

**INSIDE** 243 The Set Up - **REVIEW: Legal** | 245 Notes on Mining - **REVIEW: Mining Law** | 247 Baran Umut Baycan, Founding Senior Partner at Baycan Law Office - **INTERVIEW** | 249 A Blueprint for the Future - **REVIEW: The New Turkish Commercial Code** | 251 Steve Pheby, Relocation Manager at Bedel Mobility Solutions - **INTERVIEW** | 252 Human Resources - **Q&A** | 254 Cem Eriç, General Manager, Kanyon - **INTERVIEW** | 258 Life & Leisure | 260 When In Turkey...

## REVIEW: Legal

# The Set Up



### ► Baran Umut Baycan from Baycan Law Office explains the basics of establishing a company with foreign capital in Turkey.

Turkey is a country that offers significant opportunities for foreign investors with its geographical position functioning as a gateway between Europe, the Middle East, and Central Asia. Opportunities exist not only in the dynamic domestic market, but also throughout the region. There are many reasons for choosing to invest to Turkey. First of all, it is very simple to establish a company under the principles of non-discrimination and equal treatment in Turkish foreign investment legislation, except for the establishment of liaison offices, which is subject to the approval of the Undersecretariat of the Treasury. Foreign investors enjoy the same status as local companies.

After changes to the Turkish Commercial Code in 2003, all permits granted by the General Directorate of Foreign Investment were abolished. As a result, all transactions for establishing a company with foreign capital have become the same as local companies. Since all companies established within the framework of the Turkish Commercial Code are accepted as Turkish companies, all their duties and responsibilities are equal regardless of the nature of capital formation.

There are no rules requiring Turkish participation in the capital or management of a company with foreign capital; a company may be established with 100% foreign capital. Almost all sectors are open to foreign capital. However, there exist cer-

tain restrictions for foreign investors when they acquire immovable properties or limited rights *in rem* through a legal entity. According to recent amendments, companies with foreign capital may acquire immovable rights or limited rights *in rem*, only within the context of their objective as indicated in their articles of association.

#### The Principal Forms of Business Units in Turkey

**Joint Stock Companies (Corporation)**  
The company's stock capital is divided into shares and the liability of the shareholders is limited to the capital subscribed and paid by the shareholder. A joint stock company is established with the participation of a minimum of five real or legal persons as shareholders. The minimum capital requirement for the establishment of a joint stock company is TL50,000. The nominal value of each share shall not be below TL0.01. The mandatory company organs are a general assembly, board of directors, and a supervisory board.

A joint stock company may be defined as a type of company having a specific business title and capital that covers an amount that has been determined before, and which has been divided into shares. The structuring and organization of joint stock companies are subject to the regulations set forth in the Turkish Commercial Code. Joint stock companies having more than 250 shareholders, or which issue stocks and bonds that are quoted on the stock exchange, are subject to the provisions of the Capital Markets Board.

The capital of joint stock companies is divided into shares each having equal value. Share certificates having the nature of negotiable instruments can be issued to represent the capital of a joint stock company. Such share certificates may be bearer

certificates or registered certificates. Unless a specific provision is incorporated in the articles of association prohibiting the transfer of registered share certificates, such certificates are transferable upon the approval of the board of directors. Meanwhile, bearer share certificates may be transferred without any restrictions, subject to the provisions of the Turkish Commercial Code.

In joint stock companies generally, resolutions are passed with a majority affirmative vote. However, the Turkish Commercial Code contains certain provisions that protect the rights of minority shareholders.

In joint stock companies, the board of directors has been granted the authority to represent and bind the company. The board of directors consists of at least three members. However, dividend distribution, appointment of board of directors and auditors, amendment of articles of association, capital increases, and other important issues to be determined by the articles of association are subject to the approval of a General Assembly of Shareholders' resolution.

Joint stock companies should appoint a statutory auditor. However, there are no specific functions of the auditor other than submitting activity reports to the shareholders of the company in annual general meetings.

#### Limited Companies

Limited liability companies may be formed by real persons or legal entities and consist of a minimum of two and a maximum of 50 partners. The minimum capital must be TL5,000. Each partner shall subscribe at least TL25 or its multiples as capital.

The liability of the shareholders is limited to the share capital. The founders can be real persons or legal entities. Similar >>

to joint stock companies in other respects, limited companies cannot issue stock certificates.

Limited companies cannot be active in the banking and insurance sectors due to limitations arising out of the related regulations.

Corporate organs of limited companies consist of the meeting of partners and manager(s). It is possible to delegate the responsibility of management and representation of the company to manager(s).

Auditor(s) are appointed in limited companies provided that the company has more than 20 partners.

The appointed manager has the authority to manage the company. The managers occupy a similar position like the members of the board of directors in joint stock companies. Amendment of the articles of association, appointment and dismissal of managers and auditors, and profit distribution requires a decision of the meeting of partners.

No share certificates are issued in a limited liability company. Transfer of share interests requires the approval of at least 75% of partners, representing at least 75% of the company's capital.

Limited liability companies can be established in order to be in all legal commercial activities mentioned in the articles of association.

#### Branch Office

A branch office of a foreign entity does not constitute a separate legal entity. The name of the branch office must include the term "branch office". Special rules apply to branches of foreign banks and insurance companies.

No minimum capital requirements apply; however, the head office shall allocate certain funds as necessary for the operation of the branch office. The liability of the branch office extends to cover the assets of the head office.

A branch office may only operate in the areas of activities of the head office. It has no corporate organs, but is managed by a representative residing in Turkey who is appointed to this effect by a power of attorney issued by the head office that defines the representative's powers and authorizations.

#### Liaison Offices

Liaison offices have a special status in Turkey. They are not allowed to carry out any commercial activities. Their activities in Turkey are limited mainly to accumulate information about investment opportunities in Turkey, and to conduct market research and feasibility studies.

## Registration Procedures

The registration and establishment procedures have been simplified to a very great extent after the enactment of Foreign Direct Investment Law and revisions made in the Commercial Code and various other laws. The complex and time-consuming procedures have been eliminated for both local and foreign investors, and the number of transactions have been minimized to the following steps:

#### Registration on the Trade Registry

There are some required documents to be submitted to the Trade Registry Office. Such documents are: 1 Articles of Association certified by a Public Notary; 2 A receipt issued by the bank verifying the payment of a capital contribution if the capital is contributed by the shareholders at establishment; 3 A bank receipt verifying the payment to the Fund for the Protection of Competition of 0.04% of the capital commitment; 4 Signed declarations and passport copies of the persons authorized to represent and bind the company (copies of the identity and residence certificates for Turkish citizens); and 5 Photos and passport copies of the real person shareholders.

#### Registration with Tax Office

An application to the tax office is required, where the company headquarters is located, on the same day or the day before the registration date. A tax registration number is received and legal books are certified by a Public Notary.

The rent contract certified by a Public Notary as well as the notarized circular of signatory should be submitted to the related Tax Office.

Following these registrations, the establishment procedures are completed and the company may start to operate. The expected period for finalizing the above registrations is 2-3 days.

#### Application to the General Directorate of Foreign Investment

After the completion of establishment, an application shall be filed to the General Directorate of Foreign Investment for information purposes.

#### Registration of a Branch Office

A company should apply to the Ministry of Industry and Commerce and a resolution of the board of directors or the authorized organ of the head office concerning the establishment of a branch office shall be submitted to the Ministry of Industry and Commerce. Then the branch office should be registered at the Trade Registry and Tax

Office. After the completion of the establishment, an application should be filed at the General Directorate of Foreign Investment for information purposes.

## Acquisition of an Existing Firm

A foreign investor may also buy the shares of an existing company—wholly or partially—without the need for prior permission or approval. There are no special arrangements or restrictions imposed on foreign investors for the acquisition of an existing firm. Foreign investors may freely purchase shares on the Istanbul Stock Exchange as well.

General conditions for purchasing shares in a joint stock company are: 1 Endorsement and delivery of the share certificates to the buyer by the seller in case the share certificates are printed; 2 Written agreement for the transfer of shares in case the share certificates are not printed; 3 Board of directors resolution regarding registration of the shares into the share ledger of the company; 4 Registration of the shares into the share ledger under the name of the new owner; and 5 Notification to the General Directorate of Foreign Investment.

General conditions for purchasing shares in a limited liability company are: 1 A written, notarized agreement between the seller and the buyer; 2 A written notification about the share transfer to the legal personality of the company; 3 The consent of at least 75% of the shareholders, representing at least 75% of the capital; 4 Announcement and registration of the transfer at the Trade Registry; 5 Registration in the share ledger book of the company; and 6 Notification to the General Directorate of Foreign Investment. ●

*Note* The new Turkish Commercial Code section 6012 was published in the Official Gazette on February 14, 2011. It will become effective on July 1, 2012. The new amendment will bring significant revisions to a company's general functions. These amendments must be examined closely by foreign investors looking to establish a company in Turkey.

TBY would like to thank Baycan Law Office for compiling this analysis.



to joint stock companies in other respects, limited companies cannot issue stock certificates.

Limited companies cannot be active in the banking and insurance sectors due to limitations arising out of the related regulations.

Corporate organs of limited companies consist of the meeting of partners and manager(s). It is possible to delegate the responsibility of management and representation of the company to manager(s).

Auditor(s) are appointed in limited companies provided that the company has more than 20 partners.

The appointed manager has the authority to manage the company. The managers occupy a similar position like the members of the board of directors in joint stock companies. Amendment of the articles of association, appointment and dismissal of managers and auditors, and profit distribution requires a decision of the meeting of partners.

No share certificates are issued in a limited liability company. Transfer of share interests requires the approval of at least 75% of partners, representing at least 75% of the company's capital.

Limited liability companies can be established in order to be in all legal commercial activities mentioned in the articles of association.

#### Branch Office

A branch office of a foreign entity does not constitute a separate legal entity. The name of the branch office must include the term "branch office". Special rules apply to branches of foreign banks and insurance companies.

No minimum capital requirements apply; however, the head office shall allocate certain funds as necessary for the operation of the branch office. The liability of the branch office extends to cover the assets of the head office.

A branch office may only operate in the areas of activities of the head office. It has no corporate organs, but is managed by a representative residing in Turkey who is appointed to this effect by a power of attorney issued by the head office that defines the representative's powers and authorizations.

#### Liaison Offices

Liaison offices have a special status in Turkey. They are not allowed to carry out any commercial activities. Their activities in Turkey are limited mainly to accumulate information about investment opportunities in Turkey, and to conduct market research and feasibility studies.

## Registration Procedures

The registration and establishment procedures have been simplified to a very great extent after the enactment of Foreign Direct Investment Law and revisions made in the Commercial Code and various other laws. The complex and time-consuming procedures have been eliminated for both local and foreign investors, and the number of transactions have been minimized to the following steps:

#### Registration on the Trade Registry

There are some required documents to be submitted to the Trade Registry Office. Such documents are: 1 Articles of Association certified by a Public Notary; 2 A receipt issued by the bank verifying the payment of a capital contribution if the capital is contributed by the shareholders at establishment; 3 A bank receipt verifying the payment to the Fund for the Protection of Competition of 0.04% of the capital commitment; 4 Signed declarations and passport copies of the persons authorized to represent and bind the company (copies of the identity and residence certificates for Turkish citizens); and 5 Photos and passport copies of the real person shareholders.

#### Registration with Tax Office

An application to the tax office is required, where the company headquarters is located, on the same day or the day before the registration date. A tax registration number is received and legal books are certified by a Public Notary.

The rent contract certified by a Public Notary as well as the notarized circular of signatory should be submitted to the related Tax Office.

Following these registrations, the establishment procedures are completed and the company may start to operate. The expected period for finalizing the above registrations is 2-3 days.

#### Application to the General Directorate of Foreign Investment

After the completion of establishment, an application shall be filed to the General Directorate of Foreign Investment for information purposes.

#### Registration of a Branch Office

A company should apply to the Ministry of Industry and Commerce and a resolution of the board of directors or the authorized organ of the head office concerning the establishment of a branch office shall be submitted to the Ministry of Industry and Commerce. Then the branch office should be registered at the Trade Registry and Tax

Office. After the completion of the establishment, an application should be filed at the General Directorate of Foreign Investment for information purposes.

## Acquisition of an Existing Firm

A foreign investor may also buy the shares of an existing company—wholly or partially—without the need for prior permission or approval. There are no special arrangements or restrictions imposed on foreign investors for the acquisition of an existing firm. Foreign investors may freely purchase shares on the Istanbul Stock Exchange as well.

General conditions for purchasing shares in a joint stock company are: 1 Endorsement and delivery of the share certificates to the buyer by the seller in case the share certificates are printed; 2 Written agreement for the transfer of shares in case the share certificates are not printed; 3 Board of directors resolution regarding registration of the shares into the share ledger of the company; 4 Registration of the shares into the share ledger under the name of the new owner; and 5 Notification to the General Directorate of Foreign Investment.

General conditions for purchasing shares in a limited liability company are: 1 A written, notarized agreement between the seller and the buyer; 2 A written notification about the share transfer to the legal personality of the company; 3 The consent of at least 75% of the shareholders, representing at least 75% of the capital; 4 Announcement and registration of the transfer at the Trade Registry; 5 Registration in the share ledger book of the company; and 6 Notification to the General Directorate of Foreign Investment. ●

*Note* The new Turkish Commercial Code section 6012 was published in the Official Gazette on February 14, 2011. It will become effective on July 1, 2012. The new amendment will bring significant revisions to a company's general functions. These amendments must be examined closely by foreign investors looking to establish a company in Turkey.

TBY would like to thank Baycan Law Office for compiling this analysis.



## REVIEW: Mining Law

## Notes on Mining



► Baran Umut Baycan from Baycan Law Office comments on recent changes to legislation concerning investment in the mining sector.

Turkey has recently amended its mining regulations to attract more domestic and foreign private investors into the industry. Some environmental groups criticized this amendment regarding the substantial elimination of environmental controls, while some domestic mining investors criticized it for being radically open to foreign investors.

The Ministry of Energy and Natural Resources has jurisdiction over the mining industry in Turkey. The state is vested with exclusive rights over all minerals in Turkey. Individuals or corporations with legal status in Turkey may apply for, obtain, and hold permits granting exploration and mining rights in Turkey. Licenses and permits in the Turkish mining sector are regulated under the Mining Law (numbered 3213 and dated June 15, 1985), the Regulation of Mining Activities (dated November, 6, 2010), and the Mining Activities Permit Regulation (dated June 21, 2005). On June 10, 2010 an amendment to the Mining Law was also enacted. The primary aim of the amendment to the Turkish Mining Law was to satisfy certain environmental objections raised by the Constitutional Court and to remove ambiguities concerning the interpretation of mining legislation between state departments.

Under the Turkish Mining Law, mines are divided into six groups, which are subject to different terms and conditions on licensing principles and procedures. The licenses determined in the Mining Law are granted for a specific group of mines among those six groups and a license received for a specific group may not provide



Mining is attracting a lot of investor attention.

a right to its holder for the other groups. However, the Mining Law allows for multiple licenses involving different categories of minerals in the same area.

### Types of Licenses

There are three types of licenses granted for prospecting and operating mines under the laws of Turkey, as follows: (i) prospecting license, enabling its holder to carry out prospecting activities in a specific area; (ii) operation license, enabling its holder to carry out operational activities within the same area as stated in the prospecting license; and (iii) operation permit, enabling its holder to operate a specific mine as specified in the operation license.

#### Prospecting Licenses

A prospecting license is issued for mineral exploration activities in a specific area. Prospecting activities can be defined as all mining activities other than those carried out for production. As an exception, the prospecting licensee shall have the right to carry out production and sale activities in respect of a maximum 10% of the proven mine reserves within the prospecting license period in the event that the prospecting licensee applies to the General

Directorate of Mining Affairs with the prospecting activity report.

An application for a prospecting license is generally made to the General Directorate of Mining Affairs. Holders of prospecting licenses are obliged to submit a prospecting activity report to the General Directorate of Mining Affairs within one year of obtaining a pre-prospecting license. The term of a prospecting license is two years for gold mining and for the other groups this period is one year. Should the license owner satisfy their obligations, it will create the right for an additional four years of detailed prospecting.

#### Operation Licenses & Permits

An operation license may be granted to the holder of a prospecting license for a proven, potential, and feasible mine reserve area determined during the prospecting period for a period of at least 10 years upon the submission of a feasibility study or development plan to the General Directorate of Mining Affairs. The term of the operation license may be extended for at least five years upon the application of the holder of the prospecting license and operation license with a new operation project. However, such a term cannot exceed 60 years. The Council of Ministers »