalties for failure to report?

Bribery is an offence under the TCC. Any failure to report bribery would constitute an offence under article 278 of the TCC, punishable by up to one year's imprisonment.

Failure to report an offence would also be in breach of an employee's duty of care under the Turkish Code of Obligations as well as a breach of trust and confidence on the part of the employee under the Turkish Labour Law No. 4857, on which basis failure to report an offence could also constitute legitimate grounds for dismissal.

Regardless of legal obligations under the TCC, failing to report any knowledge or suspicion of bribery could result in an employee being dismissed and, moreover, could give grounds for compensation in the event of any damages being sustained by the employer.

Law stated - 01 June 2023

Political contributions

Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

Political contributions are neither permitted nor encouraged.

Law stated - 01 June 2023

Compliance

Is a construction manager or other construction professional acting as a public entity's representative or agent on a project (and its employees) subject to the same anti-corruption and compliance rules as government employees?

Yes. A construction manager or other construction professional is subject to the same regulation as government employees when acting as a public entity's representative or agent on a project, and in the performance of official duties. On which basis, all regulations and ethical codes to which government officials are subject – in addition to obligations under the TCC – apply.

Law stated - 01 June 2023

Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

As in many countries, foreign contractors mainly aim to overcome the legal and cultural challenges of entering new markets by investing through joint ventures with local companies.

In line with the Turkish Government's medium-term growth strategy, many incentives are available to international investors, making the country one of the most attractive jurisdictions for foreign investment, particularly for the construction industry.

Law stated - 01 June 2023

CONTRACTS AND INSURANCE

Construction contracts

What standard contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

Public procurement contracts must be compliant with the General Declaration on Public Procurement. Beyond that, consistent with the fundamental principle of freedom of contract governing civil law in Turkey, and consistent with many jurisdictions throughout continental Europe, so long as any contract complies with statutory Turkish law and with public policy more generally, Turkish legislation does not stipulate any specific form of contracts to be used in design and construction works. As regards language, pursuant to the Law on the Compulsory Use of Turkish in Economic Enterprises No. 805, all contracts and any transactional correspondence (and, where a foreign party is involved, all correspondence with government agencies) must be in Turkish.

Aside from some limited exceptions, parties to a contract are generally free to choose any jurisdiction for design and construction contracts. One such exception applies to contracts involving right in rem over immovable property, whereby, pursuant to the Law on International Private Law and Procedural Law No. 5718, Turkish law must apply where the property in question is located in Turkey (*lex rei sitae*). Parties are free to choose any location for dispute resolution, subject to these limitations – meaning any disputes relating to immovable property will be subject to domestic legislation.

Law stated - 01 June 2023

Payment methods

How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Again, in line with the fundamental principle of freedom of contract, and subject to any cash payments not exceeding a certain threshold, parties to a transaction are free to determine the timing and means of payments under construction contracts.

Parties to a transaction are typically paid on approval of interim payment certificates, with payments usually being effected by electronic transfer or, under supply contracts, through letters of credit. It is usual for a contractor to receive an advance payment for procurement and resourcing.

Law stated - 01 June 2023

Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

It is common practice for project owners to engage a turnkey or main contractor who then typically engages multiple subcontractors for specific works. Project owners are not subject to any restrictions in engaging multiple subcontractors directly, however. No obligations (beyond statutory responsibilities regarding employment law) exist between the project owner and any subcontractors engaged by the main contractor. On that basis, however, the project owner cannot enforce (or rely on) any terms agreed between the main contractor and subcontractors.

Law stated - 01 June 2023

PPP and PFI

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

While a draft legal framework is currently being developed under the country's Eleventh Development Plan, Turkey currently has no specific legal framework governing PPP and PFI contracts. Certain governing principles are outlined

under the Constitution of the Republic of Turkey (the Constitution), however, while PPP contracts are subject to certain laws and regulation, including:

- the Law on the Procurement of Certain Investments and Services under the Build-Operate-Transfer Model No. 3996;
- the Law on the Authorisation of Enterprises other than the Electricity Authority of Turkey for Electricity Generation, Transmission, Distribution and Trading No. 3096;
- the Law on Privatisation Practices No. 4046; and
- the Law on Customs No. 4458.

Tenders for PPP projects are frequently issued by Turkish government agencies including the Ministry of Energy and Natural Resources, the Ministry of Transport and Infrastructure, the General Directorate of State Airports Authority, and the General Directorate of Highways.

Law stated - 01 June 2023

Joint ventures

Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

Joint ventures and consortia are treated as different kinds of entities under Turkish law. Partners in a joint venture share all risks and liabilities mutually; each partner in a consortium bears different and separate liabilities and risks.

Under the principle of freedom of contract, however, parties are free to agree the terms of a contract consistent with statutory legislation. In this case, joint venture partners are free to allocate risks and liabilities as they wish, with these being treated as a matter of internal regulation between the partners, and with no binding (or other) implications for any third parties. Notwithstanding such allocation of risks and responsibilities among the members of the joint venture, all members of such joint venture bear joint and several responsibilities in respect of third parties (including the project owner).

Law stated - 01 June 2023

Tort claims and indemnity

Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

The Turkish Code of Obligations (TCO) stipulates that – unless no fault can be proved – a contractor must compensate the project owner (employer) if contractual obligations are not met or are not met in full. There is no exemption from liability for gross negligence and, for works subject to specific licensing requirements (including construction works), any agreement regarding exemption from liability for even slight negligence will be deemed invalid. Compensation may be reduced (or removed entirely) in the event that the first party is found to be negligent.

Law stated - 01 June 2023

Liability to third parties

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Contractors' and building owners' responsibilities are regulated specifically under the Turkish Code of Obligations and the Law on Protection of Consumers No. 6502. On this basis, any contractor responsible for construction of a building is liable for any defective works arising in that building for a period of five years from the delivery date. Conversely, the building owner (not the contractor) is held liable for any loss or damage borne by a third party as a result of improper maintenance of a building, or as a result of any construction defects.

Law stated - 01 June 2023

Insurance

To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards? Does the local law limit contractors' liability for damages?

Construction insurance is widely used in Turkish projects to cover unforeseeable risks (such as fire, flood, emergency weather events and sabotage) in line with a project's specific value and risk profile. The most commonly used insurance products include all-risk insurance, third-party liability insurance and building completion insurance. We are seeing increasing use of political risk insurance on major international projects.

Law stated - 01 June 2023

LABOUR AND CLOSURE OF OPERATIONS

Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

Turkey has no legislation directly governing the total number (headcount) of local employees that must be employed on construction projects. Pursuant to International Labour Force Law No. 6735 (the International Labour Force Law) foreign workers are required to secure a work permit unless specific clauses in bilateral or multilateral agreements to which Turkey is a party apply. This law also stipulates that at least five Turkish citizens must be employed for every foreign worker for whom a work permit is requested at any workplace.

Law stated - 01 June 2023

Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

As an employer, a contractor must ensure all payment obligations (including wages, payments in lieu of notice and any severance payments) are discharged in respect of all employees on completion of a contract, regardless of nationality.

Law stated - 01 June 2023

Labour and human rights

What laws apply to the treatment of foreign construction workers and what rights do they have?
What are the local law consequences for failure to follow those laws?

The treatment of foreign construction workers is governed by the International Labour Force Law, which determines all procedures and principles, powers and responsibilities concerning the granting of (and exemptions in respect of) work permits for foreigners.

Discrimination on grounds of nationality is strictly prohibited under the Constitution and the Turkish Labour Law No. 4857, and foreign workers benefit from all rights specified thereunder on the same basis as local workers. Fines may be imposed under this legislation where an employer fails to comply with statutory obligations, and in such circumstances, employees have the right to claim compensation.

Law stated - 01 June 2023

Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

There are no obstacles specific to foreign contractors on terminating their operations, and legal obligations are identical to those applicable to local contractors.

On that basis, foreign contractors terminating their operations are required to fulfil all outstanding obligations to project owners, to terminate or conclude contracts with third parties, to fulfil all obligations to their employees, to close all their subscriptions in the utilities and to discharge their liabilities towards the relevant tax office. As is the case for local contractors, foreign contractors must also cover all public debts, including tax and social security obligations.

Law stated - 01 June 2023

PAYMENT

Payment rights

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

Contractors in Turkey typically receive advance payments to cover procurement and resourcing costs arising before a project starts.

Milestone payments, entitling contractors to payment after completion of predetermined stages of a project, are often preferred during procurement and resourcing. Bank letters of guarantee can be used to secure contractors' payment rights.

Turkish law allows contractors to place a lien on the property of a project owner (primary employer) unless specifically excluded under the terms of the applicable contract.

Law stated - 01 June 2023

'Pay if paid' and 'pay when paid'

Does local law prohibit construction contracts from containing terms that make a subcontractor's right to payment contingent on the general contractor's receipt of payment from the owner, thereby causing the subcontractor to bear the risk of the owner's non-payment or late payment?

'Pay if paid' and 'pay when paid' provisions are commonly used in Turkish construction: the enforceability of such provisions remains subject to debate, however.

Consistent with the 'freedom of contract' principle inherent in Turkish civil law, parties are free to agree contractual terms to the extent that these do not contravene existing legislation. On that basis, parties to a contract (or subcontract) have the right to include terms that make a subcontractor's right to payment contingent upon the general contractor's receipt of payment from the project owner.

It is important to stress, however, that all agreements between parties, including contracts or agreements involving 'pay if paid' and 'pay when paid' provisions, will have no legal protection unless they are consistent with statutory law.

Law stated - 01 June 2023

Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

Foreign states' immunity from the jurisdictions of other countries is limited to transactions under public law, and only in the exercise of sovereign authority. No immunity is available for disputes arising from private law, and a government agency cannot claim sovereign immunity against any claims by contractors.

Law stated - 01 June 2023

Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

Consistent with the freedom of contract principles underpinning Turkish civil law, parties are free to draft provisions governing the termination or cancellation of a project or works (with appropriate entitlements) as required. In the event of there being no such specific provisions under a contract, regulations stipulated under the Turkish Code of Obligations or the Civil Code may apply.

As a general principle, under Turkish law, in the event that a construction project is cancelled or interrupted, a contractor will be entitled to payment for works undertaken or performed up to such termination date. A contractor is also entitled to make a claim for any equipment and machinery they own that is retained by the project owner (employer). In addition to these general principles, a contractor is also entitled to a lien on the property on which such works have been undertaken if payment is not made in full.

Law stated - 01 June 2023

FORCE MAJEURE

Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Turkish law does not explicitly define force majeure or acts of God. Article 136 of the Turkish Code of Obligations (TCO), which governs the consequences of impossibility of performance, can be applied to a force majeure event.

Contractors may be excused from performing contractual obligations in the face of force majeure events:

- on the basis of any contractual force majeure clause;
- under article 136 of the TCO; or
- on the basis of legal precedent.

Impossibility of performance is governed by article 136 of the TCO, which states that where the fulfilment of obligations becomes impossible for reasons beyond a contractor's control, that contractor cannot be held responsible. Legal precedent from the Supreme Court also suggests that force majeure can be defined as an event resulting in the non-performance of an obligation that:

- could not have been predicted at the time any contractual relationship was entered into;
- was the result of factors beyond the parties' control (such as unforeseen acts of nature (storms, earthquakes, flooding), actions by third parties (such as a general strike) or legal interventions (such as a formal ban); and
- could not have been prevented or avoided through any effort by such parties.

Parties to a contract are also free to regulate contractual force majeure clauses to the extent that these are consistent with statutory law in Turkey.

Law stated - 01 June 2023

DISPUTES

Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

In contrast to other sectors (such as insurance), Turkey has no specific or industry-sponsored tribunals dedicated to resolving construction disputes. There is an increasing trend for construction-related disputes to be resolved through mediation or arbitration. This can often secure a more timely outcome than action through local courts.

Law stated - 01 June 2023

Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

Yes, DRBs are used in Turkey as a form of alternative dispute resolution in construction contracts.

The decisions of DRBs in Turkey are not final but serve as a recommendation to the parties. The parties may accept the DRB's recommendation, or they may further apply for dispute resolution options, such as arbitration or litigation. Nevertheless, the parties may agree to give the DRB's decision a binding effect. This will require the parties to agree in advance that they will abide by the decision of the DRB as if it was final and binding.

Law stated - 01 June 2023

Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

Voluntary participation in mediation is not a generally accepted concept among contractors, although it is becoming increasingly popular as a pre-litigation or pre-arbitration process in construction contracts. The Law on Mediation in Civil Disputes No. 6325 (the Mediation Law) which entered into force in 2013, introduced the concept of mandatory mediation as a prerequisite in commercial disputes prior to any court action. Highly qualified mediators, who shall be registered on the Mediator's Registry of the Ministry of Justice, are available for both mandatory and voluntary mediation, many of which come from engineering backgrounds with vast project experience as well as LLM degrees.

Law stated - 01 June 2023

Confidentiality in mediation

Are statements made in mediation confidential?

Pursuant to article 4 of the Law on Mediation in Civil Disputes, confidentiality is fundamental to the mediation process and any mediator, and the parties present at mediation meetings are obliged to treat all information and documents submitted or otherwise obtained during such meetings as confidential.

Confidentiality is an essential part of the mediation process, and any statements or documents produced in the course of mediation cannot subsequently be used as evidence or testimony in arbitration or court proceedings. Disclosure of such information cannot be requested by a court, arbitrator or any administrative authority, and cannot be taken into consideration even when presented as evidence. Such information may be disclosed to the extent required by law, however, or where necessary for the implementation and enforcement of any agreement reached as a result of the mediation process.

Law stated - 01 June 2023

Arbitration of private disputes

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Arbitration is becoming increasingly popular in resolving construction disputes. Given the time pressures common on most construction projects, the ever-changing nature of construction works and the level of technical complexity often involved, arbitration often proves a more timely solution than action through local courts. As Turkey also lacks specialist courts (and, accordingly, experienced judges), court-appointed experts are often required. Heavy workloads, however, mean that even where such experts are appointed, full technical analysis is often lacking. Arbitration is, therefore, becoming increasingly stipulated under International Federation of Consulting Engineers contracts.

Governing law and arbitration providers

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

Arbitration is becoming an increasingly common practice in settling international construction disputes in Turkey, with the International Chamber of Commerce (ICC)'s international reputation making it the preferred arbitration provider. The Istanbul Arbitration Centre (ISTAC) has also been gaining popularity among Turkish contractors as an alternative to the ICC since its establishment in 2014.

While there is no significant resistance to specific jurisdictions for arbitration, where a jurisdiction other than Istanbul is designated Switzerland (Geneva, Zurich), France (Paris) and the United Kingdom (London) are commonly preferred. Contracting parties in Turkey tend to prefer neutral legislation over the domestic law of either party, with Swiss law typically preferred in the light of its considerable similarities to Turkish law.

Standard forms and contracts issued by the PPA are used in Turkey. These were updated in 2018 and now require contracting parties to submit to the jurisdiction of Turkish courts or to stipulate ISTAC arbitration for the settlement of disputes.

Law stated - 01 June 2023

Dispute resolution with government entities

May government agencies participate in private arbitration and be bound by the arbitrators' award?

Government agencies may engage in private arbitration and contracts can be drafted on that basis, stipulating that disputes may be resolved through local courts or through arbitration.

Any arbitration award issued against a government agency is binding on that agency. Where such an award is rendered through domestic arbitration, enforcement will be made under the Code of Civil Procedure No. 6100 and the Enforcement and Bankruptcy Law No. 2004. Should the award be rendered by an international arbitration tribunal, enforcement is possible through the application of International Arbitration Law No. 4686 (the International Arbitration Law (IAL)). As Turkey is a signatory to the (New York) Convention on the Recognition and Enforcement of Foreign Arbitral Awards, enforcement is likely to be swift.

Law stated - 01 June 2023

Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Any rejection of an international (foreign) arbitration award is subject to regulation stipulated under the IAL. As Turkey is a signatory to the (New York) Convention on the Recognition and Enforcement of Foreign Arbitral Awards the basis of rejecting any foreign arbitration award would be a verbatim adoption of the reasons stipulated under the New York Convention.

On that basis, Turkish courts are required to follow a limited number of reasons stipulated under the New York Convention and the IAL in rejecting the enforcement of any arbitration award. Two of the most frequently used objections for rejecting arbitration awards are that such an award would be contrary to public policy in Turkey; and that there has been some breach of due process or representation.

Law stated - 01 June 2023

Limitation periods

Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

Limitation periods for initiating a lawsuit under Turkish law vary, depending on the nature of the claim. Pursuant to the Turkish Code of Obligations (TCO), the general limitation period in respect of receivables is 10 years unless otherwise provided by law.

Under construction contracts, excluding claims arising from a contractor's gross negligence resulting in a failure to carry out works properly or in full, the limitation period for filing a lawsuit is five years.

Article 478 of the TCO contains specific provisions in respect of claims relating to defective structure, whereby the limitation period is two years in respect of movable property and five years for immovable property. Where any defect is the result of a contractor's gross negligence the statutory limitation period is 20 years, regardless of the nature of the work. The Law on Public Procurement Contracts No. 4735 stipulates a statutory limitation period of 15 years, starting from the date of final acceptance of work.

The main statutory precondition for filing a lawsuit in a Turkish court is to conclude the mandatory mediation process in advance.

Law stated - 01 June 2023

ENVIRONMENTAL REGULATION

International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Yes, Turkey has been party to the Stockholm Declaration of 1972 as of 23 May 2001, and to the Rio Conference of 1992 as of 24 February 2004. In line with the principles of the Stockholm Declaration, which encourages individual countries to develop their own environmental policies and protect natural resources and wildlife, Turkey has specific legislation in place to that end, including the Law on the Environment No. 2872, the Forest Law No. 6831, the Animal Protection Law No. 5199, the Bosphorus Law No. 2960, the Coastal Law No. 3830 (amending the Coastal Law No. 3621), and the Turkish Soil Protection and Terrain Law No. 5403, as well as certain protections under the TCC, the Misdemeanours Law No. 5326 and the Constitution.

Law stated - 01 June 2023

Local environmental responsibility

What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

Pursuant to article 181 of the TCC, anyone convicted of causing harm to the environment by polluting soil, water or air through waste or residue contamination in violation of regulated technical procedures can be imprisoned for a period of up to two years. Where such pollution results in human or animal diseases that are difficult to treat (including infertility and any impact on the natural characteristics of animals or plants) this can result in a prison sentence of not less than five years and a judicial fine (an amount payable to the State Treasury by the offender, which is calculated, unless otherwise stated in law, by multiplying the identified number of days with a specified daily amount) of up to 1,000 days.

The Law on the Environment No. 2872 governs environmental protection in Turkey, and covers, specifically, biological diversity and the ecosystem; the protection of natural structures and wetland ecology; the conservation of endangered and rare plant and animal species; the protection of natural resources and assets; and sea, underground and surface-water resources.

Pursuant to this law, institutions, organisations and businesses that could cause environmental problems as a result of any planned activities are obliged to prepare an Environmental Impact Assessment Report or Project Introduction File. Approvals and permits cannot be given, and no project can be put out to tender, unless a company's environmental impact assessment has been approved, or unless the appropriate regulatory authority has ruled that an Environmental Impact Assessment Report is not required.

Law stated - 01 June 2023

CROSS-BORDER ISSUES

International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Yes. Turkey is a signatory to and has adopted more than 100 bilateral investment treaties with other countries as of 2023. These agreements aim to promote and protect foreign investment by offering guarantees and protections to foreign investors against various forms of expropriation, discrimination and other risks that may arise in the host country.

Investments are generally defined as covering every kind of asset or investment (connected with business activities) invested in or acquired for the purpose of establishing lasting economic relations in the territory of a contracting party in conformity with its laws and regulations. Some agreements also cover specific provisions for the protection of investments in construction and infrastructure projects, such as provisions on fair and equitable treatment, protection against expropriation without compensation and access to dispute settlement mechanisms.

Law stated - 01 June 2023

Tax treaties



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Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

To prevent double taxation, Turkey has concluded treaties for the avoidance of double taxation with many countries. The purpose of these treaties is to avoid the double taxation of income that arises in one country and is received by residents of another country.

General double taxation treaties apply to construction works (on the basis of sites constituting permanent entities) and most treaties are deemed to be contractor-friendly. Practice and exemptions vary according to the nationality of the contractor.

Turkey currently signed double taxation treaties with over 80 countries, including the United States, the United Kingdom, Germany, France, China and Japan, among others.

Law stated - 01 June 2023

Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

Turkey has no currency controls specific to construction works. Those parties and transactions to which currency regulations apply are specified under the Amendments to Presidential Decree No. 32 Regarding the Protection of the Value of the Turkish Currency (2018). Furthermore, with the amendment made in Communiqué No. 2008-32/34 on Decision No. 32 on the Protection of the Value of the Turkish Currency and published in the Official Gazette dated 19 April 2022, it is prohibited to pay the contract price in foreign currency in movable sales contracts to be concluded among residents of Turkey.

Law stated - 01 June 2023

Removal of revenues, profits and investment

Are there any controls or laws that restrict removal of revenues, profits or investments from your jurisdiction?

Generally, there are no restrictions on profit distribution or investments, and these are subject to standard corporate law practices. Tax regulation should be taken into consideration in any transactions, however, since withholding tax or tax exemptions may apply.

Law stated - 01 June 2023

UPDATE AND TRENDS

Emerging trends

Are there any emerging trends or hot topics in construction regulation in your jurisdiction?

The most pertinent developments in Turkish construction regulation are Presidential Decree No. 5203 of 23 February 2022, and the Eleventh Development Plan (2019–2023), approved by the Grand National Assembly of Turkey on 18 July 2019.

Presidential Decree No. 5203 (on the Principles Regarding the Implementation of the Provisional Article 5 of the Public Procurement Agreements Law No. 4735) gives contractors the right to request additional price differences (price adjustments) that arise from unforeseeable price increases in the majority of raw materials and employment prices, and to assign construction agreements (subject to the approval of the appropriate agencies) provided that the conditions specified in the Decree are met, the appropriate construction contract is executed in accordance with Public Procurement Law No. 4734 (the Public Procurement Law) and the currency of any agreement is in Turkish lira.

On 13 May 2022, the Presidential Decree Determining the Procedures and Principles for the Procurement of Goods and Services to be Made within the Scope (b) of Article 3 of the Public Procurement Law (Presidential Decree) by the Turkish Ministry of National Defence, General Directorate of Military Factories and General Directorate of Shipyards was amended and published in the Official Gazette. With this amendment, a provisional article has been added to Presidential Decree No. 4416 dated 24 August 2021.

Pursuant to the amendment, in contracts made in Turkish lira for the purchase of goods and services, including purchases made through the direct procurement method within the scope of the Presidential Decree, the additional price difference can be calculated and these contracts can be transferred under Law No. 4735, which became effective with the Presidential Decree dated 23 February 2022, and numbered 5203.

Law stated - 01 June 2023

Jurisdictions

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	Australia	Holding Redlich
	Canada	Singleton Urquhart Reynolds Vogel LLP
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	Iraq	Al Hadeel Al Hasan Law
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	New Zealand	Hesketh Henry
	Sweden	Foyen Advokatfirma
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