

Foreign Language Trade Names are Now Permitted in Turkey

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The Turkish Ministry of Customs and Commerce has published a Communiqué in the Official Gazette on 14 February 2014 with the intention of introducing a guideline for the substance of company trade names and for individual trades people operating commercial enterprise.

The basic principles for selecting and registering a trade name are defined in the Turkish Commercial Code (TCC). Under Turkish law, trade names for incorporated companies and limited liability companies are made up of three elements: the company's name, the company's subject, and the company's type (such as "ABC Technology Limited").

The Communiqué clarifies the TCC principles and requirements for trade names as follows:

- A trade name cannot be stated in such a way which misleads third parties and creates the wrong impression about the company's owner, or about the company's scope, importance, or financial status;
- A trade name cannot contradict public order, morals, national interests, nor may it bring harm to cultural and historical values;
- The words "Turk", "Turkish", "Republic" or "National" used on their own can only be used in a trade name with the consent of the Council of Ministers about that specific company or tradesperson. The exception to this is where the mentioned word(s) are the name or surname of the individual tradesperson;
- Companies established for the purpose of merging with other companies should use the term "holding" in their trade name;
- A trade name containing a country name will only be accepted by the Council of Ministers if the relevant national authority's consent is submitted;
- The names or abbreviations of Turkish or international institutions and organizations may only be used as a part of the trade name where the institutions or organizations own or are the shareholder of the company;
- Trade names which are withdrawn from the corporate registry cannot be registered by another company or trades person for five years, starting from the date the withdrawal is published in the Turkish Corporate Registry Gazette.

Apart from the principles listed above, the Communiqué clarifies the cases of confusion as follows:

- Any word ("ABC" in the example above) may be registered as the name element of a company's trade name, irrespective of the language, provided the subject of the company and company type are also mentioned in Turkish;

The name element of a trade name should not be identical with the name element of an existing registered trade name. If such similarity exists, the TCC states that the later registered company must add extra word or suffix in order to differentiate the two trade names. For example, if there is already a registered company using "ABC" for the name part of its trade name, ABC Technology Limited must differentiate the "ABC" part (for example, changing to "ABCXY Technology Limited").

- The name element of a registered trade name can be identical with the corresponding part of an existing registered trade name, provided the areas of activities stated in the two trade names are different. For example, prior registration of "ABC Clothing Limited" will not prevent registration of "ABC Technology Limited".

Failure to comply with the above principles gives rise to the right for the existing trade name owner to initiate a lawsuit within a year of the date it becomes aware of the new trade name.

Accordingly, the Communiqué opens the way of using non-Turkish words within the name element of trade names. Until now, this was required to also include Turkish words and companies who wished to use a non-Turkish word were required to seek permission from the Council of Minister's permission. Obtaining such permission required companies to meet certain requirements for paid capital or development strategy (among others) and the process would often take 2-3 years.

While the Communiqué expands the available scope of trade names in Turkey for foreign companies, this also introduces a risk for such companies. That is, foreign companies which are not operating within Turkey, but do offer goods and services to the Turkish market will need to be careful about their trade names since they could become subject to trade name applications by third parties, potentially even in bad faith.

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