

1992

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Recommended Citation

Carl Felsenfeld, *An American Reflection on Turkey's Financial Leasing Industry*, 60 Fordham L. Rev. S135 (1992).

Available at: <https://ir.lawnet.fordham.edu/flr/vol60/iss6/8>

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AN AMERICAN REFLECTION ON TURKEY'S FINANCIAL LEASING INDUSTRY

*CARL FELSENFELD**

An American observer of the banking scene finds Professor Tekinalp's presentation remarkable. Although one might believe that leasing in Turkey could not conceivably be of interest to an American lawyer, one discovers that the subject casts an illuminating light on regulation of the financial system.

Professor Tekinalp describes a highly controlled, newly established system for financial leasing. Charters from the state are required; activities of lessors are prescribed; relationships among manufacturer, lessor, and lessee are circumscribed; lease terms and amounts are limited; reports must be submitted; and much more. At first blush, this all seems somewhat reasonable. In the United States, we have a highly regulated banking system. Indeed, many of the controls established in Turkey's Law Concerning Financial Leasing are imposed by the United States on banks. A commercial bank, for example, is restricted in its investment banking activities, in its sale of insurance, and in its entry into the manufacturing sector. Moreover, although a holding company may operate across state lines, a bank generally may not have interstate branches, and the holding company is subject to restrictions under both federal and state law.

But strangely, in the face of all this financial regulation, United States financial leasing companies are essentially unregulated. If a leasing company in the United States wants to manufacture as well as lease equipment, there are no prohibitions. If it wants to establish a branch office in Tennessee, no laws interfere. And if it wants to open a pizza parlor on the side, again no law or regulation is violated. Why is financial leasing such a highly regulated activity in Turkey when in the United States it is subject to the free market? This is an especially compelling question given that the United States subjects a related industry—banking—to a blanket of laws and regulations.

Professor Tekinalp provides an answer. The essential difference is the place of financial leasing in the Turkish economy as contrasted with its place in the United States. Turkey is trying to stimulate financial leasing and is willing to make several accommodations to financial leasing companies that it does not make for other businesses. For this reason, it must define and delimit the field of leasing. By contrast, bank regulation in the United States exists for another purpose—to ensure the safety of the banks.

One must ask, however, how the system of highly controlled regula-

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tion will work in Turkey. There is currently considerable debate about the extent to which the United States banks might be *over*-regulated and whether market freedom would improve the health of what is increasingly perceived as a marginal business. Many are asking whether regulatory concepts imposed in 1863 (when national banks were established), or 1913 (when the Federal Reserve was formed), or 1933 (when the depression led to extensive "corrective" legislation), or 1956 (when bank holding companies were regulated) continue to make sense in the 1990s. The United States experience has been that it is easier to enact a statute than to repeal it. Regulations build bureaucracies who are unwilling to lose their powers and who ultimately see themselves as significant spokes in the economic wheel. Regulations also protect parties who will fight, rather than lose, their protected status. In short, regulations acquire lives of their own.

One looks with interest to Turkey down the road, when it will have developed a vibrant and thriving financial leasing industry. Will it continue to require that financial leases be at least four years long in order to protect the lessor, the lessee, the economy, or whatever? The United States experience strongly indicates that there will be arguments both for the demise and continuation of the regulatory scheme Turkey has forged.