

ESTABLISHMENT OF A LIMITED LIABILITY COMPANY WITH A FOREIGN LEGAL ENTITY PARTNER

1. Description of the Issue

There are fundamental amendments in the provisions for the limited liability companies which have been set on the new Turkish Commercial Code (“TCC”). When the revoked Law no. 6762 was in force, at least two shareholders were requisite to be able to establish¹ a limited liability company in Turkey. However, according to the one of the most crucial amendments on the cited Law, it is possible to establish a limited liability company only with one shareholder. Moreover, unless the otherwise agreed in any Law being in force in Turkey and in any international agreement to which Turkey is a party, in principle it is abeyant to be made foreign investments in Turkey² and accordingly it is possible to establish a limited liability company in Turkey by a foreign natural/legal entity.

Within the framework of this article, we will deal with the essential points of establishment a limited liability company by a foreign legal entity in Turkey pursuant to TCC and related legislations and the required transactions for the cited establishment as well as the basic information regarding the establishment and establishment process.

2. Single-Shareholder Limited Liability Company

One of the most significant and radical changes, *made on the TCC no. 6102 which was come into force following the promulgation of the same on the Official Gazette of Turkish Republic dated February 14, 2011*, is that only one shareholder is sufficient to be able to incorporate a limited liability and/or joint stock company.

When the annulled TCC was in force, at least two natural/legal entity shareholders were required to be able to establish a limited liability company in Turkey, yet the cited rule was altered with an amendment made in the related Law and it was rendered possible to be established a single-shareholder limited liability company.

Hence, the article 573/1 of new TCC regulates that “*A limited liability company is established by **one** or more natural or legal entity under a trade name and principal*

¹ (Previous) TCC, clause 503rd and clause 504th.

² Direct Foreign Investment Law (numbered 4875) clause 3, sub-clause (a).

capital of the cited company, being certain, consists of the total of the cited capital's shares." According to the cited provision, it was rendered possible to establish a single-shareholder limited liability company in Turkey.

Single shareholder limited liability company can be established from the beginning and in case the number of shareholders diminish to one in limited liability companies established with more than one shareholder, manager of the company should be notified in written within the seven days as of the date of transaction that caused this result. Even if there is not any glossator article in the new TCC regarding who should make the referred notification, it is accepted that the cited notification should be made by the single shareholder³.

3. The Possibility for Establishing a Limited Liability Company by a Foreign Legal Entity in Turkey

When 6224 numbered Foreign Investment Promotion Law was in force, for establishing a new company or branch office, for directly or indirectly joining to existing company, for making investments, for increasing the capital and transferring the shares, it was required to obtain the determined permissions from the Secretariat of Treasury and to invest the minimum capital amount 50.000 USD. However, the aforesaid provisions were superseded upon the entry of the 4875 numbered Foreign Direct Investment Code into force and the foreign and Turkish investors are equalized through the adoption of liberty principle for the investments of foreign origin, unless the otherwise agreed in any Law being in force in Turkey and in any international agreement to which Turkey is a party. Thanks to the referred articles and pursuant to Turkish Laws related to a foreign legal entity, it has rendered possible for foreign legal entity to make investments in Turkey and to establish limited liability company in ways that it would become the only shareholder in the cited company.

On the other hand, when former TCC with number 6762 was in force, at least one of the managers of limited liability companies with foreign shareholder(s) had to be settled in Turkey, yet this requirement was abolished through the cited new amendment. As a result of the amendments made with 6335 numbered Code after 6102 numbered new

³ Yıldız, Şükrü; page:72; Pulaşlı, Hasan; page:2001; Bahtiyar, Mehmet; page:318

TCC came in to force, the explanations regarding the nationality of shareholders become a requirement to be included in only in the company's principal agreement and manager of the company does not have to be settled in Turkey or does not have to obtain residence permit⁴.

4. Establishment Processes of A Limited Liability Company with a Single and a Foreign Legal Entity Shareholder.

As it mentioned above, a foreign legal entity is able to establish a limited liability company in ways that it would become the only shareholder in the cited company. Certain documents should be provided and processes to be subsequently detailed below should be completed for establishment processes.

However, at the beginning of these transactions, below mentioned steps should be fulfilled respectively:

4.1. Fulfilling "Reservation of a Trade Name" process is very crucial. Establishment processes are commenced through the system that placed at "www.mersis.gov.tr" website and the trade name of limited liability company to be established should be determined as the first step. Hence, as the new trade name will be used in the documents being required for establishment process, trade name should be determined at the beginning of the cited processes and pursuant to the regulations related to trade names. The determined trade name on the Central Registry System, ("Mersis") can be reserved for 15 (fifteen) days period. Considering that establishment transactions most probably take time more than 15 days, it is possible to make a new reservation transaction in every 15 days and to reserve the trade name more than just once.

4.2. Obtaining a Potential Tax number: In case the founder of the foreign legal entity and the single shareholder of the limited liability company does not have any former activities in Turkey, potential tax number for this legal entity (*different from potential tax number to be obtained for the company to be established*) should be obtained from the authorized tax office in Turkey. The authorized tax office is the tax office that placed in the territory at which headquarter of the company settled in or the tax office being settled in the same

⁴ Bilgili, Fatih / Demirkapı, Ertan; page. 619.

territory and being authorized to accept the applications for potential tax numbers on the date of the cited application.

4.3. Required Documents in Establishment Phase:

Before giving details for the required documents, we would like to emphasize that the documents, prepared in non-Turkish language and being mandatory within the scope of establishment of the company, should be legalized with apostille, translated into Turkish by sworn translator and then certified by Notary Public. Within this scope, the required documents pursuant to practice of İstanbul Commercial Directorate are presented below;

- a)** Power of attorney, *bearing the required authorizations*, legalized with apostille, translated into Turkish by sworn translator and certified by Notary Public,
- b)** The trade registry certificate of single shareholder of the limited liability company to be established in Turkey, *being foreign origin legal entity*, legalized with apostille, translated into Turkish by sworn translator and certified by Notary Public,
- c)** Apostilled, translated into Turkish by sworn translator and notarized version of founders' declaration⁵ signed by authorized managing bodies of foreign legal entity being the shareholder,
- d)** Apostilled, translated into Turkish by sworn translator and notarized version of the resolution taken by the authorized body of foreign origin shareholder regarding the establishment of limited liability company to be established in Turkey,
- e)** Articles of Association signed by the foreign shareholder of the company or its attorney,

⁵ "Founders of the Company have to submit this declaration whether the company is established with cash capital or capital in kind",

Şirket Kurucuları şirketin kuruluşu ister nakdi, ister ayni nitelikte olsun, bu beyanı vermek zorundadır.

Altaş, Soner; Türk Ticaret Kanununa göre Limited Şirketler, Seçkin Publishing, Ankara, 2016, 7th Edition, page 74.

- f) Bank letter proving that $\frac{1}{4}$ of the stipulated capital was deposited and the original receipt proving that four out of ten thousand of the stipulated capital was transferred into the bank account of the Turkish Competition Authority,
- g) The registry petition of Istanbul Chamber of Commerce to be signed by attorney of the company.

4.4. Establishment Processes:

Processes listed and detailed below are required to be fulfilled after obtaining all of the above aforesaid documents from the foreign origin legal entity being the single shareholder.

a) Certification of the Articles of Association

Following the initiation of establishment processes from www.mersis.gov.tr, the Articles of Association should be certified by Notary Public. The attorney of the company is authorized to complete this process and the Articles of Association should be certified so as to be 3 copies. One⁶ of the cited 3 copies should be original signed document.

- b) **Statement Of Signature** : Following the certification process, the manager of the company should submit his/her statement of signature. There exist some crucial points about who will be the company manager and the procedure of determining the company manager. First of all, specifying the company manager in Articles of Association is compulsory. Foreign origin legal entity could directly be the company manager. However, it is also mandatory for the cited foreign origin legal entity to appoint natural person as a representative to the established company and this appointment should be inserted to the Articles of Association. If the appointed person is a Turkish citizen, his/her name-surname, address, nationality and Turkish identity number is required. However, if the mentioned representative is foreign origin person and domiciled in Turkey, residence permit and passport copy certified by Notary Public and translated into Turkish is required, as well. The representative of the company manager determined

⁶ For the Company's records we kindly recommend to archive a wet signed copy of this document which must be notarised.

through this procedure is needed to submit his/her signature of statement in person before the notary.

c) Stocking of the Capital : Following the completion of the aforementioned procedures for the signature of statement, $\frac{1}{4}$ of the stipulated capital should be stocked in “Halk Bankasi” or “Ziraat Bankasi” and the “BANK LETTER” proving the completion of this transaction should be received from the bank. At this point, we would like to emphasize that, article 334/1 of the TCC regulates that *“At least twenty five percent of the nominal price of the shares that stipulated in cash must be paid before registration and the rest must be paid within the 24 months after registration of the company.”*

d) Competition Authority Fee :

After obtaining the referred bank letter, four out of ten thousand of capital stipulated by foreign origin legal entity shareholder of the company or his/her representative should be deposited to the bank account of the Competition Authority (80000011 (IBAN NO:TR40 0001 2009 4520 0080 0000 11) numbered *Türkiye Halk Bankası Ankara Branch*) via cash/EFT/money order and the bank receipt with signature and stamp proving the completion of such transaction should be received from the bank.

e) Chamber Register Petition : Thereon, the chamber register petition to be signed by the company manager or his/her representative should be arranged. At this point, the registered tax office of establishing company should be included in the cited petition and printed document should be enclosed herewith. Furthermore, the company’s trade name/capital, opening date of the headquarter and the real subject of the activity of the company on this date should be clearly stated with NACE code in this petition and trueness of these information and in case of otherwise is proved, accountability of the person or people who signed this petition are should be declared.

f) Establishment Declaration Form:

On the other hand, establishment declaration form should be signed by company manager or his/her representative and made ready. In this phase, since the only

shareholder and founder of the company is foreign origin legal entity, referred form should be arranged as four copies.

After all these processes are completed and all the necessary documents are obtained, these documents should be submitted to the Registry of Commerce. Registration decision after the application should be followed in MERSİS system and relevant commercial chamber in person. After Trade Registry Directorate made registry decision, official books (*daily wage, book of final entry, inventory, share books, board members negotiation and decision book*) and first authorized signature list should be notarized on the same day. Stamp taxes of the rental agreement for the related company and service contract related to the accounting service (if available) should be paid, as well.

After the mentioned transactions, company establishing process will be completed and the company will be registered in the Trade Registry at which the company is placed and promulgated in the Turkish Trade Registry Gazette. Following the cited registration, it would be required to apply to the tax office in order to initiate the opening proceedings of the company. Upon the cited application, an authorized officer from the related tax office would visit the company headquarter and complete the tax inspection. During the cited inspection, attendance of the representative of the foreign origin manager or attorney of the company is required and as a result of the referred inspection, all the proceedings for the establishment of the limited liability company in question will have been completed and the cited company could go into operation.

5. Missing Documents on Establishment of the Company.

There might be some missing documents at the establishment phase of the company. Detection of these is ex-officio made by the Registry of Commerce and the detected deficiencies are reported to owner of the application.

The mentioned deficiencies should be fulfilled at first and then the cited documents should be re-submitted to the related trade chamber. However, we would like to overemphasize that the power of attorney to be received from the owner should contain ***“the power of signing the amended context”*** in order to be complete the amendment processes.

After referred amendment papers are resubmitted, suitability of them will be checked by related trade commerce and in case it is approved, registration processes referred above will continue and company will be registered.