

# Turkish delights? Choosing the most effective corporate structure for investing in the Turkish market

## KEY POINTS

- When investing in the Turkish market investors should consider the legal procedures for terminating their business activities in advance, should a clean exit be required.
- A straightforward winding-up procedure will take at least a year.
- If the company's assets do not cover the debts, the shareholders and the managers will be personally liable from their own assets. The Tax Procedure Law introduces an aggravated liability regime for LLC shareholders and holds them liable in proportion to their share capital. Compared with the shareholders' restricted liability, the Tax Procedural Law envisages a broader regime for managers, where they will be jointly liable for the whole amount of the debt.
- In the light of the numerous practical challenges in terminating business activities in Turkey, investors may prefer to seek alternative models without actually entering the market through the typical corporate structures.

The Turkish Commercial Code (TCC) of July 2012 aims to align the approach to corporate governance in Turkey with international standards and has brought about many changes to corporate structures, including granting greater flexibility in establishing commercial partnerships. Together with the equal treatment principle in the Foreign Direct Investment Law, the TCC applies equally to foreign investors.

One of the most remarkable flexibilities can be found in the shareholding structures of commercial partnerships allowing joint stock (JSC) and limited liability companies (LLC) to be established with only one shareholder. Although investing by way of establishing such partnerships is feasible, when deciding on the best structure, investors should consider the legal procedures for terminating their business activities in advance, should a clean exit be required.

If investors wish to dissolve their commercial activities permanently, then the company will have chance to enter into a voluntary winding-up (liquidation) procedure as regulated under the TCC. Once the company is wound up, the legal entity will survive until the end of the process with the phrase "in liquidation" prefixed to its trade

name. However, the duties and powers of the board of managers or general assembly will be restricted by the liquidation. As a result of such a limitation, the companies will not engage in any further commercial activity unless required by compulsory situations with the sole purpose of creating a better valuation of the current assets. Since the involuntary dissolution procedures by court order and technical bankruptcy situations require a more detailed explanation, this article primarily focuses on the procedures for the voluntary liquidation of LLCs.

## THE ROLE OF THE LIQUIDATORS

Under Art 529 of the TCC, voluntary liquidation can be initiated through a general assembly resolution. Unless appointed in the company's articles of association or adopted through a general assembly, the board of managers shall act as liquidator during the liquidation. Regardless of how they are appointed, the representation and management of the company will be transferred to the liquidators who have the sole authority to represent and bind the company during the entire process. The TCC allows for foreign individuals to be appointed as

liquidators provided that at least one of them is a Turkish citizen. The liquidators are responsible for terminating the ongoing business, realising the assets and paying the company's debts if they do not exceed the net assets of the company.

In this regard, the liquidators will commence the process by drawing up an inventory and opening the balance sheet after examining the financial situation of the company. Once the inventory and balances are approved by the general assembly, the liquidators will take possession of all company records, documents and ledgers together with the recorded assets.

Known creditors, according to the company books or other instruments, will be invited to declare their debts. Article 541 of the TCC states that this call should be made in the *Trade Registry Gazette* at weekly intervals over a three-week period. Following these announcements, the creditors will be granted one year to make declarations and present their documents. As a final step, the liquidators shall deposit with a notary public any amount which is in dispute or which has not yet become due, except where the debt has already been secured or where the distribution of the company's assets between the shareholders has been conditional on the payment of these debts.

In addition to the above, the liquidators are also bound by other obligations under the TCC. If the company debts are likely to exceed its assets, the liquidator shall immediately inform the court to decide on the execution of bankruptcy proceedings. If the liquidation process is extended, the liquidators will draw up an interim annual balance sheet and submit it for the approval of the general assembly. As the "authorised persons" of the company for the purposes

## Feature

### Biog box

Pelin Baysal is a partner, Görkem Bilgin a senior associate and Beril Arı an associate in the corporate and M&A department of Gün+Partners. Email: [peлин.baysal@gun.av.tr](mailto:peлин.baysal@gun.av.tr); [gorkem.bilgin@gun.av.tr](mailto:gorkem.bilgin@gun.av.tr); and [beril.ari@gun.av.tr](mailto:beril.ari@gun.av.tr)

of the process, the liquidators are to take all necessary steps to finalise the liquidation as soon as possible, properly keep all the company records of the process and provide the shareholders with written information when required.

One year after the third announcement to the creditors, following the payment of the company debts, the remaining net assets of the company shall be distributed, in cash, among the shareholders in proportion to their capital commitments and a final balance sheet must be submitted to the general assembly for approval.

When these formalities are completed, the end of the liquidation will be registered and announced before the Trade Registry and the trade name of the company will be removed. Finally, the court consigns all the company books and records to a notary public for preservation for a ten-year period from the date of the liquidation. Relevant declarations to the tax authorities and Social Security Institution informing them of the company's winding up should also be processed.

### FURTHER LIABILITIES

A straightforward winding-up procedure with all these formalities will take at least a year. In cases where the liquidation is conducted too quickly and some transactions are not finalised, the liquidation process can be re-opened by the court at the request of new liquidators or the board of managers or the company's creditors, which can prolong the process even further.

If an investor does not want to be involved in these burdensome formalities

and decides to keep the company dormant for a limited time, then it should be noted that the company is still under an obligation to make monthly tax declarations regardless of whether it has any commercial activity or income. Additionally, even if the company is left dormant, its registered address will still be the official address for any notifications and if this is not regularly checked for any official notices, a claim may be lodged against the company or against its managers within the ten-year period. This claim can be processed in the managers' absence provided the notification has been correctly made with a debt registered against them. If the company has no income or activities, it will be fined TRY 1,500 (€500), for every month that it fails to make a declaration and the fine will be classified as public debt. If the company's assets do not cover the debts, the shareholders and the managers will be personally liable from their own assets.

Even though the TCC sets forth a liability regime for shareholders in corporate partnerships, limited by their subscribed capital, the Tax Procedure Law introduces an aggravated liability regime for LLC shareholders and holds them liable (with all their personal assets) in proportion to their share capital. Compared with the shareholders' restricted liability, the Tax Procedural Law envisages a broader regime for managers, where they will be jointly liable for the whole amount of the debt. Although there is not any explicit provision preventing shareholders and managers from being pursued at the same time, the Council of State foresees a third degree of

liability for shareholders, requiring that legal proceedings should have been initiated against the managers before claiming against the shareholders.

### AN ALTERNATIVE INVESTMENT APPROACH?

In light of the numerous practical challenges in terminating business activities in Turkey, it might be useful to seek alternative models without entering the market through these corporate structures. If investors are considering monitoring the market for a limited time prior to making an investment or involvement in a business activity, establishing a liaison office would provide a more flexible structure to evaluate business opportunities. However, bear in mind that it is not permissible to run any form of commercial activity through liaison offices. For investors who wish to engage in business in the Turkish market but may require a clean exit and to cease their business activities at some stage, the requirements of the TCC should be closely reviewed and adhered to in order to achieve a straightforward winding up. ■

### Further reading

- The emergence of the Turkish sukuk market (2014) 9 JIBFL 578
- LexisPSL Banking and Finance: Practice note: Turkey- cross border banking and finance guide
- LexisPSL Restructuring and Insolvency: Practice note: Turkey

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