

Establishing a Business in Turkey

The New Turkish Commercial Code No. 6102 ("New TCC") was published in the Official Gazette on February 14, 2011. As stipulated in the New TCC and the Law on Effectiveness and Implementation of the Turkish Commercial Code No. 6103 ("Code on Effectiveness of New TCC"), the new code came into effect on July 1, 2012.

The main goal of the New TCC is to develop a corporate governance approach that meets international standards; to foster private equity and public offering activities; to create transparency in managing operations; and to align the Turkish business environment with EU legislation, as well as for the accession process.

Major amendments in the New TCC can be outlined as:

Shareholding Structure

The New TCC allows the establishment of joint stock companies (A.Ş.) or limited liability companies (Ltd. Şti.) with only a single shareholder.

According to the former code, joint stock companies could be established with a minimum of five shareholders, while limited liability companies could be formed with a minimum of two partners.

Therefore, the New TCC removes the obligation for foreign companies to secure mandatory minority shareholders in order to comply with the minimum shareholder number requirements by the former TCC. The shares of previously established companies can now be held by a single party.

Board of Directors*

Under the New TCC, in compliance with the EU legislation, the board of directors may now be comprised of a single person instead of at least three members. This offers foreign investors the opportunity to do business more easily, as board meetings may be hindered if there are a large number of shareholders that have to travel frequently between countries.

The New TCC does not require physical presence of board members; it allows board meetings to be held in an electronic environment and board resolutions may also be approved via electronic signatures. Through these amendments, the New TCC will prevent foreign companies from incurring unnecessary travel expenses.

Additionally, legal entities may be appointed as board members. This means foreign shareholders no longer have to deal with red tape such as, excessive legal documents or holding shareholder meetings in order to change board members. Different representatives may be appointed as a board member on each occasion if he or she is entitled to by the legal entity.

The obligation that board members must be shareholders has also been abolished. According to the New TCC, any independent individual may be a board member. This ensures a professional board of directors that can act separately from shareholders, and in turn, boosting corporate governance.

*in accordance with provisions pursuant to Joint-stock company (A.Ş.)

Registered Capital System

The New TCC offers non-public companies the opportunity to adopt a registered capital system, so non-public joint stock companies may benefit from the opportunity of flexible capital increases introduced by the registered capital system. This is seen as a great advantage for foreign companies to increase capital whilst reducing bureaucracy and/or travel expenses.

Intellectual Property Rights

Intellectual property rights may be contributed as capital in-kind. In order to contribute such assets as capital in-kind, those assets shall have transferable qualifications, and become eligible for valuation in cash.

Ultra-Vires

The former TCC incorporated the doctrine of Ultra Vires that is "corporations can only be authorized to acquire rights and undertake debts, provided that they conduct their business within the field of operations defined in the articles of incorporation." This doctrine of Ultra Vires was abolished on June 1, 2012, therefore, transactions of companies, which operate outside the business areas specified in their articles of association, will be effective.

Establishing a Business in Turkey

Turkey's regulatory environment is extremely business-friendly. You can establish a business in Turkey irrespective of nationality, or place of residence.

Company Establishment in One Day

It is possible to establish a company in a single day by applying to the relevant trade registry office with the required documents. The company is established once the founders declare their intent to set up a joint stock company in the articles of association, which have been issued in accordance with the law, and where they, with their notarized signatures, unconditionally acknowledge and undertake to pay the whole capital. The company receives its "legal entity" status upon registration with the trade registry.

Types of Companies

Incorporated companies such as a:

- Joint-stock company (A.Ş.)
- Limited liability company (Ltd. Şti.)
- Commandite company
- Collective company
- Cooperative company

Joint Stock Company

The company's stock capital is divided into shares and the liability of the shareholders is limited to the subscribed capital and paid by the shareholder. At least one shareholder (real person or legal entity) and a minimum capital of TRY 50,000 are mandatory. The mandatory company shall include a general assembly and a board of directors.

Limited Liability Company

It is a company established with at least one shareholder (real person or legal entity) and the liability of the shareholders is limited to the subscribed capital and paid by the shareholder. A minimum capital of TRY 10,000 is mandatory.

Commandite Company

It is the company established to operate a commercial enterprise under a trade name. Whereas the liability of some shareholders is limited to the capital subscribed and paid by the shareholder (commanditer), for some shareholders there is no limitation of liability. Legal entities can only be commanditer. No minimum capital is required. The rights and obligations of the shareholders are determined by the articles of association.

Collective Company

It is the company established to operate a commercial enterprise under a trade name and, the liability of none of the shareholders is limited only to the capital subscribed and paid by the shareholder. No minimum capital is required. It is mandatory that all the shareholders be real persons. The rights and obligations of the shareholders are determined by the articles of association.

Company Establishment Procedures

Three copies of articles of association (one copy original) which are notarized are prepared. Following the notarization of articles of association, within 15 days at the latest, application to the relevant trade registry office with the documents set below is needed.

Documents for the Company Establishment

- Letter of Undertaking (Trade Registry Regulation Article 24)
- Articles of association including notarized signatures of founders and notary certification proving that all shares constituting the registered capital have been subscribed by the founders in the articles of association
- Founders' statement signed by the founders
- The bank letter proving that the share capital has been deposited
- The bank receipt indicating that 0.04% of the company capital has been deposited to the account of the Turkish Competition Authority at a state bank
- Permit or letter of compliance for companies whose corporation is subject to the permit or letter of compliance issued by the relevant ministry or other official institutions
- Notarized copy of signatures of persons with the authority to represent and bind the company

- Application number indicating that the trade name to be used has been checked and confirmed by the Trade Registry Office
- Company establishment statement form (3 original copies)
- Certificate of residence of founding partners
- Notarized translation of passport in case the foreign shareholder is a real person; apostilled and notarized translation of registry document issued by the competent authority in case the foreign shareholder is a legal entity