

# Turkey

## Legal overview

### Executive Summary

Turkish legislation on establishing a company, is based on the principle that both international and local investors enjoy the same treatment and have the same rights and liabilities.

Turkey has introduced many reforms, making it easier to do business, and eliminating unnecessary formalities, to minimise cost and procedures.

After the articles of association of the companies are entered into MERSIS (Central Registry System), the incorporation of a company is carried out at Trade Registry Offices located in the Chamber of Commerce.

### Registered Companies and Partnerships

The four most common ways, for a non-Turkish company to operate in Turkey as a foreign investor are as follows;

- **Ordinary Partnerships:** An Ordinary Partnership does not have a legal personality. Any partnership formed in order to carry out a specific project, is accepted as an Ordinary Partnership, which is regulated under the Turkish Code of Obligations No.6098.
- There are no significant differences between Ordinary Partnerships, joint ventures, consortiums or business partnerships, none of which are registered. Although Ordinary Partnerships are subject to less complicated requirements than registered companies, the partners are first and foremost responsible for the debts of the company.
- **Liaison Office:** a non-Turkish company may open a Liaison Office to conduct market research and advertise and promote their business in Turkey. Liaison Offices are prohibited from

engaging in commercial activities. They do not have independent legal personality, or representation authority against third parties, they cannot issue invoices, enter into purchasing/selling agreements on behalf of the parent company, execute contracts, provide price quotations, or accept orders from customers. Liaison Offices must submit an annual notification of their activities to the Ministry for Economy.

- **Branch Office:** a non-Turkish company may open a branch which is independent from the parent company, and can independently perform commercial transactions. The parent company remains liable for all obligations of the branch, irrespective of the capital allocated to the branch. In the event of the transfer of the parent company, the branch shall also be subject to the transfer unless otherwise stipulated in the transfer agreement. Branches must maintain separate accounting records and separate management personnel. Turkish law applies to branches established in Turkey.
- **Turkish Subsidiary:** non-Turkish companies may also incorporate in Turkey. The common types of incorporation in Turkey are joint stock company (JSC) and limited liability company (LLC). These are explained in more detail below.

## Classification of Registered Companies

Pursuant to Turkish Commercial Code No. 6102 (“TCC”), companies are organized in two main groups; non-capital companies and capital companies:

- **Non-capital/partnership companies:** Collective and commandite companies. There is unlimited liability of shareholders for the company’s debts and undertakings. Therefore these are rare in Turkey.
- **Capital companies:** JSC, LLC and commandite partnerships with a share capital divided into shares. The shareholders have limited liability in these types of companies.

JSCs and LLCs are the most common types of capital companies. LLCs can be established with a minimum capital of TRY 10,000 and JSCs with a minimum capital of TRY 50,000. JSCs are better suited for bigger operations and the legal framework for corporate governance is more developed. Only JSCs can make a public offering. On the other hand, such as strict share transfer restrictions, the LLCs may suit better to reflect the shareholder’s commercial understanding.

## **Memorandum and Articles of Association**

The main constitutional document for a JSC and LLC is its articles of association (“AoA”). All registered companies must register their AoA that set out the rules which govern the company, including procedures for the appointment and removal of directors/managers of the company and shareholders’ meetings. It is possible to use a different shareholders’ agreement however this agreement is only binding on the shareholders/parties and is not binding on third parties.

## **Share Capital**

Share capital is the primary source of finance for the companies. The amount of share capital is recorded in the AoA and must be paid within 24 months starting from the date of incorporation. Changes in share capital are made through general meeting decisions.

Unlike partnerships, service deeds; personal effort; commercial reputation and undue credits may not be brought as capital in JSCs and LLCs. Assets including virtual platforms and intellectual property rights, on which there is not any limited property rights, confiscation or measures and which can be valued as cash and can be transferred, may be brought as capital.

In capital companies, shareholders’ liability is limited by their capital contribution to the company. However shareholders of an LLC can be held liable for public debts that cannot be collected from the company.

## **Public Offer of Shares**

Public offering procedures are regulated by the Capital Markets Board (CMB). Only JSCs can offer its shares to the public. The company should apply to CMB to receive approval of its proposals and at the same time apply to Borsa Istanbul to be listed on the relevant market.

Two prerequisites for companies to go public are; the capital of the company must be fully paid-in and the shares should be freely transferable. After fulfilling these conditions, companies follow a detailed procedure determined by CMB. The whole procedure starting from application to Borsa Istanbul and CMB, to trading on the exchange may last approximately 6 weeks.

## General Meetings

The rules applicable to quorum requirements of shareholder meetings vary depending on whether the company in question is a JSC or LLC.

For JSC, unless a higher quorum is required by law or by the AoA, a general assembly convenes with shareholders representing  $\frac{1}{4}$  of the share capital. This quorum must be preserved throughout the meeting.

If this quorum is not met at a first meeting, the shareholders are called to a second meeting. At the second meeting, present shareholders can vote on resolutions on any matter, irrespective of the share capital they represent. Resolutions are passed by a simple majority of votes.

The Turkish Commercial Code ("TCC") also introduces qualified meeting and resolution quorum requirements for some issues, such as change of scope of activities, change of nationality of the company and change of legal form.

In LLCs, all general assembly decisions, including election decisions, require the vote of simple majority of the shareholders present at the meeting, unless otherwise provided for in the AoA or in the TCC.

The TCC introduces qualified meeting and resolution quorum requirements in LLCs for certain issues such as change of scope of activities, creating privileged shares and so on. Different classes of shares with different voting rights can be issued. It is possible for a company to issue privileged voting shares, although a privilege can only be granted to the share (or a class of shares) and not to the shareholder(s).

## Directors

Unless otherwise required by special laws and regulations, there are no restrictions regarding the nationality and residency of the directors or managers. Legal entities can also be appointed as directors or managers of a company. In this case, a person must also be appointed as representative of the legal entity to act on its behalf. Foreign individuals who serve as directors or managers, or act on behalf of a legal entity manager or director, must obtain a Turkish potential tax number, to be registered with the relevant trade registry office. Directors of JSCs who are foreign individuals and also not shareholders and residing outside of Turkey, do not

need a work permit. A board of directors can be composed of a single member. Under the TCC, at least one member of the board must have full capacity to exercise the legal rights of the company.

## **Financing of a Company**

The company can be financed by:

- Capital contribution from shareholders in the form of shares;
- Loan, debt and bank finance;
- Equity investment from private equity funds;
- Capital contributions in kind such as; movable properties, real estates, intellectual rights (on condition that there are no encumbrances on them).

## **Commencement of business**

There are various requirements that need to be filled before a company can commence business. Before submitting the documentation determined in TCC and by the Trade Registry, the AoA agreed by shareholders must be entered into MERSIS. Once entrance of the AoA is completed in MERSIS, the physical documentation must be submitted for registration with the Trade Registry where the company has been incorporated. Registration takes approximately 5-7 days, provided the Trade Registry does not require additional information. Following registration with the Trade Registry, the company must also register with the relevant tax office, where the headquarters of the company is located.

## **Mergers and Acquisitions**

Mergers and acquisitions are regulated under the TCC. It is possible for companies to merge with other companies and take over another company or partnership.

For partnerships, it is possible for them to merge with other partnerships, however this can only occur where the partnership can only be taken over by a company on merge.

When a merger or acquisition is made, either a new legal entity is created, or one company or partnership continues with the other legal entity's name.

It is also possible for companies that are bankrupt to enter into a merger, with the condition that they must be the company taken over as part of the merger. The asset distribution of the bankrupt company, must not have started for the merger to take place.

Merger or acquisition transactions do not require any governmental authorities' approval in principle however, the transaction does require merger clearance by the Competition Authority, in case conditions determined in the Law on the Protection of Competition and relevant communique requirements are met.

Since public companies are generally regulated under Turkish Capital Markets Law, merger and acquisition transactions may require the approval of the Capital Markets Board.

Companies operating in regulated sectors (such as banking, insurance and energy) will also be subject to the approval of the relevant authority under specific laws.

## **Corporate insolvency**

The Turkish Execution and Bankruptcy Law (the "Law") gives priority to the prevention of a debtor's prospective bankruptcy however, the Law imposes a condition that the creditor's best interest must be protected during the process.

Insolvency proceedings must be dealt with in the courts. The proceedings can be initiated by debt collection procedures, or direct filing for bankruptcy. Regardless of the method used for commencement of insolvency proceedings, a company's assets must be liquidated either by bankruptcy declaration, approval of debt restructuring by forfeiting assets, or approval of reorganization by consent.

The law allows for three company rescue mechanisms;

- Postponement of bankruptcy;
- Debt restructuring;
- Re-organization by consent.

The partners in the individual companies (unlimited liability company, commandite companies and active partners who have to become natural persons in the commandite companies) have unlimited liability for all assets from the same debt.

In joint-stock companies and limited liability Companies, the share capital is the total amount contributed to the company by the partners. It is the company that is primarily responsible for the debtors in capital companies.

The exception, which applies to all types of companies, the public, tax and SSI debt, both the company and its partners/shareholders can be held accountable for the debt.

## Winding up of companies

A company may dissolve for various reasons determined in the TCC, such as:

- The company has realized its purpose and the shareholders no longer want to continue the business activities;
- the company was established for a limited period of time, which was prescribed in its Articles of Association;
- the company shareholders consider that the company no longer represents their interests;
- one or more claims have been filed by creditors with a Turkish court and the company is bankrupt.

The liquidation process can be started voluntarily by the company, or is compulsory, after the creditors have filed a petition with the court. The liquidation can be conducted by the Board of Directors, unless other liquidators are nominated within the AoA, or by a General Assembly resolution. The liquidators must be registered with the Trade Registry and announced.

If the liquidation takes place following a court decision, then the liquidator is nominated by the court. One of the liquidators with authority to represent the company must be a Turkish citizen and reside in Turkey.

The liquidator will prepare the balance sheet and the inventory of the company's assets, which must be approved by the shareholders during an extraordinary meeting.

The creditors then submit their claims and if the claims are not completed in time, the amount necessary to cover them is deposited to an administrative authority, appointed by the liquidator.

After paying the company's debt, the rest of the assets will be distributed to the shareholders. The amount given to each shareholder is in accordance with their contribution to the capital of the business.

The last step in the liquidation process, is to convene a general meeting, in which the termination of the procedure is announced.

The liquidation process can be completed within 12 months.

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# Tax overview

## Company Registration

Companies should be registered at the Chamber of Commerce and tax office where the company is located. Registration with the Chamber of Commerce should be done over MERSIS, a software/database prepared by the Government. Articles of Association, shareholders structure and company structure should be uploaded using MERSIS.

After registration at the Chamber of Commerce, the tax office application is done and the company will obtain a tax number.

If the company then intends to employ people, then a social security application must be made to the Social Security Institution.

## Setting-Up Taxation

The costs for setting up a company's taxation system are as follows:

- Turkish Competition Authority Charge 0.004%
- Chamber of Commerce Charge Trade Registry Gazette EUR300
- Notarization of Legal Books EUR100
- Notarization of Signature Circular EUR50

## National Current Benefit Taxation

The different types of tax attributable to Turkish companies are:

### Corporate Income Tax

The income of companies doing business in Turkey is subject to corporate income tax at a rate of 22% for 3 years (2018-2019-2020) and then after 3 years the corporate income tax rate will be reduced to 20%.

### Dividends

15% withholding tax is applied to dividends distributed by resident companies to Turkish individuals, who are considered full taxpayers in Turkey.

Any dividend distributions by resident companies to resident com-

panies, are not subject to withholding tax. In addition, in the event the company profit is not distributed, or added into the capital, no withholding tax shall be applicable.

## **Other Taxes**

### **Value Added Tax ('VAT')**

VAT was introduced in Turkey in 1985. The implementation of VAT in Turkey is similar to those practices in force in other European Union Countries.

As a general rule, all deliveries of goods and services that take place in Turkey are subject to VAT. This means that VAT is payable on every transaction involving production, or the performance of a service. Goods and services imported into Turkey are also subject to VAT.

Liability for VAT occurs as soon as a delivery of goods or services takes place. In a situation where invoices are issued prior to such delivery, VAT is payable only on the amounts shown on them, i.e. the amount cannot be altered. When goods are shipped, the VAT liability occurs when shipment begins.

The VAT that a taxpayer pays for goods and services purchased, can be deducted from the VAT received on deliveries of goods and services made. When the amount of VAT on sales is greater than the amount on purchases, it is this positive difference that the taxpayer pays to the tax office. Where the reverse is true (input VAT is more than output VAT) the tax is carried forward and can be deducted from future VAT collections.

VAT Tax rates are as follows:

**Standard rate of 18%**

**Second rate of 1%**, which applies to;

- Deliveries of newspapers and magazines;
- Second-hand cars;
- Processing and deliveries of some agricultural commodities;
- Houses, smaller than net 150 m<sup>2</sup>;

**Third rate of 8%**, which applies to;

- Basic foods;
- Deliveries of books and similar publications; and

- Cinema, theater, opera etc. admission fees.

The Council of Ministers has the authority to raise VAT rates to a maximum rate of 40%, or to reduce them to 0%.

VAT is reported and paid monthly by companies. Each monthly VAT return must be submitted to the tax office by the 24th day of the following month. If the return shows a VAT payable, that amount must be paid on 26th day of the same month that the return is filed.

### **Banking and Insurance Transactions Tax**

Income received by banks such as; commissions, interest, and premiums collected by insurance companies, is subject to a 5% banking and insurance transaction tax.

A return has to be filed and the tax paid by the 15th day of the month that follows the return. The banking and insurance transaction tax rate on interbank deposit transactions, repo gains and gains received from the sales of government bonds and treasury bills before their maturity is 1%.

### **Real Estate Tax**

There are different types of real estate tax and consequently different situations, to which they apply.

Property and wealth taxes may be imposed on the price of property and are therefore regarded as impersonal. They may also be imposed on the combined property holdings of a person, or his/her net worth and in this instance are regarded as a personal tax.

The real estate tax levied on immovable property, is a special form of wealth tax. This is broken down as follows:

- An annual Real Estate Tax on the estimated market value applies to residences at a rate of 0.1%;
- For buildings other than residences the rate is 0.2%;
- For cultivated land the rate is 0.3%, and for uncultivated land is 0.1%.
- For properties within municipalities of big cities, the amount of Real Estate Tax applicable is double those referred to above.

The tax amount reported by a company for Real Estate Tax purposes, cannot be less than the amount determined by the government authorities. The tax is paid in two equal installments; the first installment is in March, April and May and the second is in November.

### **Inheritance Tax**

Gifts, or unexplained transfers by inheritance, or by donations are subject to Inheritance Tax (IHT). IHT rates range between 1% and 30% depending upon the amount and nature of the transfer (gratuitous or non-gratuitous). The IHT is paid over three years, twice a year in May and November in equal installments.

### **Stamp Tax**

Stamp Tax is applicable to a wide range of legal documents such as; contracts, agreements, notes payable, financial statements and tax returns. The tax amount applied differs depending upon the nature of the document. Stamp Tax is applied as either a fixed amount, or as a percentage of the value of the transaction evidenced by the document.

### **Special Consumption Tax**

Special Consumption Tax is levied on the delivery, first acquisition or imports of goods determined in four different kinds of lists. The contents of lists and the applicable Special Consumption Taxes are shown in the table below.

Content of the List		Taxable Event	Special Consumption Tax
List I	A	Natural gas, petroleum products, LPG, petrol derivatives, base oil, etc.	Import and manufacturing (including refineries) of the goods.
	B	Solvents and derivatives of solvents and other similar kinds of goods.	Import and manufacturing (including refineries) of the goods.
List II	Vehicles	Subject to registration	First acquisition
		Not subject to registration	Import, delivery of the goods by the manufacturer, or auction sale of the goods before special consumption tax is levied.
List III	Non-alcoholic beverages, alcoholic drinks, cigarettes, tobacco products.		Import, delivery of the goods by the manufacturer, or auction sale of the goods before special consumption tax is levied.
List IV	Goods subject to increased VAT rate before Special Consumption Tax		Import, delivery of the goods by the manufacturer or auction sale of the goods before special consumption tax is levied.

## Treaties for the Avoidance of Double Taxation

Turkey is a signatory to a Treaty for the avoidance of Double Taxation, along with many countries all over the world.

A Double Taxation Treaty, in principle, enables tax paid in one country to be offset against the tax payable in the other, therefore preventing double taxation.

The treaty also provides for the grant of an exemption, or for the tax to be paid at a reduced rate on certain receipts, such as interest, royalties, dividends, capital gains and others that are connected with a transaction carried out between parties associated with the Double Taxation Treaty.

When certain income is taxable under the Turkish Income Tax Ordinance, but there is an exemption (reduced tax) under any Taxation Treaty, the income is taxed according to the provisions of the Taxation Treaty, which in some cases may mean no tax is payable.

## **Tax Treatments of Losses**

Any losses not deducted on a company's annual tax return can be carried forward for up to 5 years. Losses cannot be carried back.

## **Employer Obligations**

The obligations on an employer in respect of Turkish tax regulations are as follows:

### **Wage Tax**

In general an employer is obliged to pay wage tax and social security contributions direct to the tax authorities. The amounts due for this is taken from the salary of the employee and paid effectively on their behalf. Any payments in relation to wage tax or social security contributions are responsibility of the employer.

Both wage tax and social security contributions are paid on a monthly basis, prior to the end of the month following receipt of the benefit or wages by the employee.

### **Social Security**

Public sector workers, with private law employment contracts and private sector workers, who are employed by one or more employers, are covered by the Social Security Law.

Both the employees and the employers contribute social security premiums. The contribution rates for employee are 15% and employer 21.5%. The contributions are calculated as a percentage of the employee's gross salary, and are paid within an upper and lower limit.

The Social Security System covers, illness, maternity, disability, old age pensions and death. Employees' dependents may also be entitled to certain benefits under certain circumstances.

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