

# Incorporation of a Bank in Turkey

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In recent years, more and more foreign investors have become interested in the banking sector in Turkey. There are three ways for foreign investors to enter the banking sector: (i) they, along with domestic partners, can enter into bids to purchase banks from Savings Deposit Insurance Fund (“TMSF”) (Tasarruf Mevduatı Sigorta Fonu); (ii) they can buy shares of existing banks; or (iii) they can incorporate new banks. In this article, this last alternative, incorporation of a bank in Turkey, will be briefly examined.

## Incorporation of a Joint Stock Company

Banks in Turkey are to be established in the form of a joint stock company. Moreover, the establishment of a joint stock company to operate as a bank is subject to the permission of the Ministry of Industry and Commerce (Sanayi ve Ticaret Bakanlığı).

The minimum capital requirement for a joint stock company is TL 50,000 and at least five (5) shareholders are required for the establishment. However, in accordance with the relevant legislation, the minimum capital requirement for the establishment of a bank is TL 30,000,000.

All the shareholders and directors may be foreign nationals provided that these real persons or legal entities meet the necessary qualifications outlined in the relevant legislation.

In order to establish a joint stock company operating in the banking sector, the necessary documents are to be submitted to the trade registry located in the province where the company intends to be established. These documents include, without limitation, a petition, a power of attorney, the articles of association, a certificate of activity, resolution(s), a bank receipt evidencing that 4/10,000 of the capital has been deposited, the chamber registration statement, a letter of undertaking, the approval of the Ministry of Industry and Commerce, and an original copy of a bank receipt showing the amount of the paid capital.

In addition to the above-listed documents, Banking Regulation and Supervisory Agency (“BRSA”) permission authorizing the company to carry out banking activities and the receipt of the required deposit

amount for a banking license shall be submitted as well. BRSA may reject the application for a banking license at its own discretion. Therefore, the incorporation of the joint stock company shall be completed on the condition that a banking license is obtained from BRSA. In other words, the establishment of the bank shall be finalized provided that a banking license is obtained following the documentation process for the establishment of a joint stock company, including the permission of the Ministry of Industry and Commerce, has been completed. The purpose of such an application is to avoid the cost of incorporation if the application for a banking license is rejected.

Once the company is incorporated, the additional procedural steps regarding taxation need to be completed. However, it should be noted that the majority of the necessary documents to be submitted to the registered tax office are similar to the documents to be submitted to the trade registry.

## Documents Required for the Permission of BRSA for Incorporation of a Bank (Banking License)

As mentioned above, incorporation of a bank in Turkey is subject to the permission of BRSA. The documents required to be submitted to BRSA include, without limitation, the articles of association, a detailed feasibility report, a balance sheet and loss and profit statement projections, a document from the commercial court regarding the founders and real person/legal entities holding indirectly ten percent (10%) or more of the capital, a power of attorney, a record of convictions of founders, a statement from the Social Security Institution, an audit report related to the founders holding more than ten percent (10%)

of the shares of the capital, resolutions and official documents regarding any restrictions on the operations of the company.

In addition to the aforementioned documents, if the founder of a bank is also a bank or a financial entity having foreign nationality, additional documents shall be required.

### Operating Permission

After obtaining a banking license and finalizing the establishment of the joint stock company as a bank, operating permission from the BRSA should be obtained. The founder of the bank must apply for operating permission within nine (9) months of the obtainment of a banking license at the latest. The BRSA's decision on the operating permission shall be resolved within three (3) months of the date of application and the operating permission granted shall be published in the Official Gazette.

A bank that has received establishment permission

shall be required to meet some strict criteria in order to commence its operations. These include, without limitation, payment of the capital in cash, payment of a minimum of one-fourth (1/4) of the system entrance fee, ensuring that the activities are in compliance with corporate governance provisions, and ensuring that the managers meet the qualifications set out in the corporate governance provisions.

### Conclusion

As mentioned above, incorporation of a bank in Turkey is subject to the strict supervision of BRSA. Nonetheless, incorporation of a new bank requires a more demanding process, as a joint stock company must initially be established and only then can the necessary permission be obtained from BRSA and the Ministry of Industry and Commerce. This may be the main reason why many foreign investors entering the banking sector in Turkey still prefer to attend the tenders for sale and purchase of existing banks from TMSF over incorporating a new bank.