

DOING BUSINESS IN TURKEY:

ESTABLISHMENT OF COMPANIES BY FOREIGN REAL PERSONS AND ENTITIES

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This briefing note provides brief descriptions as to the types of corporations – namely, joint-stock company (“JSC” *anonim şirket*), limited liability company (“LLC” *limited şirket*), liaison office (“LO” *irtibat bürosu*) and branch office (“BO” *şube*) – and summarizes the basic differences of each in accordance with the applicable Turkish legislation to be considered through the eyes of foreign investors.

Under applicable Turkish legislation, foreign real persons and entities are allowed to incorporate JSCs or LLCs as shareholders of such companies and open LOs and BOs to pursue their scope of business within the limits envisaged by law.

I. PRESENCE OF FOREIGN REAL PERSONS / ENTITIES IN TURKEY

Pursuant to the Turkish Commercial Code numbered 6102¹ (“TCC”) and relevant sub-regulations, establishing a JSC and an LLC and opening an LO and a BO are considered methods of foreign investment for foreign real persons and entities in Turkey. Such corporations differ from one another in terms of the share capital, incorporation/opening procedures, liabilities, allowed activities, etc

¹ Published in the Official Gazette dated 14.02.2011 and numbered 27846.

II. CORPORATION TYPES

A. Joint- Stock Company

A JSC, one of the most commonly preferred corporation types, is a company whose capital is determined and also divided into shares, and which is liable for its debts only with its assets.² A JSC may be incorporated for any economic purpose or business, provided that such purpose or business is not prohibited by law and has a legal personality that is independent from its shareholders.

- i. *Process of incorporation:* The incorporation process and essential documentation are listed under the Regulation on Trade Registry. Once the incorporation documentation is collected and submitted to the relevant Trade Registry, the registration process can be completed within a period of four to six business days depending on the workload of the Trade Registry office. In addition to this basic registration procedure, there may be additional application/permission procedures required by relevant governmental authorities that must be met for the incorporation of regulated companies, which may take longer depending on the regulator.
- ii. *Term of the corporation:* A JSC can be incorporated for an indefinite term.
- iii. *Capital:* A JSC shall adopt either the (a) registered share capital system, or (b) the principal share capital system pursuant to the TCC. A minimum of TL 50.000 in share capital is required for the incorporation of a JSC within the framework of the principal share capital system. On the other hand, in the event of a registered share capital system in which a JSC is entitled to increase its share capital through board of directors' resolutions within a designated registered share capital limit, this amount shall be TL 100.000.
- iv. *Number of shareholders:* A single shareholder is sufficient to incorporate a JSC, and there are no nationality or residency requirements for shareholders.

² Özcan, Zekai, "Hangi Şirket Kurulmalı Türk Ticaret Kanunu ve Vergi Kanunları Kapsamında Avantajları – Dezavantajları," s.44, Temmuz 2013, Seçkin Yayıncılık.

- v. *Management of the corporation:* A JSC is managed by the board of directors, and the board shall at least be composed of one member, who may be a real person or a legal entity. In the event the legal entity is elected as a board member; such legal entity board member shall be represented by a real person. There are no nationality or residency requirements for JSC board membership. Management and representation powers of the board of a JSC may be delegated to certain board member(s), company personnel or third party personnel, with the exception of non-delegable powers. In terms of regulated companies, there may be several potential qualifications to appointment as a board member.

- vi. *Liabilities:* Shareholders' liability of a JSC is limited to shareholders' subscriptions to share capital.

- vii. *Mandatory transactions to be performed during the activity year:* The general assembly of a JSC – a high level management body where every shareholder of a JSC is represented – may be convened ordinarily and extraordinarily. The ordinary meeting shall be held within the first 3 (three) months following the end of each activity year.

- viii. *Liquidation:* The shareholder(s) of the JSC shall convene to resolve a liquidation. A JSC shall make 3 (three) announcements (with one week between each announcement) to the creditors in the Trade Registry Gazette and on its website. The creditors are invited to give notice regarding their receivables with these announcements. After the payment of the debts of a JSC and the refund of the share capital amount to the shareholders, the remaining assets of the JSC shall be distributed among the shareholder(s) proportional to the share capital and their privilege rights, unless otherwise stipulated under the Articles of Association of the JSC. Following the payment of debts, the remaining amount shall not be distributed to the shareholder(s) within 6 (six) months as of the date of the third call made to creditors. However, where there is no danger for the creditors, the court may allow distribution before the lapse of 6 (six) months.

B. Limited Liability Company

An LLC shall be incorporated by one or more real persons and/or legal entities under a trade name, with definite capital consisting of the total of capital shares. An LLC differs from a JSC primarily in terms of the liability of the shareholders, as mentioned below. An LLC may be incorporated to pursue

any economic objectives and activities provided such objectives or activities are not prohibited by law and have a legal personality independent from shareholders.

- i. *Process of incorporation:* The incorporation process and essential documents are listed under the Regulation on Trade Registry. Once the incorporation documentation is collected and submitted to the relevant Trade Registry, the registration process can be completed within a period of four to six business days depending on the workload of the Trade Registry office.
- ii. *Term of the corporation:* Like JSCs, an LLC can be incorporated for an indefinite term.
- iii. *Capital:* A minimum of TL 10.000 in share capital is required for the incorporation of an LLC. The registered share capital system is not applicable to LLCs.
- iv. *Number of shareholders:* A single shareholder is sufficient in order to incorporate an LLC, and there are no nationality or residency requirements for shareholders. The maximum number of shareholders shall be 50 (fifty).
- v. *Management of the corporation:* An LLC is managed by managers who are chosen from among non-shareholders or real persons and/or legal entity shareholders. However, at least one shareholder shall be appointed as a manager. A legal entity manager shall be represented by a real person; there are no nationality or residency requirements for the managers of an LLC. Management and representation powers of the management board of an LLC may be delegated to one or more shareholders or all shareholders and/or third parties.
- vi. *Liabilities:* Shareholders' liability of an LLC is limited to shareholders' subscriptions to share capital. However, one exception is that shareholders of an LLC are responsible for public debts (tax debts, etc.) in cases in which governmental authorities cannot manage to collect such debts from the LLC.
- vii. *Mandatory transactions to be performed during the activity year:* The general assembly of an LLC – a high level management body where every shareholder of an LLC is represented – may be convened ordinarily and extraordinarily. The ordinary meeting shall be held within the first 3 (three) months following the end of the activity year.

viii. *Liquidation*: The liquidation process explained for a JSC is also applicable to an LLC.

C. Liaison Office

An LO in Turkey – a type of presence without a legal personality-, is an appropriate entity for carrying out a market research business to understand how the new market works, to identify and pursue potential business opportunities, and to establish key contacts with prospective clients without carrying out commercial activities and generating income. The main approach from foreign companies is to establish an LO prior to incorporating a separate legal entity in Turkey in order to avoid some obstacles arising from the establishment of a separate legal entity (i.e., tax liabilities).

In accordance with the Regulation for Implementation of Foreign Direct Investment Law (the “Regulation”),³ the Ministry of Economy of Turkey (the “Ministry”) is authorized to grant permits and extend such permits to companies established in accordance with the laws of foreign countries to open an LO in Turkey provided they do not carry out commercial activities in Turkey.

- i. *Process of incorporation*: The incorporation process and essential documents to be submitted to the Ministry are listed under the Regulation. Applications for establishment shall be finalized within 15 (fifteen) days following the application, provided that the necessary information/ documents are properly completed and submitted.
- ii. *Term of the corporation*: In its initial application, an LO is granted an activity permit of 3 years at most. For extensions, an LO is required to make an application to the General Directorate of Incentives Implementation and Foreign Investment (“General Directorate”) before the expiration of a permit.
- iii. *Capital*: Since liaison offices are not permitted to conduct any commercial or income-generating activities, and all office expenses (salaries, lease of office, water, gas, electricity etc.) shall be covered by the foreign exchange imported from abroad. In this respect, the cash collected under the bank account of an LO is not considered as share capital from a legal perspective, and there is no such requirement in relevant legislation.

³ Published in the Official Gazette dated 20.08.2003 and numbered 25205.

- iv. *Number of shareholders:* An LO – as a legal structure opened by the primary foreign entity – has no shareholders.
- v. *Management of the corporation:* An LO is managed and represented by the general manager authorized by the foreign entity through the power of attorney. The general manager may also be entitled to delegate all or part of his or her authority within the limits specified under the primary power of attorney.
- vi. *Liabilities:* Since an LO is not independent from its foreign entity and does not have a legal personality, a foreign entity shall be liable for an LO.
- vii. *Mandatory transactions to be performed during the year:* After obtaining approval to establish an LO, the LO shall send a copy of the tax office registration and the rental contract to the General Directorate within 1 (one) month at the latest. In addition to the foregoing, an LO shall notify the General Directorate of any change in address, liaison representative/representatives and job title of the foreign company (parent company abroad) within no later than 1 (one) month of the change by attaching the new rental contract, the authorization document of the new representative or the document indicating the job title amendment. In addition, an LO shall send the Information Form Concerning the Liaison Office Activities (Annex 4 of the Regulation) and its relevant annexes to the Ministry each year at the end of May at latest. Should liaison offices fail to send such form and its relevant annexes, their request for an extension shall not be examined by the Ministry, and the operational permit may ex officio be cancelled.
- viii. *Liquidation:* An LO may terminate its activities. The LO must submit the termination and examination form from the relevant tax offices to the General Directorate for the purpose of closing its activities. Consequently, liaison offices cannot claim any money transfers, except the balance arising out of the termination and liquidation.

D. Branch Office

Pursuant to the TCC, commercial enterprises with principal offices established outside Turkey are allowed to incorporate a BO in Turkey. In the light of this purpose, A BO of a commercial enterprise in Turkey with principal offices established abroad shall be registered as a domestic commercial

enterprise without prejudice to the provisions of the laws of its own country concerning trade names. A fully authorized commercial representative who shall be domiciled in Turkey shall be appointed for such a BO. Upon fulfillment of this regulation, the foreign commercial enterprise can establish a BO anywhere in Turkey.⁴

Following the approval of the Customs and Trade Ministry, the registration documents,⁵ which are listed under Regulation on Trade Registry, shall be submitted to the relevant Trade Registry in order to complete the registration process.

Since the foreign commercial enterprise intends to establish a BO in Turkey, the notion of shareholders is not applicable, and there is no share capital requirement. A BO that is subject to the foreign enterprise and its management policies shall be in compliance with the foreign enterprise's policies.⁶ The principal office established outside Turkey may resolve the liquidation of such BO. This resolution shall be registered to the relevant Trade Registry. Following this registration, the announcement shall be made to the creditors.

The following forms shall be submitted to the General Directorate:

- i. Information on capitals and operations of BOs, in accordance with the “FDI Operations Data Form” given as Annex I of the Regulation, on an annual basis, and at the latest by the end of May every year;
- ii. Information on payments made to their equity accounts, in accordance with the “FDI Capital Data Form” given as Annex II of the Regulation, within 1(one) month following the payment;
- iii. Information on share transfers made between current domestic or foreign shareholders, or to any domestic or foreign investor outside the company, in accordance with the “FDI Share Transfer Data Form” given as Annex III of the Regulation.

⁴ Başak, Levent, “*Yabancı Gerçek Kişi Tacirler Türkiye’de Şube Açabilir mi?*”, *Yaklaşım Dergisi* / Ekim 2015, Sayı:274.

⁵ http://www.ito.org.tr/wps/portal/tescil-ilan-kurulus?WCM_GLOBAL_CONTEXT=yabanci_sermaye_yeni

⁶ Arkan, Sabih, “*Ticari İşletme Hukuku*,” s. 38, 2011, Banka ve Ticaret Hukuku Araştırma Enstitüsü.

III. CONCLUSION

Because the corporations described above differ from one another in several key respects, foreign real persons and/or entities are free to choose any of the structures summarized herein to conduct business in turkey, considering their needs as well as their business purposes.

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