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**ÖZCAN & NATAN ATTORNEY PARTNERSHIP
ESTABLISHING A BUSINESS ENTITY IN TURKEY**



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ESTABLISHING A BUSINESS ENTITY IN TURKEY

A. Types of Business Entities

1. Description of The Types of Entities

Pursuant to Turkish Foreign Direct Investment Law, foreign investors are free to make foreign direct investments in Turkey and shall be subject to equal treatment with domestic investors. Thus, foreign invested companies enjoy the same rights available to local companies under the Turkish Commercial Code (“TCC”). The TCC provides several company structures. However, largely due to advantages regarding liabilities borne by the shareholders, investors most commonly chose between a stock corporation known as *anonim sirket* which is similar to an *Aktiengesellschaft* under German law and to a *société anonyme* under Swiss or French law and limited liability company known as *limited sirket* which resembles a *GmbH* under German law or an *S.A.R.L.* under French law.

2. Matters to Be Considered When Choosing Between *Anonim Sirket* and *Limited Sirket*

- Both companies can be established with one or more shareholders.
- Both companies, in theory, are solely liable for their debts and liabilities with their assets. However, shareholders and directors of a *limited sirket* are responsible with their personal assets for the tax liabilities and social security contributions which may not be collected from the company. On the other hand, shareholders of an *anonim sirket* who are not board members do not have such responsibility. According to article 553 of the TCC, board members may only be held liable for damages if they breach any obligation imposed on them by law or the articles of association of the company and if

their fault or negligence caused the damage.

- The *anonim sirket* shares are usually freely negotiable instruments; therefore, share transfers are not subject to notarization and registration. On the other hand, any share transfer in a limited sirket requires fulfillments of execution of share transfer agreement before a Notary Public, approval of general assembly of shareholders and registration with the Trade Registry.
- The share transfer of a limited sirket is subject to income tax for the selling party. However, in an *anonim sirket*, if share certificates are held more than two years by the selling party, the share transfer will not be subject to income tax.
- *Limited sirket* is a simpler form of corporate ownership. There is no compulsory board of directors. The company’s business may be managed directly by the shareholders. It is possible to appoint one or more managing directors.
- It is statutory to establish companies operating in certain fields such as banks and insurance companies shall be established as *anonim sirket*.

B. Steps and Timing to Establish

Although the required documents for establishing the above described companies are almost the same, it differs in accordance with either preferred type or way of participation to the partnership. Common basic steps are as follows:

- Before the incorporation of a company, shareholders should register with the local tax office and receive potential Turkish Tax Identification Number.



- All the required documents and statements such as articles of incorporation certified by notary public, signature declarations (local individuals, to be appointed as the signatory authority shall issue their signature declarations in the presence of the trade registry officers) and chamber registration statement should be submitted to the Trade Registry Office located at the province where the company will be established.
- The documents delivered to Trade Registry Offices should get the official approval after their examination of whether all given and described conditions on the documents and statements are in compliance with legislation.
- Company registrations should be announced to third parties or related parties through being published on Turkish Commercial Registry Gazette.

After all required documents are prepared; the incorporation process of the company normally does not take more than a week.

C. Governance, Regulation and Ongoing Maintenance

1. Brief Summary of Regulation of Each Type and Ongoing Maintenance, Reporting Requirements

i. *brief summary of regulation of anonim sirket and limited sirket*

Anonim sirket is managed by its board of directors. The board of directors may be comprised of a single person or more. Non-shareholders and legal entity shareholders can be appointed as board members.

Limited sirket may be governed by one or more managers. The shareholders can transfer their management rights to one or more

shareholders or can appoint third party manager(s) provided that at least one of the managers is a shareholder.

ii. *reporting requirements*

The board of directors of *anonim sirket* should prepare financial statements, its supplement annual report while the manager of *limited sirket* should prepare financial statements, annual activity reports.

It is compulsory to appoint independent auditor(s) for the type companies determined by the TCC and shall prepare reports for risk detection and risk management.

2. Requirements for Local Shareholding/Directors

Anonim sirket and *limited sirket* can be established with 100% foreign capital without the necessity of a Turkish shareholder and at least one shareholder is required for the incorporation. Shareholders may be natural persons or legal entities, residents, or non-residents in Turkey. In both corporate forms, there is no obligation for directors and managers to reside in Turkey or to be Turkish citizen.

3. Minority Shareholders' Rights and Protection

Minority shareholders' rights are regulated under the TCC. Minority shareholders have right to request the followings:

- extraordinary general assembly meeting to be convened, or that a time to the agenda of the general assembly meeting to be added,
- postponement of balance sheet discussions for one month to have a chance to review the balance sheet in detail,



- independent auditor to be appointed or replaced,
- under circumstances requesting dissolution of the *anonim şirket* by filing a lawsuit,

Minority shareholders may also be granted the right of being represented in the board of directors by the articles of association. Apart from the rights mentioned above, meeting and decision quorum also have impact on minority rights. For instance, consents of at least 75% of shareholders of *anonim şirket* are required to change the scope of the company.

D. Foreign Investment, Thin Capitalization, Residency and Material Visa Restrictions

- **Barriers to Entry for An Offshore Party**

All the procedures for incorporating foreign invested companies are the same as local companies. The national treatment principle is applicable by all means. Therefore, there are not significant barriers to entry for an offshore party.

- **Thin Capitalization**

According to Corporate Income Tax Law, if the total of the borrowings of a corporation, which are obtained directly or indirectly from its shareholders or persons to the shareholders and used in the business, exceeds three times of the equity capital of the corporation at any time within the fiscal year, the excess part of the borrowings will be considered as thin capital for the relevant fiscal year. However, borrowings such as loans borrowed by the banks or from third parties based on non-cash guarantees provided by the shareholders or persons related to the shareholders are not deemed to be thin capital.

- **Capitalization Obligation**

Incorporation of a company requires the minimum capital as stipulated in the TCC. Accordingly, the minimum capital amounts required for an *anonim şirket* is TL 50,000 (approx. EUR 5,500) while TL 10,000 (approx. EUR 1,100) for a *limited şirket*. For *anonim şirket*, if the shares are stipulated in cash, at least 25% of the related capital should be paid during the registration process and the unpaid amount should be paid within 24 months after registration. For *limited şirket*, a payment during the registration process is not required, 100% of the shares should be paid within 24 months after registration. Assets including intellectual property rights may be contributed as capital in-kind provided that those assets are transferable and eligible for valuation in cash.

- **Special Business or Investment Visa Issues**

Due to the national treatment principle, foreign investments are not subject to pre-entry screening requirement or additional approvals and authorizations. However, the companies operating in certain commercial activities determined by the TCC should obtain permission from the General Directorate of Domestic Trade for the incorporation of company such as banks, private finance institutions, insurance companies, financial leasing companies, factoring companies, holding companies, companies operating as foreign currency exchange offices, companies dealing with public warehousing, publicly held companies subject to the Capital Markets Law, companies that are founders and operators of free zones.

- **Restrictions on Remitting Funds Out of The Jurisdictions**

Pursuant to Turkish Foreign Direct Investment Law, investors can freely transfer abroad: net profits, dividends,



proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or special financial institutions. All mentioned incomes utilized within Turkey will be subject to withholding tax.

- **Provisional Measures Taken by The Government Due to COVID-19**

Within the scope of governmental measures taken due to COVID-19, dividend distributions were limited until December 31, 2020. Accordingly, a company cannot distribute advance dividends until December 31, 2020. The related legislation introduces three exception groups with regard to the dividend distribution limitation. The companies fall into the scope of these exceptions are subject to the Ministry of Trade's assent. In order to benefit from these exceptions, companies must submit the related documents to the Ministry of Trade.

Three exception groups: (I) Companies that do not benefit from certain government support can make dividend distributions equal to or less than TRY 120,000. (ii) Companies can make dividend distributions without being subject to the limitation to enable its shareholders to pay their capital subscription debts to another company. (iii) Companies can make dividend distributions without being subject to the limitation if the shareholders will fulfil their due and payable credit and project finance liabilities, in cash.