Your Turkey specialist

Establishment of a company in Turkey

January 2021

2 – Company formation in Turkey

1. introduction

Turkish company law shows great similarities with the types of company also known in Germany; The differences, some of which are considerable, only become apparent when the legal details are examined more closely. Commercial companies have legal personality, which they acquire through entry in the commercial register; they also receive the merchant status. Restrictions for foreigners only arise today with regard to privileges for Turks in certain professions. In the case of corporations, such restrictions no longer have any practical effect.

MINROGROUP CONSULTING INVESTMENT advises clients on the market launch in Turkey, especially with regard to the best corporate structure. With MINROGROUP CONSULTING INVESTMENT, we are able to set up companies for you quickly and efficiently directly on site in Turkey.

II. private companies

Partnerships are only considered for foreign investors if the partners can also demonstrate a secure residence in Turkey.

The general partnership (kollektif sirket) roughly corresponds to the German open commercial company (OHG). Here the partners are personally liable with their entire assets. The limited partnership (komandit sirket) is very similar to the German KG. A practically significant difference is that the general partner (komandite) who is liable with his assets must be a natural person. The construction of the GmbH & Co. KG is therefore not possible in Turkey. A variant close to the AG is the limited partnership on shares (sermayesi paylara bölünmüs, komandit sirket).

III. Company with limited liability (LLC)

The LLC manages with a single shareholder. The maximum number of shareholders is 50.

The capital must be at least 10,000 TL in cash or in kind. The shareholder must "take over" his share, i.e. undertake to pay it in full. The condition that at least 25% must actually be paid in at the beginning no longer applies in 2018. Reserves of 20% must be formed. One share has a nominal value of at least 25 TL. The capital increase requires full payment of the initial capital.

The purpose of the company, registered office, duration of the company (limited or unlimited), capital, shareholders and share ratio, rules on the payment of the capital, management and representation relationships, distribution of profits are to be regulated in the partnership agreement (statutes). A simple model partnership agreement will often suffice. The amendment of the Articles of Association requires two-thirds of the represented capital. Shareholder resolutions must be notarized. In practice, the certification can also be carried out without the presence of the shareholders, since it is sufficient for the notary to compare the signature with the signature circular.

Company formation in Turkey – 3

At least one managing director must be appointed. If there are several managing directors, the shareholders' meeting must appoint a "chairman" (general manager). There is no residence requirement, so there is no requirement that a managing director must have Turkish citizenship or actually live in Turkey. A shareholder must have extensive managerial powers. This is commonly interpreted in such a way that a shareholder actually has to be appointed managing director. Legal persons can also become managing directors. You must then appoint a representative who will also be entered in the commercial register. The shareholders' meeting has no influence on the appointment of this representative, this is solely a matter for the legal entity that provides the management.

Details of the incorporation formalities can be found on the websites of the Chambers of Commerce, which are responsible for keeping the commercial register. It is important that when the company is founded, the capital contribution to be paid in directly is in an account designated for this purpose and that the contribution to the consumer fund of 1% and the compulsory contribution for the¨competition authority (0.04%) have been paid into an account at Ziraatbankı and the trade confirmation from the local municipality is available.

➢ Banks and finance companies (including leasing companies) cannot be incorporated as LLCs, only as Incs. The "Inc. compulsion" for insurance companies has been eliminated.

From 2013, the appointment of an independent auditor is mandatory for companies of a certain size. Medium-sized companies are not affected by this provision.

The shareholders are liable in proportion to their shares for¨public claims, which is particularly important in the event of the company's insolvency.

In principle, the company is set up for an indefinite period, but it can also be limited to a specific period. It also ends by unanimous shareholder resolution, court order or bankruptcy. Except in the case of bankruptcy, the managing director can be the liquidator. If enforcement protection is granted for the purpose of restructuring instead of bankruptcy, the managing director usually remains in his position. The transfer of shares requires notarization (in practice, certification is usually sufficient) and the consent of the other shareholders. It must be entered in the commercial register.

4 – Company formation in Turkey

IV. joint-stock company

The INC differs from the LLC in that it is easier to transfer shares, has higher capital requirements and has more opportunities to operate on the capital market. After the 2012 reform, the INC also manages with a single shareholder.

Since July 1, 2012, the law no longer distinguishes between unitary and staged foundations, but instead between unregistered and registered capital systems. In the case of the unregistered capital system, an “ordinary” joint stock company is created, which requires at least 50,000 TL as a share capital. In the "registered system" the share capital must be at least 100,000 TL. Here, the INC can register a capital limit with the capital market supervisory authority, up to which the board of directors can carry out the capital increase themselves, i.e. issue shares at any time. This meets the need to be able to obtain quick capital on the market even if the company is not listed on the stock exchange.

n the case of cash incorporation, 25% of the capital must be paid in before incorporation, the rest within 24 months. A capital increase requires full payment of the initial capital.

Reserve requirements are regulated by law (20%). A share has a value of at least 1 KR (= 0.01 TL).

The purpose of the company, registered office, capital, shareholders and share ratio, rules on the payment of capital, management board and representation relationships, auditors (not comparable to the German supervisory board!) and distribution of profits are to be regulated in the articles of association. A simple sample charter will often suffice. The auditor can be dispensed with for smaller INCs.

Since July 1st, 2012, the INC only needs one member of the board, the requirement to be a shareholder no longer applies. The term of office of the Board of Directors is a maximum of three years, with the possibility of extension. A legal person can also be elected to the board. It then has to designate a natural person as its representative. The shareholders' meeting has no influence on the appointment of this representative. There is no residency requirement, nor is there a requirement for a Turkish national to be appointed to the board of directors.

The auditors, which must consist of a suitable professional (auditor, tax consultant), monitor the activities of the board of directors from an economic point of view (balance sheets). It has indirect possibilities to intervene (right to file a claim with the court). The auditors must not have any dependency or organ relationship with the INC.

➢ Currently (September 2020), the requirement to set up an auditor only applies to certain large companies.

With certain exceptions, the Articles of Association can be amended by a simple majority.

The presence of the government commissioner (representative of the ministry) is now only required at certain general meetings, for example if the purpose of the company is to be fundamentally changed or the capital is to be increased or reduced, or if the general meeting is to be held abroad. Otherwise, the government commissioner is regularly only to be consulted with the INCs registered with the capital market supervisory authority.

The incorporation is the same as for the LLC.

➢ Special capital requirements and possibly restrictions for foreigners apply to certain types of companies on the financial market. From five times the legal minimum capital, the INC must have a contract with a company lawyer.

The INC ends by unanimous shareholder resolution, court order or bankruptcy. The law does not provide for a limited duration.

Since 2012, a qualified minority has been able to force dissolution if there is an important reason. The control options by the minority have also been strengthened with the new LEO's.

The transfer of shares is easily possible in writing, so neither a notary nor entry in the commercial register is required. A share register must be kept.

V. termination of the capital company

A corporation can be terminated by a unanimous shareholder resolution. The law made it more difficult for a shareholder to be excluded or even withdraw from the company by making it necessary to take legal action. Finally, the company can also be terminated following bankruptcy, which can also be initiated by creditors, or through liquidation. Certain dispute resolution procedures can also be agreed in the partnership agreement.

The ordinary liquidation of a corporation takes at least six months (registration period for claims). It ends when the final report shows no outstanding debts and the end of all possibly ongoing legal proceedings due to an application for cancellation to be filed with the commercial register. The liquidation is carried out by one or more liquidators who are appointed by the shareholders' meeting.

VI. liability issues

The board of directors and managing directors are liable to society for their misconduct. In addition, they may be liable to third parties for tortious acts. If the tortious act is also attributable to the company, the board of directors/managing director shall be jointly and severally liable with the company.

A special feature of Turkish law is the liability of the board of directors/managing director for public claims. Liability is not limited.

Furthermore, the shareholders of the LCC are also liable for public claims, in proportion to their shares. Anyone who holds 60% of an LCC is therefore liable for 60% of the outstanding public claims. Liability usually becomes relevant in insolvency. However, in the event of persistent non-payment of taxes, the tax office can already issue seizures while the company is still running. The managing director can then in turn be held liable for this by the affected shareholders. The liability regulations against shareholders do not apply to the stock corporation.

6 – Company formation in Turkey

VII. conversion, fusion

The conversion (türü degiştirme) is about a change of form. If a general partnership and a limited partnership are merged, there is a greatly simplified procedure, because here only one partner has to be made a general partner or released from this status. The conversion is treated similarly to the incorporation of a company in the new form. The management has to draw up an interim balance sheet, a conversion plan and a conversion report. Voting rights and rights to the income should be retained; if this is not possible - for example if preferred shares are converted into normal shares - a severance payment must be made.

There are two basic types of merger:

- Merger: two or more companies are merged into a new company.
- Takeover: one company takes over the other with all assets and liabilities. The acquired company is deleted from the commercial register.

In both cases, a new group of assets is created that is liable for all the liabilities of the previous companies and assumes their claims. Takeover and merger can also be combined with a change of legal form, i.e. the LLC can be converted into an INC or vice versa. Partnerships and cooperatives can also be merged with or converted into corporations. In connection with these processes, shareholders can leave the company, and if necessary, severance payments can also be made for departing shareholders. It should be noted that an undercapitalized company can only be taken over if the acquiring company takes care of the capitalization.

In a full split, all of the company's assets are divided and transferred to at least two other companies. The split company will be liquidated.

In the case of a partial split, the process described above is limited to individual parts of the company that are incorporated into another company. The divided society survives. The split company's capital decreases accordingly, while the absorbing company's capital increases accordingly. Interim or start-up balance sheets must be drawn up. A split plan is established. The acquiring company and the splitting-up company must conclude an acquisition agreement. A breakdown report must also be prepared.

VIII. Tax questions

Foreign shareholders and directors must apply for a tax number in Turkey. Furthermore, the financial authorities check during the course of founding whether a functional business premises is available. This rules out the establishment of letterbox companies.

By law, corporation tax is 20% of profits, can be increased (currently 22%). In addition, there are fluctuating special levies – mostly as fund levies – which slightly increase the tax burden. Other types of tax that may affect companies include property and property tax, stamp duty, sales and value added tax, special consumption tax, advertising tax, shareholder loan levies and environmental levies. Pay attention to advance payment obligations for income tax or corporation tax. There is no "trade tax" in Turkey. In total, the tax burden for Turkish corporations is lower than in Germany (max. 22%, in Germany more than 30%).

The profit relevant to tax law is determined after deduction of all expenses corresponding to the purpose of the company. Default interest is not deductible.

IX. Incorporation and incorporation costs

The notary hardly plays a role in the formation of a company. The main declarations are submitted directly to the commercial register, whereby the founders can also be represented with proper power of attorney. The signature circulars must be created personally in front of the commercial register official. If the founders are based abroad, the signature form can also be submitted to a consulate general or a notary (certified with an apostille). The entries are prepared and maintained using the Mersis database system.

The notary costs only arise due to the certification of powers of attorney and translations. At least EUR 500.00 is to be estimated for the announcement and registration. Other taxes are to be expected. As a rule, consulting costs and translation costs are also incurred. The amount also depends heavily on the individual case. Advisory costs can be borne by the new company in an appropriate amount. Anyone founding a corporation in Turkey should expect formation costs (without capital) of up to 10,000 euros for a foundation in order to achieve the necessary reliability and legal certainty. With higher share capital, the consulting costs usually go up accordingly.

X. branch office

The dependent branch of a foreign company is subject to approval. It does not have its own legal personality, but establishes a place of jurisdiction and a second tax domicile. Due to the lack of legal personality, it cannot conduct any lawsuits (exception: as a defendant in matters affecting its own activity, but the parent company is then considered sued). Unless otherwise agreed, Turkish law applies to employment contracts. When applying mandatory rules, it is not just the number of employees in the branch that is decisive, but that of the entire company (case law of the Court of Cassation). Because it is a second place of business in terms of labor law and taxation.

The conversion of the branch into a corporation is possible at any time.

As a rule, we recommend founding an independent corporation, unless you plan to do just what is typical for a liaison office.

8 – Company formation in Turkey

XI. liaison office

A liaison office can only be established by a foreign commercial company entered in the commercial register, not by a sole proprietorship (sole proprietorship, sole trader). It is subject to approval, which is granted by the Department of Commerce for three to five years, rarely for ten years. Approval is rarely refused without justification. The liaison office does not have its own legal personality, and from the Turkish point of view it is not treated like another business location in Turkey. However, office space must be proven. Employees of such an office do not have to pay any income or wage tax. Payment is made by the parent company. Nevertheless, it is necessary to keep your own bookkeeping, which is also monitored by the tax authorities. In addition, the employees have to pay the Turkish social security. The office may not be commercially active, so it cannot generate its own income. As a rule, a liaison office is only suitable for representation, marketing, control and training tasks. Conversion into a corporation is not possible, this must be re-established and the liaison office given up.

XII. The services of MINROGROUP CONSULTING INVESTMENT

MINROGROUP CONSULTING INVESTMENT supports its clients by advising them on all aspects of Turkish corporate law and other issues relevant to the establishment and management of a company in Turkey, such as labor law, commercial tenancy law and tax law. Settlement takes place in Istanbul.

MINROGROUP CONSULTING INVESTMENT in Istanbul is available with the relevant qualified staff for the foundation itself. Settlement takes place in Istanbul.

General information on business law in Turkey