THE DIFFERENCES BETWEEN A JSC AND AN LLC

Introduction

This article aims to tackle the legal and practical differences between a JSC and an LLC without going into further details for each type of company.

Number of Shareholders

Before July 2012, when the new Turkish Commercial Code (Law No. 6102, "TCC") came into force, A JSC could be established by at least five shareholders. The minimum number of shareholders for an LLC was two.

The new commercial code decreased the minimum number of shareholders for both the JSC and the LLC to one. So now a sole shareholder JSC, as well as a sole shareholder LLC is possible under Turkish law.

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While a JSC can have unlimited number of shareholders, an LLC cannot have more than 50 shareholders. It should be noted, on the other hand, if the number of partners in a JSC exceeds 500, the company becomes subject to Capital Market Law.

Capital

An LLC can only have a basic capital system. As a result of such capital system, the share capital can only be raised by a resolution of the General Assembly ("GA").

A JSC, on the other hand, can choose between the basic capital system and the registered capital system in its Articles of Association (AoA). As a result of that, the Board of Directors ("BoD") of a JSC that has a registered capital can raise its share capital (within the limits of the registered capital) without the hassle of taking a resolution in the GA of the company.

The minimum share capital for an LLC is 50.000 TRY. Unlike JSCs, the basic capital of the LLCs can be paid within two years after the registration to the Trade Registry. In the case of JSCs, 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.

In the basic capital system, the share capital of a JSC cannot be less than 250.000 TRY. The minimum share capital of a JSC that chooses the registered capital system is 500.000 TRY.

Additional Payments

Provided that it is expressly stated in the AoA, the shareholders of an LLC may be asked to make additional payments (other than the subscribed capital) if the company is in loss or cannot continue its operations without the additional funds, etc.

On the other hand, the shareholders of a JSC can only be held liable for the capital they have subscribed.

Share Transfer

In order to duly transfer the shares of an LLC; a petition must be written and signed by the company official, a share transfer agreement must be signed and notarized, the share transfer must be approved by the GA, registered in the trade registry office and in the shareholders' ledger of the company.

The process of transferring the shares of a JSC is far less complicated. There is no need to notarize the share transfer agreement or register it in the trade registry office or shareholders' ledger or get the approval of the general assembly. Unless expressly prohibited in the AoA, the shares can be transferred by a share transfer agreement between the seller and purchaser or simply by endorsing the share certificates to the purchaser.

Tax Exemption for the Transfer of Shares

If a JSC shareholder disposes of his/her equity issued by a resident company after holding it for a minimum period of 2 years, the capital gains derived from such disposal is not subject to Personal Income Tax. However, if the shareholder who is transferring shares is a legal entity, then 75% of the profit to be generated from the sale of shares held for at least two years will be exempted and 25% of the profit will be taxed.

The shareholder of an LLC, no matter how long he holds the shares, is not going to be exempt from the income tax for the profit he makes out of these shares when he transfers them. However, if the shareholder who is transferring shares is a legal entity, VAT is not incurred in the sale of shares held for at least two years and 75% of the profit to be generated from the sale of the shares held for at least two years will be exempted and 25% of the profit will be taxed.

Squeeze Out

The shareholder of an LLC can be squeezed out by a resolution of the GA (provided that it is expressly permitted in the AoA of the company) or by a court verdict upon justifiable reasons.

On the other hand, the shareholder of a JSC, in principle, cannot be squeezed out.

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

Liability for Public Debts

The shareholders of an LLC are personally responsible for public debts. For the tax obligations of the company, the shareholders are responsible in proportion to their shares in the capital. 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.

Shareholders of a JSC, on the other hand, are only responsible, either for legal or tax obligations of the JSC, within the limits of the share capital they subscribed.

Issuing Securities

A JSC can issue both equity and debt securities in order to raise finance. As a result, a JSC can go public.

It is not possible for an LLC to raise finance through issuing securities. Hence, an LLC can neither issue equity nor debt securities. As a natural result of that, an LLC cannot go public at all.

Shareholder Loans

The loans granted to an LLC by its shareholders cannot be paid back unless all the other debts of the company are redeemed.

A JSC is not bound by such limitations, i.e. can any time pay its debts to its shareholders without having to worry about the other creditors.

Management

Both types of companies have GA's where the shareholders come together in the ordinary and extraordinary meetings in order to take important decisions for the company.

The day-to-day business operations of an LLC are managed by its Director(s). At least one director needs to be selected from among the shareholders in the LLC.

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The managing body of a JSC, responsible for running the business and routine operations of the company, is its BoD (which, in principle, can be composed of a single member). Unlike the LLC, however, the management can be completely delegated to third persons, as the BoD can be fully composed of non-shareholder members in the JSC.

Employing a Legal Adviser

A JSC with a share capital over 1.250.000 TRY has to hire an in-house or independent legal adviser.

There is no obligation for an LLC to employ a legal adviser no matter how high its share capital is.

JSC-LLC DIFFERENCES AT A GLANCE

	Joint Stock Company	Limited Liability Company
Number of shareholders	Minimum: 1 Maximum: No limit	Minimum: 1 Maximum: 50
Minimum capital	250.000 TRY (Basic capital) 500.000 TRY (Registered)	50.000 TRY
Additional payment obligation	Not possible	Possible
Share transfer	Simple procedure	Complex procedure
Tax exemption for share transfer	Available, if the shares are held for at least two years	Not available
Squeeze out	Not possible (There are exceptions)	Possible
Liability for public debts	No liability for the public debts of the company	Shareholders are personally liable for public debts
Issuing securities	Can issue securities	Cannot issue securities
Shareholder loans	Can be paid back any time	Can be paid back after all other company debts are paid off.
Management and Representation	Can be completely delegated to non-shareholders	Cannot be completely delegated to non-shareholders
Mandatory hire of a legal adviser	Only if the share capital is over 1.250.000 TRY	Not mandatory

GURULKAN ÇAKIR GÜNAY

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