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1. Provide an overview of the primary sources of law, regulation and practice that govern or affect executive compensation arrangements or employee benefits. ─

There is no specific source of law applicable in relation to executive compensation arrangements or employee benefits. Such arrangements or benefits for both executives and non-executive employees are mostly regulated under individual employment contracts or internal regulations. The benefits to be provided to non-executive employees can also be regulated under collective bargaining agreements.

Back to top ^

2. What are the primary government agencies or other entities responsible for enforcing these rules? ─

There is no authorised official body to supervise the application of such compensation arrangements or employee benefits. Also, if the necessary conditions are all met to bring any claim forward in relation to the same, executives or employees can always refer the matter to the courts.

On the other hand, specific to banking sector, the Banking Regulation and Supervision Board has a guide for ensuring a better salary system for bank employees, including executives and qualified personnel. This guide introduces some principles and minimum standards in the determination of any kind of material benefits given to bank employees and executives.

Back to top ^

3. Are any types of compensation or benefits generally subject to specific corporate governance requirements or approval by shareholders or government? ─

Communiqué on Shares No. VII -128.1 requires publicly held companies to apply to the Capital Market Board (CMB) before realising the contingent capital increase within the scope of the employees' share purchase plans. Also, such application will be implemented for companies that have at least 500 shareholders .

Back to top ^

4. Under what circumstances does the establishment or change of an executive compensation or benefit arrangement generally require consultation with a union, works council or similar body? ─

In principle, consultation with employee representatives is not a requirement prior to the launch of executive compensation or benefit arrangement.

However, it is regulated under Communiqué No. II-17.1 of the CMB that the employees or their representatives should be notified with regard to the decisions concerning the employees. Unions' opinion should also be considered when the publicly held companies or listed companies make such decisions.

[Back to top ^](#)

5. Are any types of compensation or benefit arrangements prohibited either generally or with senior management? —

There is no prohibition on any type of compensation or benefit arrangements.

[Back to top ^](#)

6. What rules apply to compensation of non-executive directors? —

Stock options or performance-based payment schedules of the company cannot be used for the compensation of non-executive directors.

[Back to top ^](#)

7. Must any aspects of an executive's compensation be publicly disclosed or disclosed to the government? —

Public companies with shares traded on the exchange, on the second national market and corporate products market have to include the wages and all of the other benefits granted to the members of the board of directors in their annual activity report.

Pursuant to the Communiqué of Determination and Application of Corporate Governance, companies quoted on the stock exchange have to present the compensation principles of the members of the board of directors and executives in a general shareholders' assembly meeting for an opinion in writing. The salary policy should be published on the website of the company and financial rights of the board members and senior executives should be stated in the annual activity report.

[Back to top ^](#)

8. Are employment agreements required or prevalent? If so, what provisions are common? —

According to the Turkish Labour Act (TLA), fixed-term employment agreements should be in writing. However, there is no legal requirement for the employment agreements to be evidenced in writing if they are signed for an indefinite period. Yet, if there is no written employment contract, the employer is obliged to submit to the employee a written document indicating the general and special working conditions, daily or weekly work period, basic salary and other benefits (if, any), salary payment period, and the provisions that the parties must observe in case of termination. For this reason, employment agreements should cover at least the above-mentioned terms.

In practice, most of employers prefer signing employment agreements with their employees. In particular for executive employees, non-compete, non-solicit, confidentiality clauses are quite common in employment agreements.

[Back to top ^](#)

9. What are the prevalent types and structures of incentive compensation? Do they vary by level or type of organisation? —

The most prevalent type of incentive compensation in Turkey is bonus or premium payments paid annually.

[Back to top ^](#)

10. Are there limits generally on the amount or structure of incentive compensation? Are there limits that adversely affect the tax treatment of the employer or the executive? —

There are no limits on the amount or structure of incentive compensation.

There are some specific rules which apply for employees working in specific sectors such as banking. According to the Guide for ensuring a better salary system for bank personnel including executives and qualified personnel, published by the Banking Regulation and Supervision Agency, regardless of their nature, the benefits provided to qualified personnel should depend on personal performance, performance of the entity and ultimate performance of the bank. Forty per cent of the benefits provided to qualified personnel should be paid periodically depending on the nature of work, providing that the period is at least three years and that half of the benefits should be non-cash (eg, stocks issued by bank).

[Back to top ^](#)

11. Is deferral and vesting of incentive awards permissible? Are there limits on the length or type of vesting and deferral provisions? —

According to the Guide for ensuring a better salary system for bank personnel including executives and qualified personnel, incentive awards provided to qualified personnel should be compatible with the long-term profits of the bank and for this purpose a suitable vesting period should be determined.

[Back to top ^](#)

12. Can it be held that recurrent discretionary incentive compensation has become a mandatory contractual entitlement? —

In practice, premiums are usually agreed under individual employment agreements. However, if the employer regularly pays premiums to its employees (ie, three years in a row), although such payment is not agreed under the employment agreement, these payments become a mandatory contractual entitlement as standard workplace practice.

[Back to top ^](#)

13. Does the type or amount of incentive compensation awarded to an executive potentially affect the compensation that must be awarded to other executives or employees? —

In principle, premium or bonus payments are peculiar to each employee and employer can set specific criteria for employees' entitlement to incentive compensation. However, the equal treatment principle should be taken into account in the implementation of the determined criteria among the employees and in payment of incentive compensation.

[Back to top ^](#)

14. What are the prevalent forms of equity compensation awards in your jurisdiction? What is a typical vesting period? —

Although not regulated in law, employee stock purchase plans, stock bonuses, stock option plans and restricted stock units are the prevalent forms of equity compensations. There is no typical vesting period in Turkish law.

[Back to top ^](#)

15. Are there forms of equity compensation that are tax-advantageous or disadvantageous to employees or employers? —

Tax applications do not change based on different forms of equity compensation.

[Back to top ^](#)

16. Does equity-based compensation require registration or notice? Are exemptions, or simplified or expedited procedures available? —

Publicly held companies have to obtain the approval of the CMB when employees purchase company stocks. Employee stock purchase is also required to be notified to the Public Disclosure Platform by the publicly held company.

[Back to top ^](#)

17. Are there withholding tax requirements for equity-based awards? —

Where the employer is a company resident in Turkey grants equity based awards to its employees, it has to declare these benefits in their withholding tax statements. On the other hand, when the foreign company gives the equity-based award directly to the employee, such compensation could be considered as individual income for the employee rather than salary and it is not possible to associate the compensation with the local employer. In this case, the employee should demonstrate this compensation in its individual annual income tax declaration.

[Back to top ^](#)

18. Are inter-company chargeback agreements between a non-local parent company and local affiliate common? What issues arise? —

Inter-company chargeback agreements are not common. However, when the non-local parent company charged the cost of the stock option provided to the employee to the affiliate, this will be considered as salary by the local affiliate and subject to income taxation. If the stock option cost is not charged to a local affiliate, the employee will declare this compensation in his or her individual annual tax return.

[Back to top ^](#)

19. Are employee stock purchase plans prevalent or available? If so, are there any frequently encountered issues with such arrangements? —

The application area of stock purchase plans is not that common in Turkey. Generally, multinational companies include employees of their affiliates in Turkey in their share-based employee incentive plans.

[Back to top ^](#)

20. Are there any mandatory benefits? Are there limits on discontinuing voluntary benefits that have been provided? —

Pursuant to the TLA, salary, social security contributions, paid annual leave, paid sick leave, general health insurance contribution, weekend, public holiday, official holiday salaries, overtime payments, maternity leave or paternity leave pays are mandatory benefits.

The employer may provide to employees voluntary benefits such as daily travel and food allowance, personnel service or private health insurance. If these voluntary benefits are continuously provided (ie, three years in a row), they will be accepted as a provision of the employment agreement and the employer will not be able to discontinue or change the practice against the employee without obtaining employee's written consent.

[Back to top ^](#)

21. What types of employee benefits are prevalent for executives? Are there tax or other financial incentives or disincentives for any employee benefit arrangements? —

Personnel health insurance and life insurance premiums, leased or owned vehicles used for business purposes are prevalent types of employee benefits for executives.

[Back to top ^](#)

22. Are there prohibitions on terminating executives? Are there required notice periods? May executives be dismissed without cause? —

Under the TLA, an employment contract can be terminated by an employer either by serving the employee with notice; or terminating with immediate effect by relying on a just cause. The same rule applies for executives. That is to say, there is neither a specific notice period nor termination procedure in terms of executives.

The TLA provides job protection to employees in particular cases. If an employee has been working for at least six months at a workplace which has 30 or more employees, the employer can only terminate the employment contract by relying on a valid reason. There is no distinction between regular employees and executive employees in the application of job protection provisions. However, an employer's representative and his or her deputies who are entitled to manage the entire enterprise with authorisation to hire and terminate employees cannot benefit from job protection provisions. On this basis, an executive who is granted such authorities can be dismissed without a valid reason.

Valid reasons can be related with capability or behaviour of the employee, or the requirements of the enterprise, workplace or the work.

TLA regulates the minimum notice periods as follows:

- for employment of less than six months: two weeks' notice;
- for employment between six and 18 months: four weeks' notice;
- for between 18 months and three years: six weeks' notice; and
- for employment longer than three years: eight weeks' notice.

Those notice periods can be increased by the parties.

With regard to just causes, these are classified under three categories as follows: reasons of health; cases that are incompatible with morals, goodwill and similar circumstances; and force majeure. In the case of just cause, the employment will be terminated with immediate effect.

[Back to top ^](#)

23. Are there statutory or mandatory minimum severance requirements in your jurisdiction? Are there any other mandatory, post-employment benefits? —

The employee is entitled for severance payment if she or he has a seniority of at least one year at the workplace.

If the employment is terminated based on cases that are incompatible with morals, goodwill and similar circumstances, the employer will not make a severance payment. However, if the employment agreement is terminated based on a valid reason or for reasons of health or force majeure the employer should make the severance payment.

Notice compensation (in lieu of the notice period), unused annual vacations, pro rata portion of the bonus payments, if any, are the other post-employment benefits.

[Back to top ^](#)

24. What executive severance payment level is typical? —

Only the employees who have served the company for a period of at least one year can demand severance payment. The employer must pay severance payment at the rate of 30 days' salary for each full year as of the date on which the employment relationship has commenced. Payment must be made pro rata to the service period of the employee within a year. Calculation of severance payment must be made based on the latest salary and other benefits (such as bonus). However, in any case, the maximum amount to be paid to an employee as severance payment for now is 4,297,21 lira per year.

[Back to top ^](#)

25. Are there limits on dismissal for 'cause'? Are there any statutory limits on 'constructive dismissal' or 'good reason'? How are 'cause' or 'constructive dismissal' defined? —

Just causes are classified under three categories as follows: (i) reasons of health; (ii) cases that are incompatible with morals, goodwill and similar circumstances; and (iii) force majeure.

If the employer terminates the contract because of the acts of the employee that are incompatible with morals, goodwill, he or she must use his or her right within six working days as of the date when he or she learns the act of the employee. However, the employer cannot exercise this right if the act took place a year or more in advance of when the employer discovers it.

[Back to top ^](#)

26. Are 'gardening leave' provisions typically used in employment terminations? —

Garden leave is not regulated under the TLA. However, if the parties agree on garden leave terms in writing, then they are applicable. In practice, garden leave clauses are common for executives of multinational companies.

[Back to top ^](#)

27. Is a general waiver or release of claims on termination of an executive's employment normally permitted? Are there any restrictions or requirements for the waiver or release to be enforceable? —

In principle, general waiver or release of claims signed by the employees are not valid. The employee or executive can file a claim even she or he signs a general waiver.

However, if the employee or executive waive from a court case, then waiver will be valid.

[Back to top ^](#)

28. What post-employment restrictive covenants are prevalent? What are the typical restricted periods? —

Non-competition, non-solicitation and confidentiality clauses are generally included in employment agreements as post-employment restrictive covenants.

Non-competition obligations are valid provided that they meet the conditions under the Turkish Code of Obligations. Accordingly, the restricted period should be limited to two years. It can exceed two years only in specific circumstances.

[Back to top ^](#)

29. Are there limits on, or requirements for, post-employment restrictive covenants to be enforceable? Will a court typically modify a covenant to make it enforceable? —

Turkish Code of Obligations sets forth that the non-compete obligation must not jeopardise the economic future of the employee, contrary to the principle of equity and therefore, it should be reasonably limited in terms of place, time and subject. The courts are entitled to limit the duration and the subject of the non-compete clauses.

The non-compete clauses must be in writing and should be applicable for the employees who are in contact with customers and must access to the trade secrets of these customers, and use of such knowledge by the employee must cause a significant damage to the employer.

[Back to top ^](#)

30. What remedies can the employer seek for breach of post-employment restrictive covenants? —

The employers can request their damages arising from the breach of a non-compete agreement. If the parties agreed on a penalty clause, the employer can demand from the employee to pay the penalty clause.

Also, the employer can request from the court to cease breach provided that there is a clause in the employment agreement that gives the employer such a right.

[Back to top ^](#)

31. Are there any required pension or other retirement benefits? Are there limits on discontinuing voluntary benefits that have been provided? —

Retirement salary, healthcare contributions are provided to the employees.

Also, the Law on Private Pension Savings and Investment System has amended and employees' automatic enrolment in private pension plans by their employers has been introduced with the amendment Act published on 25 August 2016. With the new amendment, employees who have not yet turned 45 should be enrolled in a private pension plan with a pension agreement that the employer has executed.

The contribution for the plan is 3 per cent of the employee's average earning taken as basic to social security premiums. The Act obliges the employer to place this amount in the plan on the day following the payday of the employee's salary at the latest. The employee can request from its employer to allocate a higher percentage for the plan. The employee who has automatically enrolled in a private pension plan will be entitled to withdraw from the plan within two months as of the notification of the enrolment. Those new regulations will be applicable by 01 January 2017 .

[Back to top ^](#)

32. What types of pension or other retirement benefits are prevalent for executives? Are there tax or other financial incentives or disincentives for any employee benefit arrangements? —

Other than the above, there is no particular pension or other retirement benefits prevalent for executives in the Turkish legal system.

[Back to top ^](#)

33. May executives receive supplemental retirement benefits? —

The company may regulate an exclusive retirement benefit plan for the executives through the agreement signed with the executive.

[Back to top ^](#)

34. May an executive be indemnified or insured for claims related to actions taken as an executive, officer or director? —

The company may insure the executives with professional liability insurance.

It is also regulated under the Turkish Commercial Code that if a member of the board of directors defectively gives damage and the damage is insured with a price over 25 per cent of the company capital, the insurance should be announced in the stock market bulletin if the company shares are traded at the exchange. Publicly held companies should make the same announcement in the CMB's bulletin.

[Back to top ^](#)

35. Under what circumstances will an asset sale in your jurisdiction result in an automatic transfer of benefit obligations to the acquirer? —

According to the Turkish Labour Act, in case of a workplace transfer, employment agreements, which are effective on the transfer date, will be transferred to the transferee together with all of the rights and obligations. After the transfer date, the transferor employer will be jointly and severally liable for a period of two years with respect to the obligations (salary, overtime, weekend salary, official and national holiday salary) arising from the employment agreements together with the transferee employer.

[Back to top ^](#)

36. Is it customary to provide for executive retention or related arrangements in connection with a change in control? —

In principle, a change in control would not affect the status of the executive and terms of his or her employment will remain unchanged. It is possible for the transferee employer to offer retention arrangements to the executives in order to ensure their commitment to the company.

[Back to top ^](#)

37. Are there limits or prohibitions on the acceleration of vesting or exercisability of compensation in a change in control? Are there restrictions on 'cashing-out' equity awards? —

There are no limits or prohibitions on the acceleration of vesting or exercisability of compensation in a change in control.

[Back to top ^](#)

38. Do foreign exchange controls rules apply to the remittance of funds, or the transfer of employer equity or equity-based awards to executives? —

Currency exchange controls have been abolished in Turkey. Therefore, capital and profit transfers and foreign exchange transactions are performed without any restrictions.

[Back to top ^](#)

39. Must employment agreements, employee compensation or benefit plans, or award agreements be translated into the local language? —

Turkish companies are obliged to use the Turkish language for all of their transactions between themselves. Foreign companies also have to use Turkish during the transactions made with Turkish companies and Turkish public bodies. If the documents are bilingual, their Turkish translations must be submitted to the court in case of a dispute.

[Back to top ^](#)

40. Are there prohibitions on tax gross-up, tax indemnity or tax equalisation payments? —

There are no prohibitions on tax gross-up, tax indemnities or tax equalisation payments. Turkey has also entered into double taxation agreements with 82 states.

[Back to top ^](#)

41. Are choice-of-law provisions in executive employment contracts generally respected? —

On condition that the minimum protection provided for employees by the mandatory rules of Turkish law are reserved, the parties may agree on a foreign law to apply to the employment contracts if there is a foreign element.

[Back to top ^](#)

Updates and trends —

In 2016, the Draft Income Tax Law has been submitted to the approval of the Grand National Assembly of Turkey. Under the Draft Law, it has been explicitly stated that stock options granted to the employees will be taxed as salary incomes. The difference between the market value of the stock option on the exercise date and cost of the share option paid by the employee will be taxed as a salary amount.

[Back to top ^](#)



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