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COMPETITION COMMITTEE**

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Working Party No. 2 on Competition and Regulation

COMPETITIVE RESTRICTIONS IN LEGAL PROFESSIONS

-- Turkey --

4 June 2007

The attached document is submitted by the Turkish delegation to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 4 June 2007.

Please contact Mr Sean Ennis if you have any questions regarding this document [phone number: +33 1 45 24 96 55; Email address: sean.ennis@oecd.org].

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1. Regulation of entry¹

1.2 Quality standards and entry

1. Relevant legislation concerning attorneys is the Attorneyship Law No 1136. One of the conditions for admission into the profession of attorney is being a graduate of faculty of law (Article 3 of Attorneyship Law).

2. Certain business conduct such as providing opinion in legal matters; litigating and defending the rights of real persons and legal entities before courts, arbitrators, and other bodies invested with jurisdictional powers; and managing all documentation associated therewith are the sole prerogative of attorneys enrolled with bar associations (Article 35 of Attorneyship Law). Moreover, attorneys enrolled with bar associations may conduct all types of action with public offices other than those mentioned in the previous sentence.

3. There is a limited number of study places in faculties of law like any other faculties and in Turkey every year students are selected and placed to these places by a centrally administered examination system.²

4. In order to become an attorney, graduates of law schools must serve apprenticeship lasting one year, first half of which should be in courts and the second half with an attorney with a minimum 5 years in the profession (Article 3 and 15 of Attorneyship Law). The rules concerning apprenticeship is regulated in an implementing regulation adopted by the Union of Bar Associations of Turkey which is an organization formed with the participation of all of the bar associations in Turkey. For instance, the implementing regulation requires the bars to prepare a training programme during apprenticeship and determines the basic principles and methods of this programme. There is no concluding examination following apprenticeship in order to become an attorney. Graduates of the law faculties submit a petition to the relevant bar in order to be eligible for apprenticeship. The board of directors of the relevant bar decides whether to accept the petition. The public prosecutor or the petitioner may contest the decision before the Union of Bar Associations of Turkey. Decisions by the Union of Bar Associations of Turkey are finalized in case Ministry of Justice either gives its approval or does not reach a decision within two months. Decisions by the Ministry of Justice approving the decision of the Union of Bar Associations of Turkey may be challenged before administrative courts. Ministry of Justice may also send the decision of the Union of Bar Associations of Turkey back for reconsideration. If Union of Bar Associations of Turkey adopts the same decision by qualified majority, it is deemed that the decision has been approved. This decision may be challenged before administrative courts.

5. The government does not play a role in overseeing the establishment of entry standards or the number of training places available.

6. There are no requirements relating to on-going education for any of the legal professions in Turkey.

7. Individuals who are not registered with a bar association may not use the title "attorney" or work in the profession. As stated in Attorneyship Law, certain conduct is the sole prerogative of attorneys

¹ This submission includes information regarding attorneys only.

² The organization responsible for administration of this examination system is The Student Selection and Placement Center which is affiliated to The Higher Education Council.

enrolled with bar associations (Article 35 of Attorneyship Law). In Turkey, there are bar associations,³ and Union of Bar Associations of Turkey composed of all bar associations⁴. Taking all kinds of measures to encourage and ensure the professional development of attorneys, defining and recommending the mandatory rules of the profession can be cited among the duties of the Union of Bar Associations of Turkey (Article 110 of the Attorneyship Law).

8. There are no quantitative limits (for example, relating to demographic or territorial criteria) regarding the entry into the legal profession(s) in Turkey.

9. In Turkey, the profession of attorneyship is reserved to Turkish nationals (Article 3 of Attorneyship Law). The only exception to this rule are those foreign lawyers involved in partnerships that fall within the scope of the legislation governing the encouragement of foreign investment. Such partnerships must be established according to the Attorneyship Law and may only offer services of consultancy in foreign laws and international law.

1.3 Exclusive rights

10. Attorneys have exclusive rights regarding providing opinion in legal matters; litigating and defending the rights of real persons and legal entities before courts, arbitrators, and other bodies invested with jurisdictional powers; and managing all documentation associated therewith (Article 35 of Attorneyship Law). In Turkey, attorneys are not required to specialize and are free to address "*...the resolution of every sort of legal relationship, every legal matter and dispute according to principles of justice and equity*" and to use their knowledge and expertise in the service of justice and persons "*... before all courts, judges, private and public persons, boards and organizations.*"

11. Real estate agencies provide services associated with selling and buying property. However, individuals can also sell their own houses.

12. Consumers have direct access to all kinds of legal services. Every person with the capacity to sue may prepare the documents for his/her own lawsuit, file suit in person, and conduct his/her own business in courts. However, certain joint stock companies and building cooperatives are required to retain a lawyer under contract.

2. Regulation of market conduct

2.1 Fees

13. Rules regarding fees are specified in the Attorneyship Law. The attorneyship contract is drawn up at liberty (Article 163 of Attorneyship Law). The attorneyship contract must cover a specific legal service and an amount or a value (Article 163 of Attorneyship Law). Contracts in excess of the attorneyship fee ceiling are valid at the ceiling value specified in Attorneyship Law (Article 163 of

³ Article 76 of the Attorneyship Law provides that "Bar associations are professional organizations in the nature of public agencies with legal personality operating on the basis of democratic principles by conducting the whole range of activities for the purpose of promoting the profession of attorneyship; ensuring honesty and confidence in the mutual relations between the members of the profession and their relations with clients; defending and safeguarding the order, ethics, and respectability of the profession, the supremacy of the law, and human rights; and to satisfy the common needs of attorneys."

⁴ Article 109 of the Attorneyship Law provides that "The Union of Bar Associations of Turkey is an organization formed with the participation of all of the bar associations in Turkey. The Union is a professional organization in the nature of a public agency with legal personality. ..."

Attorneyship Law). The attorneyship fee may be agreed as a certain percentage of the entity or money to be litigated or adjudicated, not to exceed twenty-five percent (Article 164 of Attorneyship Law). No agency fee may be agreed below the minimum attorneyship fee tariff (Article 164 of Attorneyship Law). Cases of accepting a commission free of charge will be reported to the board of directors of the bar association. If an attorneyship fee has not been agreed or there is no written fee contract among the parties or fee contract is either not clear or is controversial, an amount from ten to twenty percent of the value of the suit is adjudged as the attorneyship fee by an authority having the power to review objections to fees in cases and lawsuits the value of which can be measured in terms of money, the fee thus determined not being less than the minimum attorneyship fee tariff. If the value can not be measured in terms of money, minimum attorneyship fee tariff is applicable (Article 164 of Attorneyship Law).

14. Every year board of directors of each bar association prepares a tariff indicating the minimum limits of attorneyship fees to be charged for actions in the juridical authority and other actions, and forward it to the Union of Bar Associations of Turkey (Article 168 of Attorneyship Law). The tariff to be prepared by the Board of Directors of the Union of Bar Associations of Turkey by taking into consideration the recommendations of the bar associations will be completed the same year and submitted to the Ministry of Justice. The tariff will become final if no decision is made by the Ministry of Justice within one month as of the date of its receipt by the Ministry of Justice or if the tariff is approved by the Ministry. However, the Ministry of Justice will return a tariff if it does not deem appropriate to the Union of Bar Associations of Turkey for reconsideration together with the reasons for return. A tariff thus returned will be considered as approved if passed unchanged by a qualified majority vote of the Board of Directors of the Union of Bar Associations of Turkey; otherwise it will be considered as not approved. The result will be communicated to the Ministry of Justice by the Union of Bar Associations of Turkey. Suits may be filed with administrative tribunals by the Union of Bar Associations of Turkey, the candidate, and the bar association concerned against the decisions made by the Ministry of Justice; and by the Ministry of Justice, the candidate, and the bar association concerned against the decisions made by the Union of Bar Associations of Turkey after reconsideration of the decisions found inappropriate and returned by the Ministry of Justice.

15. The Attorneyship law does not specify any criteria upon which the amount of fees is based.

16. Attorneyship Law includes provisions regarding legal aid for the benefit of those who do not have the wherewithal to pay attorneyship fees and other adjudicatory expenses (Article 176-181 of Attorneyship Law). Legal aid service is rendered by a legal aid office established at the headquarters of bar associations by the board of directors of the bar association with manning drawn from among its attorneys (Article 177 of Attorneyship Law). A request for legal aid shall be made to the legal aid office or its representatives and the requestor must prove the rightfulness of the request by presenting evidence (Article 178 of Attorneyship Law). If the request for legal aid is accepted, the legal aid office will assign one or more attorneys to carry out the actions required (Article 179 of Attorneyship Law). The Attorneyship Law also includes a provision on revenues and expenses of the legal aid office (Article 180 of Attorneyship Law). An implementing regulation regarding legal aid has been adopted by Union of Bar Associations of Turkey.

2.2. Advertising

17. Attorneys are prohibited from engaging in any kind of activity or enterprise which may be regarded as being in the nature of publicity in order to offer their services and particularly from displaying any other title than that of attorney and their academic titles in their signs and letterheads (Article 55 of Attorneyship Law). This prohibition also applies to the attorneys sharing an office and to attorney partnerships (Article 55 of Attorneyship Law). The provisions governing the above prohibitions will be

determined by means of regulations to be prepared by the Union of Bar Associations of Turkey (Article 55 of Attorneyship Law).

18. In line with Article 55 of the Attorneyship Law, Union of Bar Associations of Turkey has adopted an implementing regulation on advertising bans. For instance, according to implementing regulation, signs can include only the following: title of attorney, name and surname, academic title, address, phone number, internet address and email. In case attorneys work together in the same office, the term “attorney office” can be accompanied by names and surnames of one or more of the attorneys or only surnames. In case of partnership, the term “attorney partnership” must accompany the name and title of partnership written in the partnership contract. In printed materials such as business cards, letterheads, only the following information may be found: title of attorney, academic title, name and surname, address, phone-facsimile numbers, internet address and email, registration number for the relevant bar association, and Union of Bar Associations of Turkey, relevant tax administration and tax ID. Regarding phone directories, name, surname, address, phone-facsimile number, internet address and emails can be published on the condition that the information is put under the section for professions, the section is organised in alphabetical order and no term, sign, symbol, etc distinguishing attorneys, attorney offices or partnerships from other attorneys, attorney offices or partnerships is used. The implementing regulation also includes provisions regarding relations with the newspapers and other media, and use of internet. Attorneys, attorneys working in the same offices and attorney partnerships can not make public or announce attorneys, attorney partnerships whom they cooperate inside or outside Turkey by using liaison office and like phrases in a way that generalises the cooperation and makes it continuous. Therefore, it can be said that there is total advertising ban excluding signs, phone directories etc.

2.3. Partnerships and business organisation

19. Attorneyship Law provides provisions regarding attorney’s working together or as an attorney partnership (Article 44 of Attorneyship Law).

20. Accordingly, attorneys may practice their profession together in the same office or as an attorney partnership.

2.3.1 Working Together in the Same Office

21. Working together is when more than one attorney enrolled with the same bar association practices their profession using the same office. Such togetherness does not form a legal entity; nor is the work done considered commercial.

22. It is mandatory to juxtapose the expression “Attorneyship Office” with the name(s) and/or last name(s) of one or several of the attorneys working together. The mutual rights and obligations, the sharing of revenues and expenditures, office management, and the termination of togetherness are defined by those working together and submitted in writing to the bar association they are enrolled with.

2.3.2 Attorney Partnership

23. An attorney partnership is a legal entity formed by more than one attorney enrolled with the same bar association to practice their profession in accordance with the Attorneyship Law. The work done by an attorney partnership is professional and not considered commercial. It is subject to the same provisions as applied to privately owned companies as far as taxation is concerned. The name of the attorney partnership is made up by the addition of the expression “Attorney Partnership” to the name(s) and/or last name(s) of one or several partners.

24. Foreign attorney partnerships wishing to operate in Turkey within the framework of the current laws on incentives for foreign capital may only offer services of consultancy in foreign laws and international law provided that they have been formed in compliance with the Attorneyship Law and the arrangements stipulated for attorney partnerships. This restriction also applies to attorneys who are citizens of the Republic of Turkey or of foreign countries working for the foreign attorney partnership. The condition that the partners be enrolled with a bar association is not required for this type of attorney partnerships. The implementation of this rule is contingent upon reciprocity.

25. An attorney partnership with a basic contract modelled after the standard basic contract⁵ assumes legal personality upon being recorded in the Attorney Partnership Register of the Bar Association by the board of directors of the bar association with which its partners are enrolled. A request for registration may only be refused on the grounds of discordance with the Attorneyship Law and the standard basic contract. A copy of the basic contract will be forwarded to the Union of Bar Associations of Turkey.

26. Law firms can not be owned or managed by non-lawyers.

3. Institutional framework of self-regulation

3.1. Application of competition law

27. Attorneyship Law grants Union of Bar Associations of Turkey the right to determine the minimum level of fees. Although Competition Board mentioned that this has the effect of restricting competition and the provisions of Attorneyship Law conflicts with those of the Act No 4054 on the Protection of Competition, the Competition Board decided to use its advocacy powers before the National Assembly, Prime Ministry and the relevant ministry to demand amendment in the Attorneyship Law upon a complaint regarding fixing of minimum level of fees by the Union of Bar Associations of Turkey.⁶

28. In this decision, the Competition Board also mentioned that although the Union of Bar Associations of Turkey exceeded its powers granted by Attorneyship Law to fix minimum level of fees by fixing monthly fees to be paid to attorneys working on a contractual basis, actually the powers granted to the Union of Bar Associations of Turkey to fix the minimum level of fees were contrary to the Act No 4054 on the Protection of Competition and advocacy powers should be used before the National Assembly, Prime Ministry and the relevant ministry for the amendment in the Attorneyship Law. According to the Competition Board, following amendments in the relevant laws, demands by the professional associations to fix minimum level of fees may be assessed under the exemption provisions of the Act No 4054 on the Protection of Competition.

29. In sum, the Competition Board can not use its enforcement powers against conduct by professional associations like that of the Union of Bar Associations of Turkey that is authorized by another law such as Attorneyship Law and it employs its advocacy powers to amend the relevant provisions of such laws.

⁵ Drawing up the standard basic contract of attorney partnerships is among the duties of the board of directors of the Union of Bar Associations of Turkey.

⁶ *TBB*, 13.11.2003; 03-73/876 (a)-374.

3.2. *Regulatory oversight*

30. Regarding regulatory oversight, for instance decisions by the board of directors of bars regarding apprenticeship can be contested before the Union of Bar Associations of Turkey. Decisions by the Union of Bar Associations of Turkey in these cases are subject to approval of the Ministry of Justice (see explanations in “1.1. Quality Standards and Entry” for details). The tariff including minimum level of fees set by the Union of Bar Associations of Turkey is subject to approval by the Ministry of Justice (see explanations in “2.1. Fees” for details).

31. There is no independent complaints office. Negligence of duty and abuse of power are punished according to Turkish criminal code (Article 62 of Attorneyship Law). Moreover, regarding disciplinary penalties foreseen in Attorneyship Law, the authority to decide the initiation of and conduct a disciplinary prosecution rests with the bar association in whose directory the attorney was enrolled.

32. There is not an independent Regulatory Authority (consisting of a majority of non-lawyers) for the legal professions. As mentioned in “1.1. Quality Standards and Entry”, there are bar associations and Union of Bar Associations of Turkey. Taking all kinds of measures to encourage and ensure the professional development of attorneys, defining and recommending the mandatory rules of the profession can be cited among the duties of the Union of Bar Associations of Turkey.