

## INCORPORATION OF A COMPANY IN TURKEY THAT ARE SUBJECT TO PERMISSION

### 1. Introduction

Although Turkish Commercial Code does not contain any definition of the term “company” and determine its elements, the term company is defined as “the contract through which one or more persons have undertaken to unite their efforts and property in order to achieve a common purpose” in the article 620 of the Turkish Law of Obligations regulating the term ordinary company. We may say that the term company consists of the elements of persons, contract, capital, common purchase and working together to achieve that purpose.

In the Turkish legislation the companies are regulated by the Turkish Law of Obligations No. 6098, Turkish Commercial Code No. 6012 and the Cooperatives Law No. 1163. A limited number of commercial companies are listed in the Turkish Commercial Code and incorporation of any other type of companies is not possible. According to this principle unlimited liability companies (TCC 211-303), limited partnership (TCC 304-328, 564-572 etc.), joint stock companies (TCC 329-563) and limited liability companies are commercial companies (TCC 573-644). Furthermore, it may be stated that cooperatives are also deemed to be commercial companies although this is not regulated by Turkish Commercial Code.

Under this scope, if one or more persons want to incorporate a company or engage in commercial activities in Turkey, they are required to choose one of the above mentioned commercial companies, meet the conditions of the incorporation of a legal person and also have it registered and announced before the registry of commerce

After this general introduction and evaluation concerning the incorporation of commercial companies in Turkey we have mainly tried to examine the companies whose incorporation is subject to permission.

### 2. Companies whose Incorporation is subjected to the Permission of the Ministry.

Pursuant to the communique of the Ministry of Customs and Trade published in the Official Gazette dat

ed November 15, 2012 and numbered 28468 and titled “**Communique on Increasing the Share Capital of Joint Stock Companies and Limited Liability Companies to the New Minimum Values and on the Determination of the Joint Stock Companies whose Incorporation and the Amendment of the Articles of Association of which are Subjected to Permission**” the incorporation and the amendments on the Articles of Association of the companies examined below are subjected to the permission of the Ministry of Customs and Trade.

The incorporation of the above mentioned companies requires the prior permission of the General Directorate of Domestic Trade by applying to that authority, together with the signatures of the founders, Articles of Association and certificate of incorporation certified by the public notary and favorable opinion or letter of permission for the companies requiring the favorable opinion or letter of permission of other official institutions.

#### 2.1. Banks

Banks which are one of the companies the incorporation of which requires obtaining permission from the Ministry means the deposit banks, and participation banks and development and investment banks according to the Banking Law No. 5411.

**Deposit banks** mean the institutions operating with the main purpose of accepting deposits in their own name and account and providing credit facilities and the Turkish branches of this kind of institutions abroad.

**Participation banks** means the institutions mainly operating in the field of collecting funds and providing credit facilities through special current and participation accounts and the Turkish branches of this kind of institutions abroad.

**Development and investment banks** operate mainly in the field of providing credit facilities and/ or performing the duties assigned to them by special laws

in addition to accepting deposits or participation fund and the Turkish branches of this kind of institutions abroad.

The permission and conditions for the incorporation of the banks are set forth in the article 6 and 7 of the banking law. Accordingly, the incorporation of a bank in Turkey or opening the first branch of a bank incorporated abroad in Turkey requires the permission to be obtained from the Regulation and Supervision Board accepted by the favorable votes of at least five members thereof and also the permission of the ministry provided that the conditions specified in this law have been fulfilled.

## 2.2. Financial Leasing and Factoring Companies

Financial leasing and factoring companies whose incorporation is subject to the permission of the Ministry and which operate as financial institutions are regulated by the Law No. 6361 on the Financial Leasing, Factoring and Financial Companies.

**Financial leasing** is a transaction directed at providing a finance facility by the lessor authorized by this law or pursuant to the relevant legislation based on a financial leasing contract whereby any of the following options are granted to the lessee: the transfer of the ownership of the leased property to the lessee at the end of the lease period; granting the lessee the option to buy the property at a price below its current value; granting a lease period covering more than 80% of the economic life of the property or ensuring the total current value of the leasing payments to be made based on the financial leasing contract to correspond to a value exceeding 90% of the current value of the property.

On the other hand, **factoring** may be defined as a type of financial product through which services such as financing, providing guaranty and collection are provided by means of the assignment to the factoring company of the future receivables of companies that have arisen or shall arise in the future from the sale of goods and services and are based on an invoice or any other document (like check, bond etc.) that may be used instead of an invoice.

The incorporation of a financial leasing or factoring company in Turkey requires the prior permission to be obtained from the Banking Regulation and Super-

vision Board based on the favorable vote of minimum five members thereof provided that the conditions prescribed by this law have been met and also permission of the Ministry is also required.

## 2.3. Consumer financing and card services companies

Consumer financing and card services companies is a financial company and our explanations above made for financial leasing and factoring companies also apply for these companies.

## 2.4. Asset Management Companies

Another type of company whose incorporation is subjected to the permission is the asset management companies. These are companies incorporated for the purpose of buying, collection, reorganization and sale of the receivables and other assets of saving deposits insurance funds, banks and other financial institutions.

The incorporation of asset management companies requires the prior permission of the Banking Regulation and Supervision Board as well as of the Ministry.

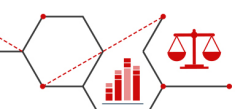
## 2.5. Insurance Companies

Insurance companies whose incorporation is subjected to permission means the insurance companies incorporated in Turkey and the organization of insurance companies incorporated abroad in Turkey pursuant to the Insurance Law No. 5684. The incorporation of insurance companies requires the permission of the Ministry.

The insurance companies which shall operate in Turkey are required to be incorporated in the form of a joint stock company or cooperative company. Insurance companies are prohibited from engaging in any business other than those directly related to insurance transactions.

## 2.6. Holdings incorporated in the form of joint stock company

Although there is no regulation concerning the holding companies in the Turkish legislation there is only one provision in the article 519 of the Turkish Commercial Code reading as "... *Holding companies whose*



*main purpose is to participate in other enterprises”.* As has been seen above, the above mentioned provision only touches upon the element of purpose of the holding companies.

It is possible to define holding companies as companies which do not engage in the production and sale activities, share in those companies and are mostly the principal partner of the companies of which they become a shareholder or control them by other means.

Although there is no clear regulation about the company type in which the holding companies may be incorporated it may be said that this void is filled by a procedure introduced by the Ministry of Customs and Trade. Under this scope the ministry only permits the incorporation of a holding company in the form of joint stock company.

## 2.7. Companies operating exchange offices (authorized institutions)

Companies operating an exchange office are the enterprises whose incorporation is subjected to a permission and are regulated by the Communiqué on the Decree No. 32 on the Protection of the Value of Turkish Lira (Communiqué No. 2018-32/45). The permission for the incorporation of a company to operate an exchange office is granted by the Undersecretariat of Treasury and a permission must also be obtained from the Ministry.

## 2.8. Companies engaged in public warehouses

The business of public warehouse is regulated by the Turkish Commercial Code and Public Warehouses Law No. 2699. The article 832 of the Turkish Commercial Code defines;

**Public warehouse** as the large store established for the purpose of accepting free or bonded goods and cereals according to the safekeeping contract in exchange for the delivery of warehouse receipt and warrant and authorizes those who deliver the said goods and cereals to sell and pledge those good and cereals. It is stated that the public warehouse may be established in the form of joint stock company based on the permission to be obtained from the Ministry of Customs and Trade taking into consideration the general economic conditions of the country.

## 2.9. Licensed warehousing companies for agricultural products

Licensed warehousing companies for agricultural products are regulated by the Law No. 5300 on Licensed Warehousing for Agricultural Products. According to that law:

**Licensed warehouse** means the premises providing the service for the preservation of agricultural products under the scope of this law under hygienic conditions and their storage for commercial purposes.

On the other hand, **licensed warehouse enterprise** refers to the joint stock company engaged in the storage of agricultural products and holds a valid license certificate under the scope of this law.

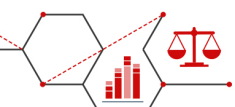
Licensed warehouse enterprises for agricultural products are incorporated in the form of joint stock company based on the permission to be given by the ministry of Customs and Trade taking into consideration the economic needs and operational conditions.

## 2.10. Specialized Products Exchange Companies

General Directorate of Domestic Trade defines the specialized products exchange companies as the companies which act as an intermediary for the purchase and sale of the agricultural products included under the scope of the licensed warehousing system and further acts as an intermediary agent regarding the trade of both the products in the physical sense and also the product bonds and contracts to be delivered representing the products and issued by the licensed warehousing enterprises and which are further equipped with sufficient infrastructure and electronic outfits and financial infrastructure and may operate at the regional, national or international levels.

## 2.11. Independent Auditing Companies

The procedures and principles concerning independent auditing and the entities which shall engage in independent auditing activities in the capital market are regulated by the Communiqué (Serial No:X, No. 28) on the Amendment of the Communiqué on the Standards of Independent Auditing in the Capital Board (Serial No: X, No. 22). The permission for the incorporation of independent auditing companies is issued by the Capital Market Board and the permission of the Ministry is also required.



## 2.12. Inspection Companies

The incorporation and activities of the Inspection companies are regulated by the Communiqué on the Status of International Inspection Company (Product Safety and Supervision: 2015/24). Under the scope of this communiqué:

**Inspection activities** refers to the international inspection activities including the control of quality and amount, determination of the state of storage, loading, discharge and transportation operations and the determination of accuracy of price and customs classification including the exchange rate and financial conditions.

Pursuant to the article 6 of the relevant communiqué public institutions and organizations, companies or economic enterprises which have a professional liability insurance with a minimum coverage of TRY 100,000 are eligible for application for obtaining the status of an international inspection company. Under this scope a certificate of international inspection company is issued by the General Directorate of Product Safety and Supervision of the Ministry of Trade.

## 2.13. Management Companies of the Technology Development Zone

Management companies of the technology development zones are regulated by the Law No. 4691 on Technology Development Zones. The management companies are incorporated as joint stock companies in accordance with the law and referred as the companies in charge of the management and operation of technology development zones which are briefly called Techno parks. The permission for their incorporation is issued by the Ministry of Industry and Trade and the permission of the Ministry must also be obtained for that purpose.

## 2.14. Companies subject to the Capital Market Law No: 2499 dated 28/7/1981

The incorporation of the companies indicated below which are subject to the Capital Market Law are subjected to the permission of Capital Market Board as stated in the relevant communiqués and in addition the permission of the Ministry of Customs and Trade is required for that purpose.

- Portfolio Management Companies,
- Intermediary Institutions (Securities),
- Investment Trusts (Securities /Real Estates/Venture Capital)
- Real Estate Valuation Companies
- Publicly Traded Companies,
- Asset Leasing Companies

## 2.15. Companies which are founder and operator of a Free Zone

According to the article 2 of the Free Zones Law No. 3218, the establishment and operation of free zones by public institutions and organizations and local and foreign real or legal persons requires the permission of the President and obtaining the permission of the Ministry of Customs and Trade is also required for that purpose.

## 3. Conclusion

As has been seen above we have examined the companies of which incorporation are subjected to permission in this article. The processes of the incorporation of a company require an extensive technical study. For that reason, we would be pleased to extend support to you in order to obtain more beneficial results based on detailed information and to avoid the potential problems that may arise.

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