

# Formation and Registration of a Company in Turkey

## Introduction

Foreign investment legislations in the Republic of Turkey are based on the principle of equal treatment for the domestic and foreign investors. In accordance with Turkish Foreign Investment Law, foreign investors have the same privileges and obligations as the domestic investors. However, it should be noted that legislations regulating media service providers and the companies operating in the electricity market, civil aviation and sea transport sectors have certain restrictions for foreign investors.

Foreign investors can freely transfer abroad net profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or other financial institutions.

To operate in the Republic of Turkey, companies must be entered in a commercial register at the local Trade Registry Office. In addition, established businesses, founders and company directors must register with the competent local tax authorities and obtain a tax number.

During establishment process, the valuations of international credit agencies as well as courts or competent authorities of the investor's country are accepted as valid in the determination of the share value for marketable securities that are contributed as capital in-kind.

Foreign capital entities may employ foreign personnel in Turkey, provided that the work permits are obtained from the Ministry of Labour and Social Security.

## Principle Forms of Business Entity

Limited Liability Companies and Joint Stock Companies are the most common forms of business entities in Turkey. Foreign investors may form any type of partnership in Turkey. In the old regime, foreign investors were only allowed to form a Joint Stock or a Limited Liability Company. Now, any form of company included in the Turkish Commercial Code is acceptable for the foreign investment. This allow investors to form a company that serves their needs best.

Forms of companies included in the Turkish Commercial Code;

- Joint-Stock Company (JSC)
- Limited Liability Company (LLC)
- Commandite Company
- Collective Company
- Cooperative Company

Based on the subject of a company's operation, the form and location of the company may affect the tax obligations of the shareholders and company itself. For instance; (i) under the current legislation, real estate investment trusts are exempted from the income tax. (ii) Liaison offices in Turkey are exempted from the salary-income tax for their employees and the corporate tax and stamp tax for their activities.



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(iii) The income derived from the sale of goods manufactured by the license holders in the Free Trade Zones is exempted from the corporate income tax.

Limited Liability Companies are the very common type of company where shareholders would like to manage their company with ease. They have a simpler structure and may be easier to administer in long run. When the primary objective is to establish a fully-owned subsidiary with minimum capital and administrative requirement, a Limited Liability Company may be preferable.

An important advantage of Limited Liability Companies is that the liability of shareholders for third parties, exempt for fiscal liabilities, is limited to the amount that remains unpaid on their shares. Moreover, unlike Joint stock Companies, any restriction on the transfer of shares to third parties under the articles of association of Limited Liability Companies can be imposed.

A Joint Stock Company is the second common type of vehicle for conducting business in Turkey. A Joint Stock Company is especially preferable where shareholders have potentially conflicting interests. Joint Stock Companies offer far better protection in relation with tax and similar duties, levies and charges since the shareholders of Joint Stock Company(s) have limited liability for fiscal obligations, unlike Limited Liability Companies.

If the founders would like to offer shares or debentures to the public, the company type shall be a Joint Stock. On the other hand, banks, private finance institutions, insurance companies, financial leasing companies, factoring companies, holding companies, companies operating as foreign currency exchange offices, companies dealing with public warehousing, publicly held companies subject to the Capital Markets Law, companies operating in the free trade zones should be established as Joint Stock Companies as well.

Limited Liability Companies and Joint Stock Companies may be formed by one shareholder only (single member company), who may also be the sole director and secretary of the company.

#### **Shareholders' Liabilities for Public Receivables**

The liability of Joint Stock and Limited Liability Companies' shareholders is only against the company and limited with their capital contribution. However, the shareholders of Limited Liability Companies are, unlike Joint Stock Companies, jointly and severally liable against public receivables (fiscal liabilities) such as taxes, duties, levies and charges if the company is unable to make the required payments.

In addition, "the legal representatives" of Limited Liability and Joint Stock Companies are personally liable for any unpaid tax and other public liability that cannot be collected from the entity.

Board members in Joint Stock Companies will not be personally liable for any unpaid taxes and other fiscal liabilities where a director(s) is appointed as a fully authorized board member to represent the company or a manager(s) is appointed to represent the company. Otherwise, the board members, as the representative of the company, would be personally liable for any unpaid taxes and other fiscal liabilities.

#### **Real Properties**

Companies incorporated in Turkey by foreign investors (or companies with foreign shareholders) can only acquire and use real properties in order to conduct the activities stated in their articles of association. These real properties cannot be in military or private security zones. Moreover, Petroleum Law, Encouragement of Tourism Law, Banking Law and the Industrial Zones Law may limit foreign companies in acquiring real property in particular circumstances.

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## Regulations of Limited Liability Companies (LLC)

**Founders, share holders.** Limited liability Companies may have a minimum of one shareholder (single member company) and a maximum of fifty shareholders. There is no nationality or residency restriction.

The shareholders of Limited Liability Companies are liable to the company only with the amount of subscribed capital and in proportion to their capital contribution with regards to third party receivables. The shareholders are jointly and severally liable against fiscal liabilities such as taxes, duties, levies and charges if the company is unable to make the required payments.

Unlike Joint Stock Companies, any restriction on the transfer of shares to third parties can be imposed under the articles of association.

**Capital.** Minimum authorized share capital is 10.000 TL. At least 25% of the capital contribution must be paid in during the establishment of the company. Unpaid capitals must be paid in a period of two years following the establishment. Capital contributions may be in the form of moveable assets, machinery, patents, domestic monetary prospects etc.

**Management.** Principally, all shareholders of a Limited Liability Company are also directors and they are collectively entitled and obligated to manage the company affairs and the company. Limited Liability Companies may be managed by their general manager(s) as well.

One or several managers are permitted. Real and legal entities are allowed to be selected as a company manager. In old regime, individuals were only allowed to be the manager of a company. The minimum number of directors in a private company is one while there is no limitation for maximum number. One of the managers is required to be shareholders. Where more than one manager is appointed, the board of directors has to be established. There is no nationality or residency restriction for the managers.

“The legal representatives” of a Limited Liability Company are personally liable for any unpaid taxes and other fiscal liabilities that could not be collected from the entity.

In case, a corporate body becomes a manager or a board member, an individual shall be appointed to act on behalf of the corporate body and this individual shall also be registered with the local Trade Registry.

**Board of directors.** The board of directors must be formed where more than one manager is appointed by the general assembly. The one of the directors shall be chosen from the shareholders. The chairman shall be appointed by the general assembly. There is no nationality or residency restriction for the directors.

**Taxes and fees.** There are no taxes on incorporation and capital increase. The costs of establishing a company in the Trade Registry and of notarizing the articles of association depend on the company's capital and the page amount of the articles of association. For the taxes that a company will be subject to, after the establishment, please refer the tax overview section of this guidance.

**Types of shares.** The shares of a Limited Liability Company, unlike Joint Stock Companies, cannot be represented by negotiable share certificates.

**Dividends.** Resident corporations are subject to a 15% withholding tax when dividends are paid out to shareholders; however, dividends paid by resident corporations to resident corporations are not subject to the withholding tax. Tax treaties often provide discounted rates of withholding for shareholders who are the residents of treaty countries.

No profit shall be distributed to shareholders unless the legal and statutory reserves and the amounts which are required to be allocated by law or under the articles of association are first allocated.

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An amount equal to 5% of after-tax annual profits must be placed in a legal reserve account until the reserve reaches 20% of equity capital. If the company's capital rate decreases, the reserve account should continue to be allocated.

### Regulations of Joint Stock Companies (JSC)

**Capital.** Minimum authorized capital is 50,000 TL. At least 25% of capital contributions must be paid in during the establishment of the company. Unpaid capitals must be paid in two years following the establishment. Other capital contributions can be in the form of moveable assets, machinery, patents, domestic monetary prospects etc.

**Founders, shareholders.** One person can establish a Joint Stock Company. There is no nationality or residency restriction.

Unlike Limited Liability Companies, the shareholders of Joint Stock Companies are not personally liable for any unpaid taxes and other fiscal liabilities that cannot be collected from the entity.

**Control.** A majority of %25 is sufficient to approve most actions; a majority of more than 50% is required for major decisions including the change of the articles of association. A minority of 10% of equity capital (5% in public company(s)) can call an extraordinary shareholders' meeting or add topics on the agenda of shareholders' meetings. A single shareholder may request an extraordinary shareholders' meeting or add topics on the agenda of the shareholders' meeting irrespective of his capital contribution, provided that the request is approved by the board of directors or the local court.

**Board of directors.** One or several board members can be appointed. The general assembly may appoint the board members for up to 3 years and may re-appoint for additional terms. At least one of the board members is required to be Turkish citizen and the resident of Turkey. There are no restrictions for the other board members on the nationality and residency. Board members are not required to be shareholders. Real and legal entities are allowed to be selected as a board member.

"The legal representatives" of Joint Stock Companies are jointly and severally liable for any unpaid taxes and other fiscal liabilities that cannot be collected from the entity. Where a director(s) is appointed as a fully authorized board member to represent the company or a manager(s) is appointed to represent the company, the directors in the board would not be personally liable for any unpaid taxes and other fiscal liabilities.

The physical presence of board members is not required for board meetings; The commercial code allows board meetings to be held in an electronic environment and board resolutions may also be approved via electronic signatures.

In case, a corporate body becomes a board member, an individual shall be appointed to act on behalf of the corporate body and this individual shall also be registered with the local trade registry.

**Independent auditors.** Companies are not obliged to have an internal auditor as a statutory organ. Companies to be subject to independent auditing are determined by the Cabinet of Ministers. Companies exceeding the following limits of at least two criteria among three criteria in two successive fiscal periods shall be subject to independent audit.

Total Assets	: min. TRY 150 million
Net Sales	: min. TRY 200 million
Employee number	: min. 500

Furthermore, a minority of 10% or shareholders owning 1 million TL equivalent shares can request a special audit provided that the founders or directors act against the rights and/or interest of the company and shareholders.h

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**Taxes and fees.** There are no taxes on incorporation and capital increase. The costs of establishing a company in the trade register and of notarizing the articles of association depend on the company's capital and the page amount of the articles of association. For the taxes that a company will be subject to, after the establishment, please refer the tax overview section of this guidance.

**Types of shares.** The shares could be represented via share certificates or temporary share certificates; which could either be in the form of bearer share certificate or registered share certificate. The shares are transferable unless the transfer is explicitly restricted in the articles of association. It should be noted that the restrictions may be only imposed in limited circumstances allowed by the commercial code.

In compliance with the requirements of Turkish Capital Market Law and respective legislation, Joint Stock Companies may issue various types of securities (equity or debts).

**Dividends.** Resident corporations are subject to a 15% withholding tax when dividends are paid out to the shareholders; however, dividends paid by resident corporations to resident corporations are not subject to withholding tax. Tax treaties often provide discounted rates of withholding for shareholders who are the residents of treaty countries. No profit shall be distributed to partners unless the legal and statutory reserves and the amounts that are required to be allocated by law or under the articles of association are first allocated.

An amount equal to 5% of after-tax annual profits must be placed in a legal reserve account until the reserve reaches 20% of equity capital.

### **Establishment Process and Customary Time Period**

The registration and establishment of a company in Turkey can be completed in a few days after required documentations are duly prepared. Founder(s) shall submit 3 copies of signed and notarized articles of association together with the below listed documents to the Trade Register located at the province where the entity will be established.

The company can start to operate its business activity after the approval and the registration of the Trade Register. Company registrations and participations are announced to the third person or related parties by the publication of Turkish Trade Registry Gazette.

No pre-approvals required for company establishments in Turkey. However, the foundation of banks, special financial institutions, insurance companies, leasing companies, factoring companies, foreign exchange dealers, and public companies subject to the Capital Market Law and founders and operators at free trade zones are subject to the prior permission of the Ministry of Industry and Commerce.

### **List of Necessary Documents for a Company Establishment**

- Company establishment petition
- Articles of association including notarized signatures of founders
- Founders' statement proving that all shares constituting the registered capital have been subscribed by the founders
- Chamber of commerce registration form
- Notarized copy of the signatures of persons with the authority to represent and bind the company.
- Notarized translation of passport in case the foreign shareholder is a real person;
- In case the foreign shareholder(s) is a legal entity; the original copy of the Certificate of Activity issued by the competent authorities and approved by the relevant Turkish Consulate or apostilled and its notarized translation
- Bank letter proving that the share capital has been deposited

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- Bank receipt indicating that 0.04% of the company capital has been deposited to the account of the Turkish Competition Authority
  - Potential tax identification number
  - Tax identification numbers of the founders and foreign directors
  - Lease contract indicating company's legal address
  - In case there are any rights and movable and immovable assets to be put in as capital for the company to be established; the expert report of the assessment made to ascertain the value of these and the related court decision for the expert assignment

Republic of Turkey is a signatory to the Hague Convention. According to the Convention, legalization is not necessary with respect to public documents issued in a country which is a signatory to the Convention. Documents only need to be certified in the form of an apostille by that country's authority. If the documents are executed in a non-signatory country, they must be legalized by the Turkish Embassy or a diplomatic representative office of Turkey representing the interests of Turkey in the home country of the founder.

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