

ESTABLISHING A JOINT STOCK COMPANY

Introduction

A Joint Stock Company (JSC), under Turkish law, is a company capital of which is divided into shares, and liability for its debts is limited to its assets.

A JSC can be established by one or more real or legal persons with a certain amount of capital under a trade name. Under Turkish law, there is no maximum limit on the number of shareholders.

Turkish law permits a 100% foreign ownership of a JSC. A foreigner who has never been to Türkiye can become a shareholder of a Turkish JSC by way of a power of attorney.

Capital

Before July 2012, when the new Turkish Commercial Code (Law No. 6102, "TCC") came into force, a privately-held JSC could only choose a basic capital system. It is now possible either to go for a basic capital system or a registered capital system.

In the basic capital system, the share capital of a JSC cannot be less than 250.000 TRY. The minimum share capital of a non-public JSC that chooses the registered capital system is 500.000 TRY. Book value per share can be 0.01 TRY or multiples of it.

At least 25% of the nominal value of the shares subscribed in cash must be paid before registration and the rest of the share capital in the following 24 months after the registration.

The cash contributions for the share capital must be deposited into a special bank account to be opened in the name of the company that is being established. A bank letter proving that the subscribed share capital has been deposited into an account will be submitted to the relevant trade registry office. The deposited amount can be withdrawn by the company upon the presentment of the relevant establishing documents showing that it acquired legal personality.

"In the basic capital system, the share capital of a JSC cannot be less than 250.000 TRY."

Contribution in kind is permissible.

Approval to Establish a JSC

Under Turkish law, in principle, establishing a JSC is not subject to the permission of any authority. However, there are types of companies where the approval of the Ministry of Trade or other relevant authorities are sought. These companies are;

banks, insurance companies, financial leasing companies, factoring companies, consumer finance and card services companies, asset management companies, holding companies, independent auditing companies, etc.

Even for these types of companies, the Ministry of Trade or any other authority will only be able to intervene if there is a contradiction to the mandatory regulations of the commercial code. Other than this, the commercial code expressly stipulates that neither the establishment nor any amendment in the Articles of Association (“AoA”) of any JSC is subject to the permission of any authority.

2

“The commercial code requires higher decision quorums for matters of major importance such as merger, demerger, capital increase or decrease, voluntary dissolution, etc.”

“In principle, neither the establishment nor any amendment in the AoA of any JSC is subject to the permission of any authority.”

Shareholders

The shareholders of a JSC can be real persons as well as legal persons. They do not have to reside in Türkiye, non-residents can become shareholders of a Turkish JSC as well.

TCC allows the establishment of a JSC with a single shareholder. In case the JSC is established with one shareholder, or the number of the shareholders is decreased to one afterwards; the name, address and citizenship details of the shareholder must also be registered in the trade registry office and announced in the trade registry gazette.

The organ of the JSC where the shareholders are represented is called the General Assembly (“GA”). The shareholder resolutions are taken in the GA meetings. The GA can convene in ordinary or extraordinary meetings. The ordinary meetings must be held at least once a year, in three months’ period following the end of the fiscal year. The board of directors (“BoD”) or the holders of at least 10% of the share capital can

call extraordinary meetings. The GA has the powers to amend the AoA, appoint and dismiss the members of the BoD, approve financial statements, determine the allocation of profits, dissolve the company, etc.

The decision quorum for matters concerning ordinary business of the company is simple majority of the share capital represented in the meeting. The commercial code requires higher decision quorums for matters of major importance such as merger, demerger, capital increase or decrease, voluntary dissolution, etc.

Board of Directors

The managing body of a JSC is its BoD. According to the new TCC, a one-member BoD is permissible.

Foreigners can be appointed as board members. A person who is not a shareholder of the JSC can also be appointed as a board member. Even legal persons can be appointed as board members. In this case, however, a real person must act as the representative of such legal person in the board meetings.

3

Liability

The liability of shareholders for the debts of the company is limited to their participation in the share capital of the JSC. Furthermore, their responsibility is directly towards the company itself, not to third parties.

Articles of Association

As being the constitutional document of the company, the AoA must be prepared in order to establish a JSC. Several copies of the AoA must be signed by all the shareholders (or their representatives by way of a proxy) of the JSC before the trade registry office (unless the shareholders or their representatives are illiterate or handicapped or cannot speak Turkish in which case the AoA must be signed before a notary public).

The AoA wording must include the following;

- a) The names and surnames, addresses, and citizenship details of the founders,
- b) The commercial name of the company,
- c) The main area of activity and the subject matter of the company,
- d) The headquarters of the company,
- e) The duration of the company,
- f) The capital of the company, number of shares, nominal value of each share, how the capital will be subscribed,
- g) The names and surnames of the members of the BoD, how they are appointed, their duties, authorities, terms of office, and how often they will meet,
- h) How the auditors will be appointed and their duties,
- i) How the GA meetings are made
- j) How the announcements about the company are made,
- k) How the profit is distributed, details regarding the accounting periods, reserves, etc.

“The JSC must also be registered in the relevant tax and the social security offices once the company registration process is completed.”

In practice, the trade registry offices are providing draft AoA texts.

AoA of a JSC may be changed by a resolution of its GA.

4

The Establishment Procedure

In Türkiye, trade registration transactions for all types of companies are made through a Central Registration Recording System called MERSİS.

The commercial name of the JSC chosen by the shareholders must be submitted via MERSİS and its approval will in principle be taken electronically. The commercial name can neither be misleading nor offensive.

The company must apply to the relevant tax office for getting a potential tax identity number once the AoA is attested by the trade registry office or a notary public. This potential tax identity number is necessary for opening a bank account in order to deposit the share capital of the Company.

A letter duly prepared by the bank where the subscribed share capital of the company is deposited must be taken. This letter should include the name of the company and its shareholders, and the amount deposited by each of them.

The approval of the Ministry of Trade or relevant authority is also sought if the company is one of the aforementioned types of company, e.g. a bank, insurance company, financial leasing company, etc.

Completion

Once the registration process is completed, the registration of the JSC is announced in the Turkish Commercial Registry Gazette.

The JSC must also be registered in the relevant tax and the social security offices once the company registration process is completed.

GURULKAN ÇAKIR GÜNAY AVUKATLIK ORTAKLIĞI

Beybi Giz Plaza, Office 43
Maslak 34398
Istanbul, Türkiye

T +90 212 215 30 00
M info@gurulkan.com
W www.gurulkan.com



Gurulkan Çakır Günay Avukatlık Ortaklığı ("Gurulkan Çakır Günay") is an attorney partnership registered at Istanbul Bar Association with a license number 105 and at the Union of Turkish Bar Associations with a license number 206.

This publication provides general information only and should not be relied upon in making any decision. It is not intended to provide legal or other advice. Gurulkan Çakır Günay and its partners will not be liable for any loss or damage arising from reliance being placed on any of the information contained in this publication.

Before acting on any information, readers should consider the appropriateness of the information provided herein, having regard to their legal and financial status, objectives and needs. In particular, readers should seek independent professional advice prior to making any decision.

This publication may not be reproduced, in part or whole, by any process without prior written consent of Gurulkan Çakır Günay.