

employee can ask the lessee for this information.

- Employment contracts that provide for worse fundamental employment terms than those applicable in the lessee's enterprise are invalid and in this case the employee can demand equal treatment anyway. Obviously this does not apply in the case of one of the two exemptions above.
- And, last but not least, if a lessor does not grant the same fundamental employment conditions to the leased employee, his labour leasing licence may be withdrawn and not be renewed.

As for the time frame, it is important to note that the modifications outlined above come into force from 1 January 2004. However, if both parties agree to the validity of a collective agreement for their employment contract, the changes of law mentioned above will apply from that day on. If there is no such individual contract, the legal situation is less clear: the question whether or not the new law is applicable before 1 January 2004 with regard to the fact that collective agreements exist in the meantime is strongly at issue and can therefore not be answered reliably at this point in time.

*Contributed by Angelika Baumgartner and Martin Fischer,
German-British Chamber of
Industries & Commerce, London.*

Turkey

Recent developments in e-commerce law

Turkey, whose family, property, wills, contracts and civil procedural laws are adopted from Switzerland, commercial law from Germany, criminal law from Italy and administrative law from France, has not broken with tradition and has turned to Europe for the new era of law-making concerning e-commerce. Hence, not only does Turkey ensure its law keeps pace with the new technology but the country also complies with one of the cornerstones of the European Union.

Electronic Signature Law

The first step was to launch the MERNIS Project, which denotes the electronic database for accurate record keeping of Turkish citizens' IDs so as to monitor tax collection, military service, justice, health and national defence systems more effectively. The enactment of a law on electronic signatures was envisaged as the second step and therefore the Ministry of Justice appointed a commission for the preparation of the Turkish Electronic Signature Law. The Commission completed the preparation of a Draft Law on Electronic Signatures (the 'Draft Law') in July 2002, which, it is hoped, will be enacted this year. As stated by the drafters in their rationale, the Draft Law is based on the EU Directive on Electronic Signatures, in addition to the electronic signature laws of Germany, Belgium, Austria and France.

Scope

Essentially, electronic signatures are allowed to be used for transactions and contracts not subject to any sort of official execution procedure under Turkish law. By way of example, all transactions related to the transfer of real rights in immovable, certain transactions related to wills and family law or any kind of transaction requiring the presence of a notary public would not benefit from the said law. Yet, those which are pursued either between/among private parties or administrative authorities are given full faith and credit and accepted as conclusive evidence (unless proved otherwise) so long as they abide by the said scope.

Qualified electronic signatures and certificates

The Draft Law recognises transactions to be valid if signed by 'qualified electronic signatures'. A qualified electronic signature is created by the use of electronic means under the sole control of the signatory, which helps detect any change of data pertaining to the signature. Furthermore, the qualified electronic signature should be uniquely linked to the signatory and such signatory could be identified by its use. Such detection and identification are performed using electronic certificates attached to the signed messages that are issued by the certification service providers.

Certification service providers

Certification service providers are allowed to operate by a prior notification to the Telecommunication Board as opposed to obtaining an administrative licence or any

other accreditation. Thus, the prior affirmative involvement of an administrative authority is not required for the establishment phase of such enterprises.

Such notification includes detailed information regarding the service provider's qualified personnel, use of trustworthy products and systems, and implementation of a secure service with all precautions taken against forgery and modification of the certificate. In the absence of these conditions, the Board may end the operation of such service provider.

Liability of service providers

The Draft Law prescribes that the rules and standards concerning service providers will be determined by a specific regulation. However, it explicitly confers that any damage suffered by third parties relying on the certificate will be reimbursed by the service provider itself unless the provider's negligence is disproved. Yet, in any occasion the provider shall be held strictly liable for any damages caused by its employees arising out of any infringement mentioned above. Neither disproving its own negligence nor proving the employees' fault would release it from such liability. Additionally, any restrictive condition that limits or abolishes the aforementioned liability to the certificate user and/or any third party is deemed to be invalid with the exception of those limiting the use of the certificate for certain types and amounts of transaction.

Foreign certificates

Finally, the Draft Law recognises the validity of a certificate issued by a service provider incorporated in a foreign state provided that a

domestic service provider guarantees it. However, the guaranteeing service provider will be held liable for any damage arising out of the infringement of the Draft Law or the implementing regulation (not yet enacted).

Contributed by Sezer Caliskan, Taboglu Law Offices, Istanbul.

Turkey

New foreign investment law in Turkey

On its way to EU accession, Turkey has been making essential amendments to numerous laws. One of the most important of these is the 'Law on Foreign Direct Investment', which entered into force on 17 June 2003.

The new Law on Foreign Direct Investment repealed the Law Concerning the Encouragement of Foreign Capital dated 24 January 1954. The reason the word

'Encouragement' was used in this Law was that it contained provisions concerning such matters as profit transfers and equal treatment, which were regarded as promotional factors at that time. However, developments in economic life and amendments to the relevant legislation during the almost half century of the Law's existence have resulted in these points being transformed from promotional factors into universally accepted principles of international investment. To accord with international definitions, the new Law has therefore been renamed the Law on Foreign Direct Investment.

The Law aims to promote and increase foreign direct investment by protecting foreign investors to the level of international standards. The new Law has amended the permission and approval system of the old Law and converted it into an information system, which means that foreign investors will not have to apply for permission and will not require the approval of the Undersecretariat of Treasury. Foreign investors will only have to provide statistical information requested by the Undersecretariat concerning their investments, which can only be used for statistical purposes.

As a symbol of a new understanding Turkish citizens are also defined as foreign investors if they reside abroad and in this way Turkish workers living abroad are added to the scope of the Law.

According to the new Law, foreign investors and Turkish investors will be subject to equal treatment provided that there are no international agreements or special legal provisions to the contrary. Thus with this new arrangement, foreign investors are not required to contribute US\$50,000 per person to be able to invest in Turkey, as was stipulated in the old Law. Foreign investors may bring a total amount of 5,000,000,000 Turkish lira (approximately US\$3,500 as of 30 July 2003) if they wish to establish a limited company with a minimum requirement of two shareholders or a total amount of 50,000,000,000 Turkish lira (US\$35,000 as of 30 July 2003) if they wish to establish a joint stock company, with a minimum requirement of five shareholders – the same rules as for Turkish investors.

Any net profits, dividends and