

Turkish Tech-Incentive Policy Moves On. The New Regulation On The Investment Support Program For Technological Products

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Turkish entrepreneurs, small-medium sized enterprises and start-ups which come up with ideas for projects for hi-tech products frequently give up and not even endeavor to follow up their ideas due to lack of financial support. In an emerging market with a confident new generation of innovators, an efficient techno-initiative and investment support policy and a defined program are always needed as a gate opener.

Turkish Ministry of Science, Industry and Technology (**the "Ministry"**) answered the need of those, who are willing to realize their projects. On 29 April 2014, Regulation on the Investment Support Program for Technological Products ("**Regulation**") was published in the Official Gazette of Turkey. And recently, the procedures and principles of this program ("**Procedures and Principles**") were published on the web site of the Ministry. The Procedures and Principles are the instruments that will help implement the Regulation.

The main scope of this investment support program is for technological products (the "Program"). The Program brings a **non-recourse financial support up to TRY 10.000.000** to the entities which qualify.

Who, Where and How

Application conditions which are regulated under Article 6 of the Regulation and Article 5 of the Procedures and Principles are as follows:

- The product must fall under the technological categories which are counted in a list attached to the Procedures and Principles. These categories can also be observed as important sectors which are prioritized (**the "Priority Sectors"**). The product must be a first-comer in Turkey even if it was previously produced and marketed in other countries. The Priority Sectors include pharmaceuticals, electronic devices, transportation vehicles, media and broadcasting, telecommunications, computer programming, information services, scientific research and development, chemical products, metal manufacturing and electrical equipment.
- The entities which apply for the investment support must have either (i) completed their innovative research and development project in Turkey or abroad not more than five years ago or (ii) obtained a product patent granted upon (substantive) examination (=incelemeli patent) as a result of research and development efforts resourced locally., or (iii) obtained an Investment Permit in the Technology Development Zones as per the Regulation on Technology Development Zones published on the Official Gazette of Turkey on 12 March 2014, or a report in favour of the product qualifying as a technological product.

It is only legal entities, i.e. corporate entities which may benefit from the Program. It would be beneficial to prepare ahead of time and establish a company prior to applying to the Ministry. The authorized department of the Ministry for processing these applications is the General Directorate of Science and Technology (**the "General Directorate"**).

According to the information received from the web-site of the Ministry, the first application period has commenced on 17 July 2014 and the deadline for the applications is 3 October 2014. An immediate concern is that the time

allowed is rather scarce when one thinks about the nice summer weather in Turkey and surrounding regions.

Processing of the Applications

After the Directorate has pre-examined the applications, the ones which meet the conditions will be submitted to the consideration of the examination commission (**the "Commission"**) which consists of five members who will execute a substantive review on these applications.

According to the Article 9 of the Regulation, the Commission shall finalize its review on the applications within 85 business days which is meant to start running from the application date. Naturally, the review results in either granting of the investment support or refusal. As this constitutes an administrative act, such decisions are open to administrative adjudication.

Consequences of Granting the Investment Support

If the application is granted an investment support, an agreement covering the terms and conditions of the investment is executed by and between the Ministry and the application entity. The Ministry is not only entitled to monitor and audit the flow of the investment but also to intervene and impose its instruction, when it deems necessary. Reporting functions of the General Directorate are further detailed in Art. 19 of the Procedures and Principles. Considering the modern governance standards of the innovation incentives, the Regulation also demands from the innovators annual reports during a term of five years. Considering the maximum duration of support is 36 months running from the date of execution of the agreement, this gives the Ministry sufficient post-investment audit headroom.

Naturally and as per Art. 17 of the Regulation, a business plan must accompany the agreement and provides sufficient information as to how and when and for which support item the investment will be effected, to also help avoid utilization of the investment in a disproportionate, unprofessional or even unethical manner.

Furthermore, as per Article 19 of the Regulation, the machines and equipment which are purchased using the investment support may not be transferred, sold or leased for 5 years beginning from the date on which the (last tranche of) investment support is effected. Furthermore, it is not allowed to establish any kind of pledge over the property. Of course this does not prohibit third parties from attaching the invested property as a result of unpaid debts of the innovator or the invested property being placed under preliminary attachment or injunction. Such events shall immediately be reported to the Ministry within seven days of the enforcement measure.

In case the invested entities do not fulfill their contractual obligations or violate any provision of the Regulation, the investment support provided to the entities will be cancelled and restituted.

The Agreement, unlike the administrative decision refusing or granting the investment support, qualifies as a contract of private law as the subject of the agreement is not public service or utility. Consequently the procedural and substantive law to be applied to any disputes is principally Code on Civil Procedure numbered 6100 and Code on Obligations numbered 6098.

What are the Investment Support Items?

The main items of the investment support are as follows:

- Machine and equipment support
- Loan interest support
- Operating costs

Naturally, whichever item is utilized, the investment support is effected upon presentation of sufficient documentation of acquisition of such item, for example, invoices for the machinery and equipment to be purchased (Art. 15 of the Procedures and Principles)

The upper monetary limits of the investment support for the small and medium sized enterprises are TRY 10.000.000 whilst the upper limit for the big-size enterprises is TRY 2.000.000.

Conclusion

It is for sure that the Program will increase the appetite for innovation for realization of an innovation and support efforts of the entities aiming to deliver new hi-tech products to the market. Moreover the Program looks like compact, defined and well-designed in order to encourage the entrepreneurs and start-ups and therefore improve the competitive skills of Turkey in the technology market. These points deserve praise.

However two additional approaches may be quite useful:

The hi-tech product is one that will not only affect or be beneficial for the national population, but probably and most hopefully be one that will be used in the global market. It is therefore entirely beneficial to look at other international hi-tech incentive systems to see where the competitive advantage is. As the research and development becomes more modular day-by-day, this may help detect whether further incentivizing an innovation of a sub-part of a product or a technological process may be more efficient.

Another point is that it would probably be best if the current formulated involvement of the government in substantive financial and production monitoring and monitoring activities within the Program is replaced with a more effective and expert-driven governance standard by engaging universities, scientific and even financial institutions and advisors, investment houses and angel-investment institutions. In that way the government can stand back, be guided by the expert institutions and have a much better bird's view for assessing the financial and scientific success of the incentive policy it introduces.

However these points should serve as an approach for enhancement and for long-term structuring of the investment programs on a more international and global scale to widen the customer base and interest groups for such innovations. For the time being however, it should be about "*not taking the right decision, but taking the decision and making it right.*"

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