

## ESTABLISHING A LIMITED LIABILITY COMPANY

### Introduction

As it is the case all around the world, Limited Liability Company (LLC) is the most common form of business in Türkiye.

An LLC can be established by one or more real or legal persons with a certain amount of capital under a trade name. Under Turkish law, the maximum number of the shareholders that an LLC can be established is 50.

A 100% foreign ownership in an LLC is permitted. A foreigner who has never been to Türkiye can become a shareholder of a Turkish LLC by way of a power of attorney.

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### Capital

The minimum share capital for an LLC is 50.000 TRY. Book value per share can be 25 TRY or multiples of it.

The capital can be paid within two years after the registration or at the time of 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 The deposited amount can be withdrawn by the company upon presentment of the relevant establishing documents showing that it acquired legal personality.

Contribution in kind is permissible.

### Shareholders

The shareholders of an LLC 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 LLC as well.

Turkish Commercial Code (Law No. 6102, “TCC”) allows the establishment of an LLC with a single shareholder. In case the LLC 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.

As it is the case for a Turkish JSC, the organ of the LLC 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 directors or the holders of at least 10% of the capital can call extraordinary meetings. The GA has the powers to amend the Articles of Association (“AoA”), appoint and dismiss directors, approve financial statements, determine the allocation of profits, dissolve the company, etc.

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

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*“The shareholders of an LLC are personally responsible for public debts of the company.”*

## Director

Director constitutes the managing body of an LLC, just as the board of directors does in a JSC. Director is the one who manages and represents the company before third parties.

A foreigner can be appointed as director. A person who is not a shareholder of the LLC can be appointed as a director as well.

Director can be dismissed at any time by a resolution of the GA.

## Liability

An LLC’s liability for its debts and obligations, unless it is expressly stated in its AoA, is limited to its assets. The shareholders are not responsible for the debts of the LLC.

However, there is an important exception to this general rule:

*The shareholders of an LLC are personally responsible for public debts of the company. They are jointly responsible for the taxes in proportion to their shares in the capital. On the other hand, their responsibility towards the social security premium payments for the employees of the LLC is for the whole debt and not in proportion to their shares in the capital. However, such liability will only occur if such debts cannot be collected from the assets of the company.*

One of the most significant differences between an LLC and a JSC is the liability regime regarding the public debts. Hence, it should be seriously considered when deciding the type of the company to be established.

## Articles of Association

As being the constitutional document of the company, the AoA must be prepared in order to establish an LLC. Several copies of the AoA must be signed by all the shareholders (or their representatives by way of a proxy) of the LLC 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).

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The AoA wording must include the following;

- a) The names and surnames, address 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 address of the company,
- e) The capital of the company, number of shares, nominal value of each share, how the capital will be subscribed,
- f) The names, surnames, and nationalities of the director(s), and
- g) How the announcements about the company are made.

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

AoA of an LLC may be changed by a resolution of its GA.

## 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 LLC 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 the relevant tax office for getting a potential tax identity number once the AoA are 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.

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

In case the whole or certain portion of the capital is to be paid in advance, 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.

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## Completion

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

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