

Turkish Limited Liability Companies: What's New for Foreign Investors



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In the articles published in the last two issues of *PRIVATE* magazine (3/2011 and 4/2011), we reviewed the significant changes introduced by the new Turkish Commercial Code (the "New TCC"), which will take effect on 1 July 2012. In the previous issue we looked into the joint stock company (JSC), which is the most important capital company type preferred by foreign investors in Turkey. In this article we will review the changes, which the New TCC will bring in respect of limited liability companies (LLCs).

Establishment of a limited liability company

According to the regulations of the Previous Turkish Commercial Code (the "Previous TCC"), at least 2 founding partners were required to establish an LLC. With the New TCC, a single shareholder will now be able to establish an LLC, while the formalities are simplified. However, the total number of LLC partners must not exceed 50.

The goal of the single-shareholder structure is to create a more functional

company in practice. Under the Previous TCC, if one of the partners left the company, the remaining partner had to find another partner or continue business as an ordinary company. However, this could put the legal security of third parties with business relationships with the company at risk, and problems could arise due to "nominal partners", who were not so in reality. Both problems will be solved with the new regulation.

Management and representation

Pursuant to article 623 of the New TCC, management and representation of the company can be vested in one or more partners or third parties by the articles of association, as long as they bear the title "manager". If there is more than one manager, a council of managers will be formed. A legal entity can also be appointed as a company manager, in which case the legal entity will identify a real person who will take over the management function on its behalf. At least one of the company managers should be resident in Turkey.

Minimum capital

Whereas the minimum capital stipulated in the Previous TCC was TRY 5,000, the New TCC requires at least TRY 10,000. Another change is that paying the capital in installments will not be permitted any more. The capital will have to be paid at once. Provisions related to default with regard to capital contributions will be repealed. This will help strengthen LLCs financially and protect the rights of the creditors. Furthermore, it will now be possible to attach capital contributions to registered shares. Also, some flexibility will be introduced in the transfer and proving of capital shares, and partners will be allowed to regulate share transfers as they wish, and they can make transfers easier through respective articles of association of the company.

Auditing in accordance with international standards

The New TCC requires total compliance with the Turkish accounting standards which are identical to international accounting standards.

Articles of association

The New TCC will introduce a division in terms of records to be included in the LLC articles of association. Articles 576 and 577 of the New TCC regulate the binding records, which must be included in the articles of association, and the conditional records under the condition that they are stipulated in the articles of association. Under the condition that it is stipulated in the articles of association, the purchase, forward purchase and re-purchase of capital shares is allowed. Deviation from legal provisions in the calculation of the voting rights and dividend distribution is allowed as the code opens the way for veto power and privileged voting rights to some partners. This regulation stipulates a new system. Due to this new system, LLC articles of association should be prepared with care.

Website

A limited liability company will be obliged to have a website like a joint stock company. All information about an LLC which is of interest to shareholders, creditors and stakeholders will have to be put on the website.

Conclusion

As a result of the changes in the New TCC, LLCs will almost become small JSCs. The Previous TCC did not allow dividing principal capital and attaching shares to registered stocks. The New TCC will change this and regulate that the capital of the company can be divided into shares and these can be attached to registered stocks. LLCs, a type of company where partners are not liable for the debts of the company, will now be more like JSCs, increasing their appeal for foreign investors.

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