

# Company Formation in Turkey

At Ketenci&Ketenci we regularly assist foreign corporations and investors to form new companies and branches in Turkey. Thanks to the Turkish Direct Foreign Investment regulation; foreign investors can incorporate or participate in all types of companies in Turkey which are available for local investors in accordance with the equal treatment principle

## In General

There are two kinds of limited liability companies in Turkey. There are certain similarities and differences between these two forms, namely Anonim Sirket (“AS”) and Limited Sirket (“LS”).

Similarities and differences are as follows;

Both AS and LS are actually limited liability companies where the liability of shareholders of both the AS and the LS are limited to their respective capital commitment in the company.

Both AS and LS can be established by sole shareholder.

Under the current Turkish Commercial Code numbered 6102 (the “TCC”), minimum capital required for LS is 10,000.00 Turkish Liras (approximately €4,249.- EUR as of 18.01.2013) and a minimum capital of 50,000.00 Turkish Liras (approximately €21,250.- EUR as of 18.01.2013) is required for the incorporation of an AS. However, for the AS companies which accepted the registered capital system, it is a requirement to have a minimum capital of 100,000.00 Turkish Liras.

An AS is managed by its board of directors. It is possible to have a single person within the board of directors. An LS does not have board of directors but is managed instead by its general manager and shareholders. All authorities of the shareholders relating to the management of LS can be granted to a general manager or one of the shareholders.

Call for an assembly, general assembly without any calls, minutes, right to call and to make proposal of the minority, agendum, unauthorized attendance subjects which are held under articles relating to AS under TCC, shall also be applied to an LS in comparison when required.

Companies pre-defined by the Councils of Ministers shall be subject to an independent external auditing. A draft has been announced but yet not entered into force. Financial data included in the annual reports of executive organs shall be subject to auditing for the

abovementioned companies as well to state if they are in parallel within the overseen financial statements. On the other hand, the board of directors' members of an AS is empowered to review and audit the accounts, transactions, commercial books and such of the company.

It is significant to note that LS shareholders, unlike AS shareholders, may be personally liable for amounts owed by the LS to government authorities for taxes, duties and charges if the company cannot make the required payments. Therefore, the liability of the shareholders of LS, in this respect, is not limited to their own capital contribution in the company. However, in an AS, the legal representatives of the company may be liable for the non paid aforementioned public receivables.

Any transfer of shares in LS must be approved by shareholders representing the simple majority of the company and the share transfer document must be notarized and registered with the Trade Registry Office and published in the Turkish Trade Registry Gazette. A share transfer in AS does not need to be in compliance with aforementioned requirements. However, in an AS, the board of directors may object the share transfer in certain circumstances designated in TCC.

At this point, it should also be noted that AS is recommended where shareholders with potentially conflicting interests come together, such as in a joint venture, since it is possible to establish classes on the shares of AS. On the other hand, the LS may be preferable when the sole objective is to establish a wholly owned subsidiary of a foreign parent company with minimum capitalization and administration requirements.

Steps for the Establishment of a Limited Liability Company in Turkey:

Preparation of the AoA

Pursuant to Article 575 of the TCC, the AoA shall be in writing, signed by each of the shareholders of the Company. Moreover, signatures of all of the signing shareholders shall be notarized by a Turkish Notary Public.

Under Article 576, paragraph 1 of the TCC, it is mandatory to state the address of the head office of the company in the AoA.

Because the trade names of the legal entity merchants are protected in Turkey, it is a must that the determined trade name has not previously been registered with any Trade Registry Office.

Following taxes and charges shall be applicable in connection with the execution and certification by a Turkish Notary Public of (i) the AoA, and (ii) the lease agreement of the head office of the company;

(i) For the AoA;

Pursuant to the Stamp Tax Law, a stamp tax, which is calculated at the rate of 5% of the face value of the AoA is levied on the AoA. Such stamp tax shall be due on the date of the

execution of the AoA. However, the documents with respect to the establishment of a company are exempt from the stamp tax. Therefore, no stamp tax is paid for the AoA.

Pursuant to Schedule 2 of the Law of Charges, a notary public charge, which is calculated at a rate of 1.13 ‰ of the face value of the AoA is levied for each signature put on the same. However, the documents with respect to the incorporation of a company are exempt from the payment of such notary public charge.

Only the certification fee will be paid to the Notary Public for the execution of the AoA.

(ii) In case of a lease agreement for the registered office;

Pursuant to Stamp Tax Law, a stamp tax, which is calculated at the rate of 1.89 ‰ of the total value of the rentals to be determined in accordance with the term of the lease agreement, is levied on the lease agreement for the head office of the company. Such stamp tax shall be due on the date of execution of the lease agreement. Pursuant to Schedule 2 of the Law of Charges, a notary public charge, which is calculated at the rate of 1.13 ‰ of the face value of the lease agreement is levied for each signature put on the lease agreement.

Registration with the Local Chamber of Commerce and the Trade Registry

The company must be registered with the relevant Trade Registry where its registered office will be located, and the notice of incorporation, the AoA and the signature circular containing the authorized signatories of the company must be published and announced in the relevant Trade Registry Gazette in order to put third parties on notice of the establishment thereof. Pursuant to Article 588 of the TCC, the company shall be deemed established upon its registration with the relevant Trade Registry.

Documents to be filed by the founders of the Company

After executing the AoA of the company before a Turkish Notary Public, the founders of the company or their duly authorized representatives shall apply to the relevant Trade Registry Office within thirty (30) days following the execution of the AoA before the Turkish Notary Public.

Following documents shall be attached to the application letter which shall be filed with the relevant Trade Registry Office:

Incorporation Notice Form;

Notarized AoA (four (6) original copies one of which must be original);

Signature declarations of the managers of the company under the company's trade name drafted by the Turkish Notary Public,

Commitment letter which is pursuant to Article 29 of the Registry Regulation dated 08.02.1957, a commitment letter is required from real persons or legal entities that apply for the registration of its company or the trade name of the company or from their representatives. The commitment letter must include; the trade name, capital, address,

commencement date, the actual scope of activity of the company.

Original of the receipt of Türkiye Halk Bankası, Corporate Branch of Ankara evidencing that 0.04% of the capital of the company has been paid to the account of Competition Authority;

For each manager a notarized copy of his/her identity card or passport copy;

For each foreign legal entity shareholder, the original and the notarized translation of the "certificate of activity" which will be issued by the industrial and/or commercial registry with which such shareholder is registered or by the competent courts. The certificate of activity must be certified by the relevant Turkish consulate or apostilled in accordance with the Hague Convention.

In addition to the abovementioned documents, the local chamber of commerce also requires the following documents to be submitted therewith:

Chamber Registration Statement: The Statement must bear the shareholders' photographs and must be filled in.

If the founding shareholder of the company is a legal entity, decision regarding the participation to the company.

If the founding shareholders of the company are legal entities and their head offices are not located in Istanbul, in addition to the above-mentioned participation decision, signature circulars of the founding shareholders approved by a notary public based on the decision of the recent appointment of the board of directors, in case the founder shareholders are AS and the decision of the Shareholders' Assembly, regarding the election of directors, in case it is an LS.

Pursuant to Article 39 of the Law numbered 4054 which was incorporated with the Article 29 of the Law numbered 5234 on 17.09.2004, the partners of the LS and the shareholders of AS shall pay 0.04% of their capitals at the incorporation and in case of capital increase, the increased amount of capital to the Competition Authority. This is a condition for the registration of such companies. The partners must give bank slip to the competition authority for official registration.

Notifications regarding the foreign investors

There are no approvals and/or authorizations required for a foreign investor in addition to the ones required for a local company in establishing a company or participating in an existing one in Turkey.

However, under Article 4 and 5 of the Direct Foreign Investment Implementation Regulation some notification obligations have been amended for the foreign investors and the companies within the scope of the regulation which shall be made to the Incentive Application and Foreign Capitals General Directorate under Ministry of Economy ("FCGD").

Documents to be provided by the local chamber of commerce:

Under Article 4 of the Regulation, the local chamber of commerce shall provide the FCGD with the following documents:

A copy of the Incorporation Notice Form,

A copy of the amendments to the AOA of such companies which have to be registered with the trade registry and published in the Trade Registry Gazette,

List of partners or list of attendees which will be issued to the chamber of commerce by these companies.

In light of the foregoing information, the relevant Chamber of Commerce shall provide the FIGD with a copy of the Incorporation Notice Form, which will be filled out by the founders of the Company.

Documents to be provided by the investors:

Under Article 5 of the Regulation, the companies shall provide the FCGD with the following documents:

Annual "Activity Information Form for Direct Foreign Investments", which has to be issued latest in May of each respective year.

"Capital Information Form for Direct Foreign Investments", which has to be issued within one (1) month after the payment of the capital.

"Share Transfer Information Form for Direct Foreign Investments", which has to be issued within one (1) month after the transfer of shares.

In light of the foregoing information, for the establishment of the company, the company shall provide the FCGD with the Capital Information Form for Direct Foreign Investments issued within one (1) month after the payment of the capital.

Payment of the Capital

Although the TCC does not require the subscribed capital to be paid in at the time of incorporation, pursuant to relevant instructions, at least 25% of the subscribed capital of the company must be paid in prior to the registration of the company. Such payment shall be completed by the submit of the AoA duly notarized to a authorized bank. In this respect relevant bank shall open a blocked account for the capital to be paid (at least 25% of the total capital). Procedures to be completed with the bank shall be finalized after the issuance of a letter of bank guarantee to be submitted to the trade registry. Upon the registry of the letter of bank guarantee to the Trade Registry, the abovementioned obligation of Payment of Capital shall be executed duly. The blocked account shall remain blocked for 3 months and the payment of the balance capital (if the partial payment has been made) will be determined by the resolution to be announced of the general assembly. In case partial payments to be made in an amount of at least 25% of the total capital, the balance shall be paid within 24 months of the registration.

### Further Procedural Steps

The company will have been registered with the relevant Commercial Registry Office and thus will have gained its legal entity status.

Following steps will be taken at this last stage:

A withholding tax number, value added tax number and a tax identification plaque shall be obtained from the local tax office where the head office of the company is located.

A social security number shall be obtained from the relevant Social Security Administration and employees of the company shall be registered with such administration.

A registration number shall be obtained from the relevant Labor Office and employees of the company shall be registered with such office.

The Ministry shall be notified of the establishment of the company by the Trade Registry Office.

According to the article 623 of the TCC at least one of the shareholders of the company shall be appointed as a director within unlimited acting capacity and managerial power.

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