

ESTABLISHING A BRANCH OFFICE

Introduction

An alternative way of having a business entity in Türkiye, rather than establishing a Joint Stock Company and establishing a Limited Liability Company, is to establish a branch office of a company that already exists in another jurisdiction. It has its advantages as well as downsides, and we will be discussing them in this article.

Legal Personality

Even though a branch established in Türkiye is considered as a legal entity, as it can independently carry out its operations within its scope of activity, from a legal point of view, it does not have a legal personality separate from its parent company. Naturally, a branch does not have its own articles of association. It simply has to act within the scope of activities of its parent company.

As a result of not having a separate legal personality, the rights and liabilities of the branch directly belong to its parent company.

Similarly, the trade name of the branch must include the name of the parent company. Furthermore, according to the current trade registry practice, the parent company's home country is also stated in the trade name of the branch. Hence, the Turkish branch of a British company named "ABC Manufacturing Ltd." may have a name like "ABC Manufacturing Ltd. Merkezi İngiltere İstanbul Merkez Şubesi".

For taxation issues, on the other hand, a branch is considered to have a separate personality other than its parent company. In that context, the branches have to maintain their own accounting records and are independently subject to corporate tax for their profits.

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Capital

Even though there are no formal minimum capital requirements for the branches, they must also have a separate capital.

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 The deposited amount can be withdrawn by the branch upon presentment of the relevant establishing documents showing that it acquired legal personality.

Contribution in kind is permissible.

Decision-making

The branch is subordinate to the headquarters but independent in its external affairs. The branch must have the authority to carry out the kind of transactions that the headquarters does on its own. However, the branch is not obliged to perform all the operations performed by the headquarters.

The branch has its own management team who has the authority and responsibility to run the day-to-day business operations of the branch.

However, as the branch does not have its own general assembly, important decisions must be taken on the parent company level. This may cause a lot of bureaucracy and cost, e.g. translation, notarization, apostille, attestation, etc.

Branch manager

The branch manager is a real person who manages and represents the branch towards third parties. A foreigner who has a permit to reside in Türkiye can be appointed as a branch manager.

The branch manager is responsible for the day-to-day business operations of the branch and other tasks given by the parent company.

The branch manager can be dismissed at any time by a resolution of the parent company.

Liability

As a result of not having a separate legal personality, the rights and obligations of the branch directly belong to its parent company. Therefore, the parent company is fully liable for the debts and obligations of its branch in Türkiye irrespective of the capital allocated to the branch.

It is not possible to delimit the liability of the parent company for its branch in Türkiye, either through the capital allocated to the branch or other arrangements.

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Permit to Establish a Branch

A foreign company that decided to establish its branch in Türkiye no longer needs to obtain a preliminary permit as was the case up until 2012. Starting with the era of the complete new commercial code, establishing branches of foreign companies has been subject to no extra bureaucratic procedures than that of the local companies. In this regard, the local and foreign investors are treated equally.

Nevertheless, sector-specific permits must be obtained for certain business activities such as banking, insurance, etc. In that case, such permits must be taken by local companies as well.

Registering the Branch in the Trade Registry Office

The application to establish the branch of the foreign company must be submitted to the relevant trade registry office, i.e. the trade registry office where the branch is planned to be opened.

In Türkiye, trade registration transactions for all types of companies, including the branches of foreign companies, are

made through a Central Registration Recording System called MERSİS.

A potential tax identity number must be taken for the branch either through MERSİS or online tax office.

This potential tax identity number is also needed for opening a bank account in order to deposit the capital of the branch.

A letter duly prepared by the bank where the capital of the branch is deposited must be taken. This letter should include the name of the branch and the parent company, and the amount deposited as the capital of the branch.

Completion

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

The branch registration process is typically completed in a couple of weeks.

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

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