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## Setting up operations in Turkey

Today's uncertainties at the European Union's eastern border have left companies questioning the safety of their people and the continuity of their operations in that part of the world. Businesses in the IT and BPO sectors that had found talent and growth opportunities in countries such as Ukraine and Moldova are now rethinking their strategy and options to move operations across the border, either temporarily or permanently.

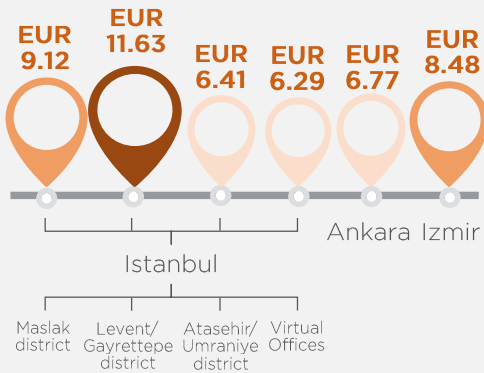
Kinstellar's Istanbul office has prepared a quick overview of the most important aspects that you need to consider if you decide to move your operations to Turkey.

# Key facts about Turkey



## AVERAGE OFFICE LEASE COSTS

per sq. m. per month for Class-A Office buildings

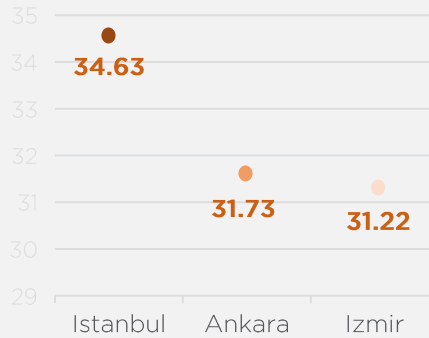


Lease costs for Class-B buildings in Istanbul are generally **38% lower**.



## COST OF LIVING INDEX<sup>1</sup>

Cost of living indices:

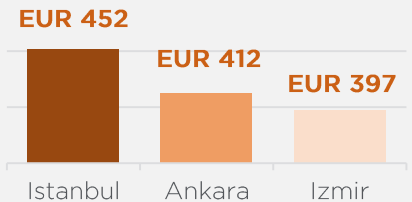


Turkey is number 38 out of 41 countries in Europe in terms of cost of living. The average cost of living is 31, making Turkey a **good place** for working professionals.



## SALARIES

Average monthly salary (net of taxes) in Turkey:



IT/BPO sector average salary in Turkey:

- The salary for the IT/BPO sector in Istanbul is **40% higher** than salaries in the rest of Turkey
- The average salary ranges from **EUR 414** (Technical support) to **EUR 2,144** (Executive/C-Level) net of taxes



## TAX

Corporate income tax (for 2022)

**23%**

Personal income tax

**up to 40%**

VAT

**18%**



## DATA PROTECTION REGULATIONS

If a company moves its team or establishes an entity in Turkey, the **Law on the Protection of Personal Data** (which contains provisions similar to the GDPR) will apply with respect to the protection of personal data and to any international transfers of personal data.



## COVID-19 RESTRICTIONS

### Lockdown measures

There is no national lockdown. The vaccination rate is 85.35% in the adult population.

### Travel and quarantine restrictions

International travel subject to minimal restrictions. Fully vaccinated passengers are not required to have a negative COVID-19 test result before traveling to Turkey from Ukraine and they will also be exempt from the quarantine. Passengers who are not fully vaccinated should present a negative PCR test result received within the last 72 hours or a negative rapid antigen test taken within the last 48 hours to avoid quarantine.

### Forced business closures

There are no forced business closures at the moment. It is not mandatory to wear a mask outdoors, but it is mandatory to wear a mask in closed areas where social distance is not maintained and cannot be adequately ventilated.

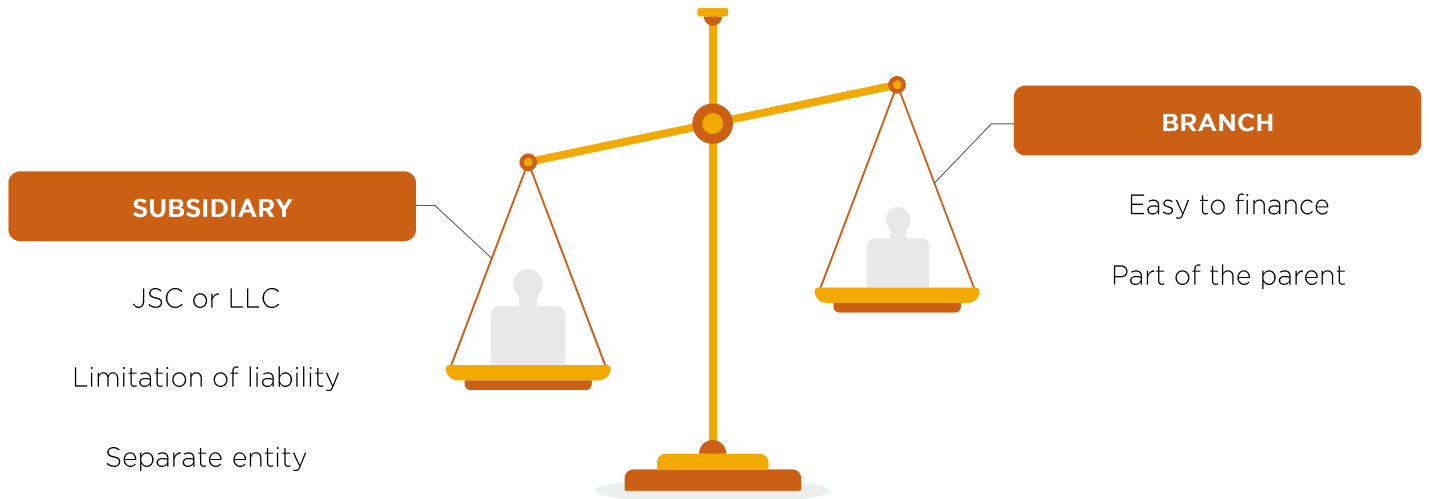
### Workplace restrictions and guidance

Work-from-home (WFH) is recommended if possible. Where WFH is not possible, employers have to ensure preventative measures for a safe working environment.

<sup>1</sup> Measuring the relative cost of living by calculating the average cost of a number of specific goods and services required for people to live an average life.

# Choice of business entity

Joint Stock, limited liability or branch office?



CRITERIA	JOINT STOCK COMPANY (JSC)	LIMITED LIABILITY COMPANY (LLC)	BRANCH OFFICE (BO)
<b>Minimum registered capital</b>	Minimum capital requirement for a JSC is TRY 50,000 (approx. EUR 3,156). One-fourth of the capital is to be paid in cash at the date of incorporation, while the remainder can be paid within 24 months from the incorporation date.	Minimum capital requirement for an LLC is TRY 10,000 (approx. 632). However, higher capital requirements are set forth under different legislation depending on the sector in which the LLC operates.  Share capital is to be paid by the shareholders within 24 months from the incorporation date.	Allocation of separate capital to the BO is mandatory. However, there is no specific requirement on the type and amount of capital. In practice, the trade registry requests allocation of a minimum of TRY 10,000 (approx. EUR 632) as the capital allocated to the BO, which is the minimum amount for limited liability companies.
<b>Minimum number of shareholders / members</b>	One shareholder (an individual or legal entity) or more with no limitation on maximum number of shareholders.	Minimum of one (1) shareholder and a maximum of fifty shareholders.	A BO may be incorporated by a company either established in Turkey or abroad.
<b>Shareholders Registration</b>	Publicly announced in the Trade Registry Gazette.	Publicly announced in the Trade Registry Gazette.	Publicly announced in the Trade Registry Gazette.
<b>Liability of the shareholders / members</b>	Liability of the shareholders of a JSC is limited to their capital contribution amount.  The legal representatives (i.e. Board members) of a JSC are responsible for the public debts (such as corporate tax, social security premiums of employees and income tax withheld from employees' salaries) that cannot be collected from the JSC itself with their individual assets pursuant to the provisions under the Tax Procedure Law.	Liability of the shareholders is limited to their capital contribution amount.  Shareholders ( <i>limited to their capital contribution ratio</i> ) and managers may be held liable for payment of public receivables (such as corporate tax, social security premiums of employees and income tax withheld from employees' salaries) that cannot be collected from the LLC itself with their individual assets pursuant to the provisions under the Tax Procedure Law.	The parent company is directly liable for all the obligations of the BO irrespective of the amount of capital allocated to the BO. The liabilities arising out of the activities of a BO belong to the parent company. In general, the parent company will be liable towards third parties for the transactions realised by the BO in Turkey. If the representative manager of the BO misuses his/her authorities, the parent company would be responsible towards a bona fide third party.

<p><b>Way of transfer of the shares</b></p>	<p>Share transfers can be conducted through the endorsement and delivery of share certificates and updating of the register of shareholders.</p>	<p>Share transfers must be approved by the general meeting, and there must be a written and notarised share transfer agreement.</p>	<p>As the BO is not a separate legal entity, in the event of the transfer of the parent company, the BO shall also be subject to the transfer.</p>
<p><b>Governing body structure</b></p>	<p>The general meeting and Board of Directors are the two authorised organs of a JSC required to operate and also to represent the company towards third parties.</p>	<p>The general meeting is the ultimate decision-making authority.</p> <p>Management and representation of an LLC is carried out by one or more managers. If there is more than one manager, a board of managers will be formed. At least one shareholder should be entitled to represent and manage the company.</p>	<p>Decisions with regards to a BO are adopted at the parent company level. That said, a BO is represented by a representative manager, so the powers of local management and decision making is delegated by the parent company to the representative manager. Regardless of nationality, such person should officially reside in Turkey. This rule aims to have at least one addressee within the Turkish territory.</p>
<p><b>Distribution of profit</b></p>	<p>Mandatory specific preconditions: (i) audit of the annual financial statements (only in certain cases), and (ii) approval of the statements by the general meeting.</p>	<p>Mandatory specific preconditions: (i) audit of the annual financial statements (only in certain cases), and (ii) approval of the statements by the general meeting.</p>	<p>If profit is to be transferred from a branch, no dividends need to be distributed.</p>
<p><b>Capital maintenance</b></p>	<p>Technical insolvency provisions are applicable to JSCs that require the company to take immediate actions where there is significant loss of its capital (i.e. loss of one-half up to two-thirds of the capital).</p> <p>There are limitations envisaged on use of company assets through the direction of the dominant shareholder.</p> <p>Provision of financial assistance by the company to finance the acquisition of its shares by a third party is prohibited.</p> <p>Shares in treasury are limited to 10% of the share capital of the company.</p>	<p>Technical insolvency provisions are applicable to LLCs that require the company to take immediate actions where there is significant loss of its capital (i.e. loss of one-half up to two-thirds of the capital).</p> <p>There are limitations envisaged on use of company assets through the direction of the dominant shareholder.</p>	<p>N/A</p>
<p><b>Employment</b></p>	<p>At least five Turkish nationality employees should be employed for each foreign employee.</p>	<p>At least five Turkish nationality employees should be employed for each foreign employee.</p>	<p>At least five Turkish nationality employees should be employed for each foreign employee.</p>
<p><b>Bookkeeping/ Accounting</b></p>	<p>Commercial books are to be kept in accordance with the Turkish Commercial Code and comply with Turkish Accounting Standards.</p>	<p>Commercial books are to be kept in accordance with the Turkish Commercial Code and comply with Turkish Accounting Standards.</p>	<p>A BO must keep commercial books in accordance with the Turkish Commercial Code and comply with Turkish Accounting Standards separately from the parent company.</p>

<b>Audit</b>	<p>Companies, whether solely or together with their subsidiaries and affiliates, which exceed at least two of the below thresholds for two consecutive financial years, shall be subject to an independent audit from the beginning of the following financial year. The applicable thresholds are as follows:</p> <ul style="list-style-type: none"> <li>▪ Net assets to be at least TRY 35 million (approx. EUR 2.2 million);</li> <li>▪ Annual turnover (net sales) to be at least TRY 70 million (approx. EUR 4.4 million); and/or</li> <li>▪ Number of employees to be at least 175.</li> </ul>	<p>Companies, whether solely or together with their subsidiaries and affiliates, which exceed at least two of the below thresholds for two consecutive financial years, shall be subject to independent audit as from the beginning of the following financial year. The applicable thresholds are as follows:</p> <ul style="list-style-type: none"> <li>▪ Net assets to be at least TRY 35 million (approx. EUR 2.2 million);</li> <li>▪ Annual turnover (net sales) to be at least TRY 70 million (approx. EUR 4.4 million); and/or</li> <li>▪ Number of employees to be at least 175.</li> </ul>	<p>N/A</p>
<b>Financing</b>	<p>A JSC may be financed by its parent company by equity or by means of a shareholder loan with market-based interest. Loans granted to a JSC by its shareholders can be paid, even if there are other debts of the company to its creditors that are not redeemed, subject to insolvency clawback rules.</p>	<p>An LLC may be financed by its parent company by equity or by means of a shareholder loan with market-based interest. Loans granted to an LLC by its shareholders can be paid, even if there are other debts of the Company to its creditors that are not redeemed, subject to insolvency clawback rules.</p>	<p>A BO could be financed through the provision of funds from the head office, but such provision of funds may not be regarded as a loan, as the branch and the head office are part of the same legal entity. This could result in different tax consequences in terms of withholding taxes on interest income and interest expense tax deductibility.</p>
<b>Repatriation of profits</b>	<p>A JSC can expatriate profit to the shareholders/parent company through the distribution of dividends.</p>	<p>An LLC can expatriate profit to the shareholders/parent company through the distribution of dividends.</p>	<p>A BO can freely remit its profits to the head office, as it is not a separate legal entity. This could result in different tax treatment when the distribution of dividends is not tax exempt.</p>
<b>Wage and other taxes <sup>2</sup></b>	<p>Corporate and value added tax obligations are applicable to JSCs. There is also a dividend withholding tax of 15% on any dividend distributions. This rate can be reduced for foreign shareholders if a double tax treaty exists. Additionally, salaries of the employees are subject to income tax in Turkey.</p>	<p>Corporate and value added tax obligations are applicable to JSCs. There is also a dividend withholding tax of 15% on any dividend distributions. This rate can be reduced for foreign shareholders if a double tax treaty exists. Additionally, salaries of the employees are subject to income tax in Turkey.</p>	<p>Corporate and value added tax obligations are applicable to BOs. Withholding tax only applies to the portion of the profit that is transferred to the headquarters from Turkey. Additionally, salaries of the employees are subject to income tax in Turkey.</p>

<sup>2</sup> Detailed tax advice should also be obtained, including on transfer pricing principles relevant to the arm's length transactions for the services to be provided by the JSC/LLC/BO to the parent company.

# Setting up your office

An office can be easily set up with a minimal initial investment through appropriate lease arrangements that generally can be very flexible.

## Rent

Rent is usually calculated on a per-square-meter basis and it is subject to annual consumer price indexation.

## Space

There is a distinction between net leasable area (which is the area of the leased premises) and gross leasable area (which is the area of the leased premises plus parts of the common areas serving only the leased premises). Space measurement is often agreed.

## Operating expenses

The tenant pays most (or all) operating expenses directly related to the leased premises over the entire term of the lease.

## Service charge

The maintenance of an office building and its common areas is the responsibility of landlords, but the landlord typically passes through these expenses as well as the operating expenses for the common areas to the tenants by means of a service charge. Capital expenses related to the building are typically not included in the service charge and are covered by landlords.

## Control of costs

In general, the costs of space can be controlled by introducing indexation, caps and other contractual mechanisms. There could be audits to verify the actual amount of the service charge.

## Fit-out

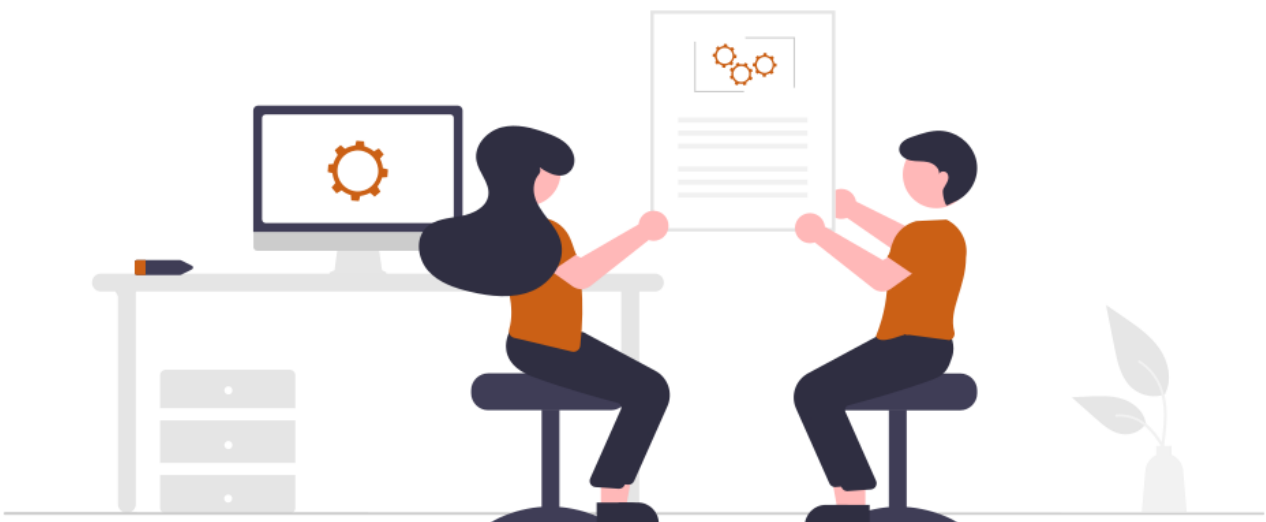
Fit-out works are usually done at the expense of the tenant. The tenant can deduct the costs for the fit-out works through the tax depreciation charges or expenses.

## Lease term

Lease-term provisions could be flexible. There are contractual mechanisms to ensure that the lease agreement will be binding for any new owner of the office building if the building is sold before the lease term expires. The tenant can also record the lease to the title deed for such purpose as well.

## Termination

Typically, unilateral termination rights of the tenant are difficult to negotiate. However, there could be extensive termination rights in case of default of the landlord and there are tenant-friendly laws in force.



# Moving your team to your new office

## 01 | Immigration rules



- ✓ A special type of residence permit called "**humanitarian residence permit**" can be granted to individuals of other countries who experience extraordinary circumstances and who want to seek international protection from Turkey. Those fleeing the war can be evaluated under this scope. If approved and issued, the term for such permit will be decided by the relevant immigration authority (the Turkish Immigration Office). Those who wish to apply for this type of permit should apply to the government within 10 days of their arrival.
- ✓ On the other hand, as per the current legislative framework in Turkey, a distinction should be made between citizens of Council of Europe member states and non-Council of Europe citizens in terms of refugee protections. As Ukraine is a member of the Council of Europe, Ukrainian asylum-seekers can be granted "**international protection status**" and enjoy full protection as a refugee for a well-founded fear of war or persecution due to various reasons, if their application is concluded positively by the Turkish Immigration authorities.



Citizens of Ukraine must apply to the police department at the border control at the Turkish border or, if the person is in Turkey, to the Turkish Immigration Office affiliated with the Turkish Ministry of Interior in order to be granted these above-mentioned rights. Citizens who are evaluated and accepted in this scope will be granted the relevant protection status by the government of Turkey.

The governing body for such procedure is the Turkish Directorate General of Migration Management. More information on asylum procedures can be found at the web page of the Turkish Ministry of Interior: <https://en.goc.gov.tr/refugee>.

## 02 | Remote working rules

**Employers must follow certain obligations according to the Remote Work Regulation.**



Conclude the remote work agreement in writing.



Provide the necessary equipment and work tools, unless otherwise agreed.



Specify and comply with the working hours. Overtime can be done with the written request of the employer and the acceptance of the employee in accordance with the provisions of the relevant legislation.



Inform the employee on the data protection legislation. The employer shall determine the scope of the data that is to be protected in the agreement and take the necessary measures to protect such data.



Inform the employee on occupational health and safety. The employer is obliged to monitor the health condition of its employee, provide training to its employees on occupational health and safety rules, and take the necessary measures regarding the equipment it provides.



### Individual employment contracts

- Not subject to a specific legal form – Mandatory requirements for its content set out under the Labour Code.
- Both indefinite and fixed-term contracts are possible; the latter can be used as an exception in limited cases listed in the Labour Code.
- Minimum monthly wage requirements – As of January 2022, the minimum monthly wage is TRY 4,253 (approx. EUR 262) and hourly rate is TRY 18.9 (approx. EUR 1.16).



### Working hours and rest breaks

- Each employee is entitled to a weekend break and rest break, depending on the working hours.
- Each employee who has been working for at least 1 year in the same workplace is entitled to annual paid leave; the duration of the annual leave varies depending on the employment term as follows: (i) 14 days for 1 to 5 (inclusive) years of employment; (ii) 20 days for 5 to 15 years of employment; and (iii) 26 days for 15 years of employment or more.
- Approximately 15 days per year of public holidays, not included in the annual leave and differs each year.



### Termination of employment contracts

- Possible to terminate the employment agreements of employees either (i) with prior notification by complying with the statutory notice periods with or without a valid reason, depending on the employee being subject to job security, or (ii) immediately with a just cause.
- Employees may enjoy special protection (i.e., certain payments such as severance, notice and unused vacation payments and contractual benefits and the right to file a lawsuit for restitution to their former position) against dismissal, if the employee concerned is entitled to benefit from job security rules.
- If the employer terminates an employment contract with a notice period, even with a valid reason, where the provisions regarding job security are applicable, employees accrue salary and all legal entitlements and other contractual benefits arising from the employment contracts, including but not limited to their severance payments (i.e. between four to eight months of gross salary), unused vacations, and a notice payment (where notice periods are not observed) shall be paid.
- Unfair dismissal claims are common before the Turkish courts.

For more information, please contact  
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