

---

# TURUNÇ

Istanbul \* İzmir \* Ankara

---

## DRAFT LAW ON

- FINANCIAL LEASING COMPANIES AND
  - FACTORING COMPANIES AND
    - FINANCE COMPANIES

### GENERAL PROVISIONS

**Purpose:** The purpose of the law is to regulate the establishment and operations of financial leasing companies, factoring companies and finance companies.

**Scope:** Financial leasing companies, factoring companies and finance companies will carry out their operations in accordance with this law.

**Banks:** This law shall not be applicable to banks.

**Financial leasing transactions** by participation banks, development banks and investment banks shall be governed by this law.

**Leasing of activities** by financial leasing companies shall not fall under this law.

Provisions of the Law on Financial Leasing of Residences, No. 5582 regarding the *financial leasing of residences* are reserved.

For those matters that are not regulated under this law, general principles of law will be applicable.

**Permission for Establishment and Operation: Two permissions** The Banking Regulation and Supervision Board (“Board”) is the authority to grant permissions both for establishing financial leasing companies, factoring companies and finance companies, and for the operation of these companies. Applicant gets an answer within three months upon application. Any discrepancies must be completed within six months; otherwise, the application shall be deemed void. The permission for operation must be requested within six months upon the permission for establishment.

**Conditions:** The following are ‘must’s for establishing a company:

- in a form of a joint stock company,
- bearer share certificates against cash,
- only qualified founders as set forth in the law,
- minimum YTL 55 million (approximately USD 50 million, EURO 32 million)

- paid up capital,
- articles of association compliant with this law.
- transparent shareholders composition to allow effective auditing.

**Amendments of articles of association:** For amending the articles of association and to register the amendments with the Trade Registry, the opinion of the Banking Regulation and Supervision Agency is required.

**Transfer of shares:** The permission of the Board is required: (i) for any transfer of shares that gives more than 10% shareholding interest to a person or that changes the control in the company; (ii) issuance of any privileged shares. Any transfer of shares entered into the share books need to be notified to the Board.

**Merger, Acquisition, Split-Off and Dissolution:** Provided that the Board's permission is obtained, any merger or acquisition or split-off or dissolution shall be subject to general rules applicable to those transactions.

**Financial Reporting:** Pursuant to rules and procedures to be determined by the Agency and/or the Board.

**Provisions:** Provisions to cover future losses should be set aside pursuant to rules and procedures to be determined by the the Board. In calculating the corporate tax base, the provisions shall be taken into account as a cost item.

**Associations:** Association of Financial Leasing Companies, Association of Factoring Companies and Association of Finance Companies are established as professional chambers holding legal entities. All Financial Leasing Companies, Factoring Companies and Finance Companies must become members to the pertinent associations.

## **DRAFT PROVISIONS ON FINANCIAL LEASING COMPANIES**

**Financial Leasing Agreement:** An agreement to allow the lessee to keep the possession of a property which is owned by the lessor (\*) against a rental. The agreement need to be made by a notary public. Agreements for real estates has to be registered with the deeds office, and movables with the pertinent registry, if applicable. The agreement must be notified to the Association of Financial Leasing Companies by the lessor. However, the parties may contract that the lessee to buy the property ath the expiration of the agreement.

### ***Rights and obligations of the parties:***

#### Lessee:

- is the possessor of the property and may make full use of it under the agreement;
- has to make use of the property in care pursuant to the agreement;
- is responsible for maintenance and protection of the property, except otherwise contracted for; and bear the maintenance and repair costs;
- is responsible for loss and damage to the property;

Lessor shall not be liable for the defects in the property purchased from a third party at the choice of lessee; the same applies even if the purchase is made from lessor.

**Insurance:** Leased property must be insured. It should be decided in the agreement who will insure the property and who will pay the premiums.

(\*) The law defines the 'lessor' as participation banks, development and investment banks and financial leasing companies.

**Subject of Financial Leasing Agreement:** Save multiplied software, with the exception of intellectual property, all movable and immovable assets can be subject to financial leasing.

**Fee for Financial Leasing:** Parties determine the fee for financial leasing and payment terms freely.

**Financial Leasing from Abroad:** Financial leasing to be made in a foreign country shall be registered by the Undersecretariat of Customs.

**Transfer:**

**By lessor:** Unless otherwise provided in the agreement, lessor cannot transfer the title of the property to a third party. If the transfer is provided for in the agreement, the property can only be transferred to another lessor. For the validity of the transfer lessee need to be notified.

**By lessee:** Lessee can transfer its rights and obligations and its title as lessee to a third person provided that it obtains the permission of lessor, which need to be registered. With respect to real property, lessee can transfer its possession to a third person, provided that it notifies lessor; for other property transfer of possession is possible provided that it is contracted for in the agreement.

**Prohibited transactions:** Financial Leasing Companies cannot deal with insurance transactions, except acting as intermediary limited to the goods subject of the financial leasing agreement.

## **DRAFT PROVISIONS ON FACTORING COMPANIES**

**Factoring Agreement:** A Factoring Agreement:

- is a contract that allows to providing finance to cause payment against the purchase of receivables arising out of invoices regarding sale of goods and services either reversible or irrevocable;
- must be made in writing;
- can be made only for one invoice (i.e. one agreement for one invoice);
- is subject to general provisions with respect to the rights and obligations of the parties.

### **Centralized Invoice Registration System**

The Association of Factoring Companies has to establish a Centralized Invoice Registration System ("System") to keep the serial numbers of invoices evidencing the grounds of factoring transactions. Factoring Companies have to send the details of their invoices to the Association of Factoring Companies. Factoring Companies must check from the System whether the invoices submitted to them had been used in another factoring transaction before.

**Prohibited transactions:** A Factoring Company:

- cannot carry out activities other than its defined operations;
- cannot give guarantees, sureties or bank guarantee letters, except guarantees and sureties given limited to factoring transactions;
- cannot collect money for any reason whatsoever, except issuance of securities, loans form international markets, providing funds from shareholder(s), banks, money markets and organized markets;
- cannot purchase or undertake collection of receivables arising out of sale of goods and services that are based on invoices, even if they are based to bill of exchange;
- cannot deal with insurance transactions, except acting as intermediary limited to the goods subject of the factoring agreement.

## **DRAFT PROVISIONS ON FINANCE COMPANIES**

**Finance Agreement:** A finance agreement:

- is an agreement crediting the purchasing of all kind of purchase of goods and services on behalf and in account of the purchaser, or by directly making payment to the seller upon supply and delivery of the goods or services
- must be concluded in writing;
- is subject to general provisions with respect to the rights and obligations of the parties.

Furthermore, Finance Companies must conclude written agreements with suppliers of goods and services.

Repayments are made to Finance Companies by borrowers.

**Prohibited transactions:** A Finance Company:

- cannot carry out activities other than its defined operations;
- cannot deal with insurance transactions, except acting as intermediary limited to the goods subject of the finance agreement.

**TURUNÇ**