

1. How to set up a bank in Turkey? Can a foreign bank open a branch in Turkey?

Under Turkish legislation the establishment of a bank in Turkey or the opening up of the first branch in Turkey of a foreign shall be permitted upon affirmative votes of at least five members of the Banking Regulation and Supervision Agency ("Agency") provided that the establishment conditions laid down in Banking Law No 5411 are fulfilled.

The principles and procedures for permission applications and granting permissions shall be determined by a regulation to be issued by the Agency. The decision regarding the permission shall be notified to the applicant within three months following the application date or after the applicant provides the missing application documents, if any. If any missing document is not provided within six months, then the application shall become invalid.

The details regarding the 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, and their fields of activity and financial reporting and audit procedures as well as the details regarding the temporary suspension or revocation of their activities shall be determined by Agency decision.

The banks established abroad may open up representative offices in Turkey with the permission of the Agency provided that they do not accept deposits or participation funds and those they operate within the framework of the principles to be set by the Agency.

2. What are the conditions to open a bank or a branch in Turkey?

In order to establish a bank or a branch in Turkey the following requirements should be fulfilled:

- a.** It should be established as a joint stock company
- b.** Its shares should be issued against cash and to name
- c.** The founders should meet the requirements indicated in the Banking Law
- d.** Its members of board of directors shall bear the qualifications set out in the corporate governance provisions in Banking Law and shall have the professional experience required for carrying out the planned activities
- e.** Its envisaged fields of activity shall be in harmony with planned financial, managerial and organizational structure
- f.** Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than TRY 30.000.000

- g.** Its articles of association shall not be in conflict with the provisions of the Banking Law
- h.** There should be a transparent and open partnership structure and organizational chart that will not constitute an obstacle for the efficient supervision of the institution
- i.** There should not be any element that hampers its consolidated supervision
- j.** The work plans for the envisioned fields of activity, the projections regarding the financial structure of the institution including capital adequacy, the budgetary plan for the first three years and an activity program including internal control, risk management and internal audit system showing the structural organization must be submitted.

3. What are the qualifications of founders to open a bank in Turkey?

Founders should meet the qualifications listed on below:

- a.** Not have been declared bankrupt within the framework of the provisions of the Execution and Bankruptcy Law No. 2004, not be in possession of a certificate of bankruptcy, not have an approved application for restructuring through reconciliation or not have been issued a decision for postponement of bankruptcy
- b.** Not have qualified shares or not hold control in banks that have been subjected to Article 71 of the Banking Law or that have been transferred to the Fund before the effectiveness of the Banking Law
- c.** Not have qualified shares or not hold control in banker subjected to liquidation, and in other financial institutions subject to liquidation, excluding voluntary liquidation, in development and investment banks whose operating permissions have been revoked, or in credit institutions whose shareholder rights except dividends and management and control have been transferred to the Fund or whose permission to conduct banking transactions and accept deposits and participation funds have been revoked, before the transfer of aforementioned credit institutions to the Fund or before their permission and authorization for accepting deposit and participation fund have been revoked
- d.** Have not been sentenced to heavy imprisonment or imprisonment of more than five years pursuant to the repealed Turkish Criminal Code No. 765 or other laws, even though pardoned, with the exception of negligent offenses, have not been sentenced to imprisonment of more than three years pursuant to the Turkish Criminal Code No. 5237 or other laws or have not been convicted of the violation of the provisions, that require imprisonment, of the repealed Banking Law No. 3182, of the Banking Law No. 4389 which is repealed by the Banking Law 5411, the Capital Market Law No. 2499 and of the legislation on lending transactions, or have not been convicted of infamous crimes such as embezzlement, extortion, bribery, theft, swindling, forgery, breach of trust, fictitious bankruptcy, smuggling offenses other than those arisen by the acts of using and consuming, fraudulent acts in official tenders and trades, money

laundering or crimes committed against the prestige of the State and unveiling State secrets, offenses committed against the sovereignty of the state or the prestige of its organs, offenses committed against the security of state, offenses committed against the constitutional order or the functioning of the constitutional order, offenses committed against national defense, offenses committed against the secrets of the state and espionage, offenses committed against relations with other states as well as tax evasion or have not been engaged in such offenses under the repealed Turkish Criminal Code No. 765, Turkish Criminal Code No. 5237 or other laws

- e. Have necessary financial strength and respect
- f. Have the honesty and competence required for the business
- g. In case of a legal person, have a transparent and open partnership structure together with the risk group.

4. What are the requirements to open a branch in Turkey for a foreign bank?

Any bank established abroad that desires to operate in Turkey by opening branch within the framework of the principles and procedures set by the Banking Regulation and Supervision Agency should to meet the following conditions:

- a. Its primary activities must not have been prohibited in the country where they are headquartered,
- b. The supervisory authority in the country, wherein the headquarters of the bank is located should not have negative views regarding its operation in Turkey,
- c. The paid-in capital reserved for Turkey should not be less than the amount indicated in Article 7 of the Banking Law No 5411,
- d. 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,
- e. It 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.
- f. The group including the bank must have a transparent partnership structure.
- g. An application for operating permission cannot be granted for the activities prohibited due to the violation of the local legislation in the country where such institutions are headquartered.

5. What kind of activities can a bank engage in?

Without prejudice to the provisions of other laws, banks may carry out the following activities:

- 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 check accounts,
- e. Purchasing transactions of commercial bills,
- f. Safe-keeping services,
- g. Issuing payment instruments such as credit cards, bank cards and travel checks, and executing relevant activities,
- h. Carrying out foreign exchange transactions, trading of money market instruments, trading of precious metals and stones and safekeeping such,
- i. Trading and intermediation of forward, future and option contracts, simple or complex financial instruments which involve multiple derivative instruments, based on economic and financial indicators, capital market instruments, goods, precious metals and foreign exchange.
- j. Purchase and sale of capital market instruments and repurchasing or re-sale commitments,
- k. Intermediation for issuance or public offering of capital market instruments
- l. Transactions for trading previously issued capital market instruments for intermediation purposes,
- m. Guarantee transactions like undertaking guarantees and other liabilities in favor of other persons,
- n. Investment counseling services,
- o. Portfolio operation and management
- p. Primary market dealing for purchase-sales transactions within the framework of liabilities assumed by contracts signed with Treasury Undersecretariat and/or Central Bank and associations of institutions,
- q. Factoring and forfeiting transactions,
- r. Intermediating fund purchase-sale transactions in the inter-bank market,
- s. Financial leasing services,
- t. Insurance agency and individual private pension fund services,
- u. Other activities to be determined by the Banking Regulation and Supervision Board.

6. What are the requirements to set up a development bank in Turkey?

The requirements to set up a development bank in Turkey listed on below:

- a. It should be established as a Joint Stock Company
- b. Its shares should be issued against cash and to name
- c. The founders should meet the requirements indicated in the Banking Law
- d. Its members of board of directors shall bear the qualifications set out in the corporate governance provisions in the Banking Law and shall have the professional experience required for carrying out the planned activities

- e. Its envisaged fields of activity shall be in harmony with planned financial, managerial and organizational structure
- f. Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than TRY 20.000.000
- g. Its articles of association shall not be in conflict with the provisions of the Banking Law
- h. There should be a transparent and open partnership structure and organizational chart that will not constitute an obstacle for the efficient supervision of the institution
- i. There should not be any element that hampers its consolidated supervision
- j. The work plans for the envisioned fields of activity, the projections regarding the financial structure of the institution including capital adequacy, the budgetary plan for the first three years and an activity program including internal control, risk management and internal audit system showing the structural organization must be submitted.

Development and investment banks are obliged to become members of the Banks Association of Turkey, which is a professional organization having the status of public legal person, within one month following the date of receipt of their operating permission.

7. What kind of activities can development banks engage in?

Development banks in Turkey can involve in activities stated on below:

- a. Granting any sort of loan, either cash or non-cash
- b. Carrying out any type of payment and collection transactions, including cash and deposit payment and fund transfer transactions, correspondent bank transactions, or use of check accounts,
- c. Purchasing transactions of commercial bills,
- d. Safe-keeping services,
- e. Issuing payment instruments such as credit cards, bank cards and travel checks, and executing relevant activities,
- f. Carrying out foreign exchange transactions, trading of money market instruments, trading of precious metals and stones and safekeeping such,
- g. Trading and intermediation of forward, future and option contracts, simple or complex financial instruments which involve multiple derivative instruments, based on economic and financial indicators, capital market instruments, goods, precious metals and foreign exchange.
- h. Purchase and sale of capital market instruments and repurchasing or re-sale commitments,
- i. Intermediation for issuance or public offering of capital market instruments
- j. Transactions for trading previously issued capital market instruments for intermediation purposes,
- k. Guarantee transactions like undertaking guarantees and other liabilities in favor of other persons,

- l.** Investment counseling services,
- m.** Portfolio operation and management
- n.** Primary market dealing for purchase-sales transactions within the framework of liabilities assumed by contracts signed with Treasury Undersecretariat and/or Central Bank and associations of institutions,
- o.** Factoring and forfeiting transactions,
- p.** Intermediating fund purchase-sale transactions in the inter-bank market,
- q.** Financial leasing services,
- r.** Insurance agency and individual private pension fund services,
- s.** Other activities to be determined by the Agency.

8. What is the legal authority for banking activities in Turkey?

Banking Regulation and Supervision Agency is the supreme authority for banking activities in Turkey.

9. Under what circumstances can an operating license revoke or restrict?

In cases where a bank has received the operating permission on the basis of non-factual declaration or has failed to commence the activity within six months after getting the operating permission or failed to perform the activity for an uninterrupted period of six months within one year following the start of activity, the operating permission of such bank shall be revoked.

In cases where a bank has not become a member of the relevant association of institutions within one month after receiving the operating permission or has failed to pay the remaining portion of the system entrance fee to the account of the Fund and has failed to fulfil these obligations despite the warning of the Agency, such bank's fields of activity other than those covered by sub-paragraphs (a) and (b) of the first paragraph of Article 4 of the Banking Law may be individually restricted by the Banking Regulation and Supervision Board. Such decisions shall be notified in writing to the relevant parties and be published in the Official Gazette.

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 it has declared bankrupt in the country of establishment, the Board shall revoke the operating permission of the branches of such bank in Turkey.

The Board's revocation of the authorization given to a credit institution under sub-paragraphs (a) and (b) of the first paragraph of Article 4 of the Banking Law shall mean the revocation of the operating permission.

10. What are the conditions to merger/disintegration or change of shares of a bank in Turkey?

Board permission shall be required for a bank operating in Turkey to merge with one or several other banks or financial institutions, or to transfer all its assets and liabilities and other rights and obligations to another bank operating in Turkey, or to take over all the assets and liabilities and other rights and obligations of another bank, or to disintegrate, or to change shares. In the event that the relevant bodies of banks do not take a decision and commence procedures within three months after the date of permission, the permission shall be null and void.

In mergers, disintegrations and transfers of banks to be carried out pursuant to the provisions of the Banking Law, the provisions of Turkish Commercial Code No. 6762 and, on the condition that the sectoral shares of the total assets of the banks subject to merger or integration does not exceed twenty percent, the provisions of Articles 7, 10 and 11 of the Law No. 4054 on the Protection of Competition, shall not be applied. Following the finalization of merger or transfer procedures, all assets and liabilities as well as other rights and obligations of the transferred institution shall be transferred to the overtaking bank, the legal person position of the transferred institution shall be annulled and its register shall be deleted from the trade registry.

The principles and procedures applicable to the implementation of the provisions of this article shall be set out in a regulation to be issued by the Banking Regulation and Supervision Agency.

11. What are the responsibilities of Board of Directors in a bank?

The dominant partners and managers of banks whose operating license has been revoked or which has been transferred to the Savings Deposits Insurance Fund by the reason of fraudulently use the resources of the bank directly or indirectly in their own or others' interests shall return and compensate for the resources used as well as the damages that arise from such misuse, within the time period given by the Fund, by excluding the provisions of the Banking Law regarding personal liability of dominant partners and managers.

The procedures for the request of repayment and compensation of resources used as explained in this article as well as the amounts to be repaid and compensated shall be determined by the Fund within the frameworks of the investigation to be carried out by the Agency at the relevant bank.

In case of a revocation of the bank's operating license, the amounts that not repaid or compensated within the time period given by the Fund shall become Fund's receivables and shall be prosecuted and collected within the framework of the provisions of the Law No. 6183 regarding the Procedures for the Collection of Public Receivables.