

## Establishment of Foreign Bank Branches in Turkey

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### Introduction

1 Developing countries, where both domestic and international commerce has a promising future, have always been a lucrative field for foreign financial entities and banks. By entering into the financial markets of developing countries, foreign banks do not only aim to present their advanced technology to the country they are investing in but also to avail themselves of the current particularities and uniqueness of the financial market of the target country for the purpose of actualizing pioneer innovations in the global financial markets.

Turkey, being a developing country and playing a crucial role within and between the MENA region and Europe due to its geopolitical position, has recently been attracting foreign banks and providing them with a relatively flexible range of motion within the market. Furthermore, the fact that banking sector is standing out among other sectors in Turkey, by virtue of favorable macro perspectives, an encouraging policy adopted by the government and an immense growth potential within the sector, is rendering the country a profitable target for foreign banks.

Banking sector in Turkey is regulated with Banking Law No. 5411 (the “Law”), and accordingly, establishment of foreign bank branches in Turkey is also subject to the provisions set forth within the Law.

In this article, we aim to elucidate the conditions for establishing foreign bank branches in Turkey.

### Conditions Stipulated under the Banking Law

Meeting the conditions stipulated under the Law is an imperative for the establishment of a branch in Turkey. For being granted the permission for establishing the branch, the conditions set out below must be met:

- i. The primary activity of the branch must not have been prohibited in the country where the bank is headquartered,
- ii. The supervisory authority in the country, wherein the headquarters of the bank is located should not have negative views regarding its operation in Turkey,
- iii. The paid-in capital reserved for Turkey should not be less than 30 million Turkish Lira,
- iv. The members of the board of managers should have adequate professional experience to be able to satisfy the requirements laid down in the corporate governance provisions and to perform the planned activities,
- v. The branch must submit an activity program indicating work plans for the fields of activity covered by the permission, the budgetary plan for the first three years as well as its structural organization,
- vi. The group including the bank must have a transparent partnership structure.

An application for operating permission cannot be granted for the activities prohibited due to the violation of the local legislation in the country where the bank is headquartered.

### Application for Establishment

Establishing a bank or a foreign bank branch in Turkey and engaging in banking activities is subject to the permission of the Banking Regulation and Supervision Agency ("BRSA"). Therefore, an application must be made to the BRSA for establishing a branch.

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The conditions pertaining to the application are stipulated within the Regulation on Indirect Shareholding and Permit-Required Transactions of Banks (the “Regulation”). As per the Regulation, first of all, the application shall be made with a letter of application appended with a variety of documents. Foreign banks shall append the below documents to their application:

- i. Articles of association of the bank,
- ii. The resolution of the authorized body of the bank regarding the branch establishment in Turkey,
- iii. An activity report analyzing the expected profit by establishing a branch and the activities to be carried out by the branch, business plans indicating the method of internal audit, internal control and risk management, the structural organization of the bank, projections including the financial structure of the establishment and the capital adequacy,
- iv. Independent audit reports, balance sheets, and profit and loss statements of the last 5 years,
- v. Shareholders and the organizational structure of the bank,
- vi. The organizational structure of the bank in the countries other than where it has its headquarters,
- vii. Detailed information and documents pertaining to the activities of the bank in international financial markets, and the reports prepared by rating agencies,
- viii. A document, issued by the authorized agency, indicating that the bank has not been prohibited to accept deposits and to conduct banking activities and/or has not been restrained for any reason in the country where it was established,
- ix. The minutes of the last general meeting,
- x. A list, certified by the authorized agency, of shareholders having shares corresponding to more than 10% of the capital,
- xi. A written commitment stipulating that the audit reports issued by an independent audit agency authorized as per the law of the country of origin shall be submitted to the BRSA on a yearly basis.

It should also be noted that, as the case may be, BRSA may request other documents and/or further information from the bank.

The establishment of the branch is permitted upon affirmative votes of minimum 5 members of the BRSA in case the conditions stipulated within the Law and the Regulation are met. The decision of the BRSA is rendered within 3 months commencing from the date when the application, together with all required documents, is duly made. However, within this period, if BRSA determines that there are deficiencies in the application that must be corrected, such deficiencies must be corrected within 6 months; otherwise, the application shall be rendered invalid.

### Conditions for Engaging in Banking Activities

Once the permission has been granted to the branch by the BRSA, it is qualified to engage in banking activities in Turkey. Nonetheless, for initiating the activities, certain criteria set out below must be met before the commencement of the activities:

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- i. The capital of the branch must have been paid in cash and must be at a level that enables the execution of the planned activities,
- ii. Minimum one fourth of the system entrance fee, equivalent to ten percent of the minimum capital requirement, which is 30 million Turkish Liras, must have been paid to the account of the Savings Deposit Insurance Fund,
- iii. The activities of the branch must be in compliance with corporate governance provisions and the branch must have the required personnel and technical infrastructure,
- iv. The managers of the branch must bear the qualifications as per the corporate governance provisions,
- v. The BRSA should comment that they bear the qualifications required for executing the activities.

The system entrance fee stated above is collected for only one time; and the shareholders of the bank are jointly responsible for paying the system entrance fee.

It should also be noted that in cases where the operating permission of any bank established abroad and having branch in Turkey has been revoked, its activities have been suspended, it has been decided to be declared bankrupt or liquidated and/or it has declared bankrupt in the country of establishment, the BRSA shall revoke the operating permission of the branches of such bank in Turkey.

### Prohibited Activities

Foreign banks' branches in Turkey are not allowed to direct the deposits they acquired through their activities in Turkey to other branches under the group they belong to or to other financial institutions. In other words, these branches, on behalf of the foreign banks they belonged to, including those in offshore banking regions, or on behalf of other financial institutions, cannot accept deposits from those residing in Turkey; and for this purpose, these branches are not allowed to execute fictitious transactions, employ personnel exclusively for such work, direct the clients of the foreign banks' branches in Turkey to other branches abroad by way of making payments or paying commissions, premium or any other incentive to the personnel on the basis of the deposits to be collected on behalf of other branches under the foreign banks and other financial institutions, or by way of making the personnel advertise and promote other branches for convincing clients.

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