



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Turkey



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

GLOBAL EXPANSION GUIDEBOOK SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Global Expansion Guidebook – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Global Expansion Guidebook – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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TURKEY



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FORM OF ENTITY

Joint-stock company (JSC)

Capital company with a legal personality. General assembly of shareholders is the highest decision-making body in a JSC. Power to manage business and affairs of a JSC is vested in its board members. Board members act as a corporate body and may have 1 or more members. Board members are not required to have a share in the company. Board members can transfer their duties and authorities to 1 or more director or a 3rd party.

Limited liability company (LLC)

Capital company with a legal personality. General assembly of partners is the ultimate decision-making body in LLC. Management rights and duties of LLC are conferred to the managers. At least 1 partner must have management rights and representation power of an LLC as a manager. It is also possible to appoint 3rd-party individuals, who are not partners of the LLC, as managers.

Other business forms

Branch offices (BO)

BOs may carry out the business their principal company is conducting and freely enjoy the right to pursue commercial activities. A foreign principal company remains liable for all debts of the BO. BOs have autonomous capital and accounting to carry out commercial transactions with 3rd parties, although they are closely associated with the principal company in respect of internal management. This means that rights, debts, profits and losses of the BOs are assumed by the principal company. A BO can only engage in activities of its principal company. Although there is no legal capital requirement for BOs, it is required that the principal company maintains capital that is sufficient to run the BO in practice.

Liaison Offices (LO)

LO can only provide "representation" and "relationship management" with respect to the overseas principal company's Turkish customers and suppliers, but it cannot engage in any commercial or trading activity.

ENTITY SET UP

Incorporation procedures for a JSC and an LLC are very similar and include:

- Preparation of a company's articles of association
- Registration of a company with the relevant Trade Registry
- Announcement of a company in the Trade Register
- Registration with the relevant tax office

MINIMUM CAPITAL REQUIREMENT

Joint-stock company (JSC)

Minimum capital requirement is TL250,000, while this amount is TL500,000 for the non-public JSCs which accept the registered capital system.

Limited liability company (LLC)

Minimum capital requirement is TL50,000.

LEGAL LIABILITY

Joint-stock company (JSC)

Shareholders of a JSC are generally not liable for the debts of a company aside from their financial contribution to the company. Board members are jointly and severally liable for public debts which cannot be paid by the company. Liability is joint and several, with a right to recourse against other board members.

Limited liability company (LLC)

Partners of an LLC are generally not liable for the debts of an LLC aside from their contribution to an LLC. However, both Partners and Managers are liable for public debts which cannot be paid by a company. Managers' liability is joint and several, with a right to recourse against other managers. On the other hand, Partners' liability is in pro rata to their shareholding in the company. Recent court precedents suggest that public debts may be collected from the Partners without the need to make any prior claims against the Managers.

TAX PRESENCE

Joint-stock company (JSC)

A JSC's profit is subject to 25 percent corporation income tax for 2024.

Limited liability company (LLC)

An LLC's profit is subject to 25 percent corporation income tax for 2024.

INCORPORATION PROCESS

Articles of association and other necessary documentation must be submitted to register with the relevant Trade Registry. Following the establishment, the company must also register with the relevant tax office where the company's headquarters is located in order to be able to operate.

BUSINESS RECOGNITION

Well regarded, but not widely used.

SHAREHOLDER MEETING REQUIREMENTS

It is mandatory to hold ordinary general assembly meetings with a certain agenda within 3 months from the end of the accounting period. Additionally, when necessary, general assembly is called for an extraordinary meeting.

BOARD OF DIRECTOR MEETING REQUIREMENTS

As often as internal operations of the company require.

ANNUAL COMPANY TAX RETURNS

Must file tax returns annually, quarterly and monthly with relevant tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

Initial registration and annual filings are required, as well as certain actions, such as amendment of articles of association.

BUSINESS EXPANSION

Joint-stock company (JSC)

No need to change as business expands.

Limited liability company (LLC)

If the number of shareholders exceeds 50, either the shareholder number must be decreased back to 50 or the company must be converted to a JSC.

EXIT STRATEGY

Must start a liquidation process and register it with the relevant Trade Registry.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Company books such as a share ledger, minutes book for resolutions of board members and minutes book for general assembly meetings must be maintained.

DIRECTOR / OFFICER REQUIREMENTS

No specific requirements, apart from the sector-specific requirements in the relevant sector-specific laws.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not mandatory.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

JSCs whose capital exceeds TL1.25 million are obligated to employ a lawyer in their payroll or contract a lawyer on a continuous basis for legal services.

LOCAL OFFICE LEASE REQUIREMENT

If the company is not the owner of real estate in Turkey to be used for registered address, the company's office must be leased for registration purposes.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Under Turkish law, a company needs a physical office in Turkey in order to exist and operate.

SUFFICIENCY OF VIRTUAL OFFICE

Not applicable for this jurisdiction.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

The company must have a registered address in Turkey which will be registered with the relevant Trade Registry and tax office. The law firms cannot provide a registered address due to their code of conduct.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable, apart from the sector-specific requirements.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Not applicable, except for the BOs and sector-specific requirements.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Authority of directors

The non-delegable and indispensable duties and powers of the board members are as follows

- Top-level management of the company and giving instructions in this regard
- Determination of company's management organization
- Establishment of a necessary system for financial planning to the extent required, and for accounting, finance audits and managing the company
- Appointment and dismissal of managers and persons performing same function and authorized signatories
- High-level supervision of whether the persons in charge of management act in accordance with the law, articles of association, internal regulations and written instructions of the board of directors
- Keeping the share ledger, resolution books of the board and the general assembly meeting and discussion register, preparation of the annual report and corporate governance disclosure and submission thereof to the general assembly, organization of general assembly meetings and enforcement of general assembly resolutions
- Notifying the court regarding the company's state of excess of liabilities over assets

Authority of shareholders

The non-delegable and indispensable duties and powers of the general assembly of shareholders are as follows:

- Amendment of articles of association

- Nomination, dismissal and acquittal of the board of directors and determination of their term of office, powers, salaries and attendance fee, premium and bonus,
- Nomination and dismissal of auditor with the excluding situations mentioned in the Turkish Commercial Code
- Obtaining resolutions regarding financial statements, annual report of board of directors, how to use annual profit, determination of profit and earning shares, reserve funds to be added to capital or profit to be distributed, and usage
- Termination of company in the situations mentioned in the Turkish Commercial Code
- Wholesale of company assets

Authority of managers

The non-delegable and indispensable duties and powers of the managers are as follows:

- To execute ultimate direction and management and to give necessary instructions
- To determine partnership management organization in accordance with law and articles of association
- To develop accounting, financial auditing and financial planning if necessary for the management of a partnership
- To supervise whether persons to whom one or more divisions of partnership management have been entrusted, are acting in accordance with law, articles of association, internal regulations and instructions
- To establish a committee for early risk detection and management, except for small sized partnerships with limited liabilities
- To prepare partnership's financial statements, annual report and, where necessary, group of companies' financial statements and annual report
- To organize general assembly meeting and to execute general assembly resolutions
- To notify the court that partnership's liabilities exceed its assets

Authority of partners

The non-delegable and indispensable duties and powers of the general assembly of partners are as follows:

- Amendment of articles of association
- Nomination and dismissal of managers
- Nomination and dismissal of the community auditor and auditors

- Approval of community annual financial statements and annual activity report
- Approval of year-end financial statements and annual activity report, determination of profit and earning shares
- Determination of managers' salaries and their discharge
- Approval of transfer of principal capital shares
- Requesting court to remove a partner from a company
- Authorization of a manager to acquire the company's own shares or approval of such acquisition
- Termination of a company
- Passing resolutions on issues that general assembly is authorized by law or articles of incorporation or that directors present to general assembly

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

The identity of directors, officers and shareholders are disclosed through registration with the Trade Registry and announcement at the Trade Registry Gazette.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Joint-stock company (JSC)

At least 1 shareholder is required; no limit for maximum number of shareholders.

At least 1 board member is required; no limit for maximum number of board members.

Limited liability company (LLC)

At least 1 partner is required, maximum number of partners is 50.

At least 1 partner must be appointed as a manager and must have representation and binding authority on behalf of the company. No limit for maximum number of managers.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private limited company

Not applicable for this jurisdiction.

Public limited company

Not applicable for this jurisdiction.

Ordinary partnerships (*adi ortaklık*)

Minimum number of partners required by law is 2.

REMOVAL OF DIRECTORS OR OFFICERS

Joint-stock company (JSC)

Members of the board, whether elected or appointed by the articles of association, may be removed at any time by the decision of the general assembly.

Limited liability company (LLC)

Managers, whether elected or appointed by the articles of association, may be removed at any time by the decision of the general assembly.

REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction, apart from certain industries (eg, banking, insurance).

BOARD MEETING REQUIREMENTS

Members of the board cannot vote on behalf of each other or participate in the meeting through proxy.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Joint-stock company (JSC)

Unless a higher quorum is required by law or by the articles of association, general assembly convenes with the presence of shareholders representing 1/4 of the share capital. This quorum must be preserved throughout the meeting. If this quorum is not met at a 1st meeting, the shareholders are called to a 2nd meeting. At the 2nd meeting, present shareholders can adopt resolutions on any matter, irrespective of share capital they represent. Resolutions are passed by a simple majority of votes. However, Turkish Commercial Code introduces qualified meeting and resolution quorum requirements for certain issues such as change of nationality of the company, change of scope of activities and change of legal form.

In JSCs, unless a higher quorum is required by law and/or the articles of association, board of directors convenes with the majority of members and resolutions are passed by the vote of majority of members present at the meeting.

Limited liability company (LLC)

All general assembly decisions, including election decisions, require the vote of at least 1/2 of partners present at the meeting, unless otherwise provided in the articles of association. The Turkish Commercial Code introduces qualified meeting and resolution quorum requirements in LLCs for certain issues such as change of scope of activities, creating privileged shares and so on. Quorum and voting rights must be proportionate to shareholdings. However, different classes of shares with different voting rights can be issued. It is possible for a company to issue privileged voting shares, although a privilege can only be granted to the share (or a class of shares) and not to the shareholder(s) per se.

In LLCs, a quorum for managers' convening is not established by law, but the law merely states the quorum required to pass a resolution. If there is more than 1 manager, resolutions are passed by a simple majority of votes. Articles of incorporation may require a higher quorum to pass resolutions and a quorum for convening.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Opening a bank account in a local bank is mandatory for JSCs prior to incorporation, as JSCs are obliged to deposit at least 25 percent of the incorporation capital of the company to a local bank account before incorporation. There is no such requirement for LLPs. Banks generally seek for the signature circular of the company, company registration certificate and tax number while converting the account to a regular account after the incorporation.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

According to the Turkish Commercial Code, the President determines companies that are subject to independent audit. Such independent auditor can either be a certified accountant or an independent financial consultant located in Turkey.

Legal books such as share-ledger, board of directors and general assembly resolutions' ledgers and some other financial ledgers of a company must be certified by the relevant Trade Registry or notarized by a Turkish public notary after registration certificate is obtained. Legal books must be kept in Turkish. Board of directors' book and financial ledgers of a company must be notarized by a Turkish public notary annually. There is no requirement to keep company books locally.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Joint-stock company (JSC)

Nominal value of minimum KRI (TL0,01).

Limited liability company (LLC)

Value of any share cannot be less than TL25.

INCREASING OF CAPITALIZATION IF NEEDED

Companies may decide to increase their capital by way of in cash or in kind contributions. The following is required to increase capital:

- In order to realize capital increase, current committed capital must be paid
- A report prepared by a certified public accountant stating the current committed capital is paid
- Company shareholders resolution for capital increase and
- Registration of capital increase in the relevant Trade Registry.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Financial statements become final with the approval of the majority of shareholders or partners through a general assembly resolution. At the same meeting, distribution of profits (as dividends) can also be approved.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Unrestricted, unless the articles of association restrict. Transfer of shares of an LLC requires a transfer agreement notarized by a Turkish public notary.

OBTAINING A NAME AND NAMING REQUIREMENTS

Each company form must have a business title that shows the companies type as JSC or LLC (in Turkish) and gives a hint on the business activities of the company (in Turkish), this must also be registered with the Trade Registry. Other than these, there are language constraints and limitations with regards to use of some words (eg. Turkey).

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Not applicable for this jurisdiction, apart from certain industries (eg, banking, insurance.)

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

No government authority approval requirement, apart from certain industries (eg, banking, insurance).

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

All businesses, regardless of the industry, are required to obtain an Establishment and Operation of Workplace License before commencement of their operations. Additional licenses may be required for certain industries (eg, banking, insurance).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not applicable for this jurisdiction.

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