



DIFFERENCES BETWEEN JOINT STOCK AND LIMITED LIABILITY COMPANIES IN TURKEY

THE NEW TURKISH COMMERCIAL CODE (NTCC) that came into force on July 1st 2012 conveyed important changes to businesses and company law.

Apart from providing general information on joint stock and limited liability companies, this article aims to set out the innovation transported by the NTCC and distinguish the two types of corporations.

Turkish Joint Stock Company (Anonim Şirket), is a corporation that has a title, with a certain capital, divided into shares that is only liable to its creditors with its assets. Both types of corporations are classed as stock corporations although Turkish joint stock companies are typical stock corporations with legal identity and title¹. Company capital is registered and divided into shares. All the debts and obligations owed to third parties are owed by the company itself, not by the members or directors. Joint stock company is only liable to its creditors with its assets; members' liability is limited to the value of their shares. Company could be established for all kinds of commercial purposes that are not restricted by law. It has its own legal identity separate from that of the human beings who are involved in the company. There is a transferability of ownership, shares can easily be bought and sold. This provides for small capital to come together to form large funds and undertake greater business that would not be possible otherwise.

Turkish Limited Liability Company (Limited Şirket) is formed by one or more real or legal persons gathering under a commercial title. The actual capital is specified which is made up of the total of the divided shares. The shareholders are not liable for the debts of the company but only for the actual capital that they have committed themselves to or for their obligations such as secondary payment or duty stated in the company agreement. Limited liability companies could also be established for all kinds of economic purposes that are not restricted by law.²

Formation of Joint Stock and Limited Liability Companies

Joint stock and limited liability companies are formed by a founder who declares his intentions to form a company by a signed undertaking that receives notary public approval, to pay all the capital without conditions, contained in the Articles of Association (AoA). Company receives legal identity upon registration at the registry following delivery of the formation documents. Registration period is 30 (thirty) days. There are little differences between a joint stock and a limited liability company in terms of formation.

Formation Documents

According to NTCC formation documents consist of the AoA, founders’ declaration, valuation reports, agreements between the company and the founders and/or other persons including agreements for asset or company transfer. The AoA must cover all the topics stated in NTCC and be in writing. Furthermore the AoA, which must contain the founders’ names, surnames, addresses and if foreign nationalities, must be signed by the founders and approved by the notary public.

The city and town of the central office of the company must be stated in the AoA, as well as the full address of the company.

The purpose and activity of the company must be stated in the AoA. Joint stock and limited liability companies could be established for all kinds of economic purposes that are not against the law. The nature of business stated in the AoA must cover the main activities that the company intends to carry out and does not need to show all prospective activities.

The declaration to be presented to the registry must be signed by the founders themselves; otherwise this document will be invalid.

It is possible to form a joint stock or limited liability company by one person under the new NTCC. Companies with one shareholder are not different categories but special types under joint stock or limited liability companies. The rules of NTCC that apply to joint stock and limited liability companies also apply to one shareholder companies with some special provisions for distinct situations.

According to the relevant sections of NTCC one shareholder companies must state the one shareholder status and report and register the name, residence and nationality of the shareholder. Changes in the position of the joint stock or limited liability company such as losing the one

shareholder status must be reported and registered.

Formation documents for a joint stock company:

- 1. Petition
- 2. Application for registration which consists of three pages,
- 3. AoA approved by notary public,
- 4. Signature declaration of the authorized under the company title,
- 5. Establishment declaration signed by the founders,
- 6. Stamped and signed bank receipts showing payment received,
- 7. Bank receipt showing the payment of at least the minimum share capital as stated by law or in the AoA, (where cash payment of all or part of the company capital is undertaken, at least ¼ nominal value of this amount must be paid before registration and the reminder within 24 months.)
- 8. Chamber registration manifesto,
- 9. Valuation reports prepared by an expert appointed by the court to assess the initial company capital and the prospective businesses that are to be obtained together with their capital,
- 10. Proof obtained from the relevant registry that there are no limitations on the company assets,
- 11. Documents showing that the registries of real property, intellectual property and their cash values have been annotated with the rights of the company,
- 12. Agreements between the company to be established and the founders and/or other persons including agreements for asset or company transfer,
- 13. Ministry or other official permission or approval for companies that such is a pre-requisite,
- 14. Signed letter of acceptance by the appointed directors who are not shareholders,
- 15. Where an entity is appointed as a director, the name and surname of a real person on behalf of the entity together with the appointment made by an authorized organ of the entity that is signed by a notary public.

Formation documents for a joint stock company:

- 1. Petition
- 2. Application for registration which consists of three pages,
- 3. AoA approved by notary public,
- 4. Signature declaration of the managers under the company title,
- 5. Establishment declaration signed by the founders,
- 6. Signed letter of acceptance by the appointed managers who are not members,
- 7. Where an entity is appointed as a manager, as well

- as the name of the entity, the name and surname of a real person on behalf of the entity together with the appointment made by an authorized organ of the entity that is signed by a notary public,
- 8. Stamped and signed bank receipts showing payment received,
- 9. Bank receipt showing the payment of at least the minimum share capital as stated by law or in the AoA, (where cash payment of all or part of the company capital is undertaken, at least ¼ nominal value of this amount must be paid before registration and the reminder within 24 months.)
- 10. Chamber registration manifesto,
- 11. Valuation reports prepared by an expert appointed by the court to assess the initial company capital and the prospective businesses that are to be obtained together with their capital,
- 12. Proof obtained from the relevant registry that there are no limitations on the company assets,
- 13. Documents showing that the registries of real property, intellectual property and their cash values have been annotated with the rights of the company.

The Tittle of a Joint Stock and Limited Liability Company

Limited liability and joint stock companies must state the nature of business in the company name. It is possible to have additions to the main nature of business in the company name as long as it does not mislead the public. The words “Limited Şirket” (Limited Liability Company) or “Anonim Şirket” (Joint Stock Company) must be stated in the company name. When the company name consists of a name of real person, the words that refer to the company type cannot be abbreviated such as Ltd.

A branch office must use the title of its principal and state that it is a branch at the end of its business name. It is possible to place additions relating to the branch on the business title. A business that has its principal abroad must state in its name that it is a branch office and the place of its principal and place of branch.

Business names are protected in Turkey. The chosen name must not be registered in the business registry before. The business name cannot be against public policy and misleading third persons about the size, reputation and financial status of the business. The words “Türk” (Turk), “Türkiye” (Turkey), “Cumhuriyet” (Republic) and “Milli” (National) can only be used as business names with the decision of the Council of Ministers.

The business name must be Turkish, however this rule is relaxed by allowing some foreign words in the business

name as long as there is some foreign element in the company and the whole of the business name is not foreign.

The Number of Partners in Joint Stock and Limited Liability Companies

Joint stock companies are formed with one or more shareholders. If the number of shareholders falls to one, the directors must be notified in writing, within seven days of the matter that resulted in the change. The directors must report and register the company as a single shareholder joint stock company within seven days from the date of notification. In both situations, when the company is established as a single shareholder joint stock company and when the company is reduced to a single shareholder joint stock company, the name, residence and nationality of the single shareholder is reported and registered. Otherwise liability for possible damages lies on the single shareholder who did not make the declaration and the directors who did not report and register the single share-ownership.

The number of members cannot be more than fifty in limited liability companies. If the number of members falls to one, the manager(s) must be notified in writing, within seven days of the matter that resulted in the change. The manager(s) must report and register the company as a single shareholder limited liability company together with the name, residence and nationality of the single shareholder, within seven days from the date of notification. Otherwise they will be liable for any possible damages. Managers’ liability is similar in the situations where the limited liability company is established with a single member.

The Amount of Capital in Joint Stock and Limited liability Companies

The minimum capital in joint stock companies cannot be less than fifty thousand Turkish Liras and cannot be less than a hundred thousand Turkish Liras where the company adopted the registered capital system whereby it has given the general assembly an authority ceiling and the shares are not open to public as well as it is the case for the publicly held companies. The minimum capital quantities could be raised by the Council of Ministers.

The minimum capital in limited liability companies is ten thousand Turkish Liras. This amount could be increased by the Council of Ministers by up to ten fold.

According to NTCC 25% of the nominal share value and a total of the premium if applicable, must be paid before registration. The remainder amount must be remitted within twenty four months the latest.



The Obligation to Issue Shares and Raise Capital in Joint Stock and Limited Liability Companies

Shares could be created by cash or assets in joint stock companies. The minimum nominal value of a share is stated as 0.001 TL in NTCC. This value could be increased by one kuruş and its multipliers. However Council of Ministers could increase the said nominal value by up to one hundred fold. Any shares issued that do not comply with these rules are invalid; nevertheless the rights arising from the payment made for these shares is reserved. The persons who have transferred these shares are jointly liable for the people they have caused damage.

Unless a higher amount is stated in the Company Agreement of limited liability company, every twenty five Turkish Liras in shares give one right to vote. However, it is possible to limit the voting right of persons with more than one shares in the company agreement. A partner has a minimum of one vote and could vote by post if it has been clearly specified in the company agreement. It could also be stated in the company agreement that voting rights are independent of nominal share values and that each one actual capital share receives one vote. In these circumstances the lowest nominal value of the actual capital share cannot be less than one tenth of the total of the nominal values of the remaining actual capital shares.

Management and Representation in Joint Stock and Limited Liability Companies

The board of directors is the representative organ of the joint stock companies. The members are appointed by the AoA of the joint stock and/or general assembly. NTCC makes it possible for the board of directors to consist of one person and also for legal entities to be appointed. When a legal entity is elected to the committee of directors, together with this entity one real person chosen by this entity to act for and on behalf of the entity is also registered and reported. Only the person who is registered can attend the meetings and vote for and on behalf of the legal entity. All board members and the person registered to act on behalf of the legal entity must be fully capable.

The management and representation of the limited liability companies on the other hand, is regulated in the company agreement. This agreement may state that the management and representation of the company is to be carried out by the one or more than one of the shareholder(s) who is/are to be referred to as manager, or by third parties. There must be at least one shareholder as a manager and representative of the company. Where one of the managers is a legal entity, this entity will specify a real person who will carry out the responsibilities for and on behalf of the entity. The managers have authority to

make decisions and carry them out in any aspect that is not left to shareholders' committee by the company agreement or by law.

Termination of Joint Stock and Limited Liability Companies

A joint stock company comes to an end:

- a) where the company is established for a specified period in the AoA, at the end of the period, as long as it did not become an indefinite company by conduct, due to carrying on with business after the expiry of the period;
- b) when the reason for business is accomplished or has become impossible to accomplish;
- c) when one of the reasons in the AoA for termination is fulfilled;
- d) with a shareholders' resolution;
- e) when a decision for insolvency has been made; and
- f) in other circumstances that are specified by law.

A limited liability company comes to an end:

- a) when one of the reasons in the company agreement for termination is fulfilled
- b) with a shareholders' resolution;
- c) when a decision for insolvency has been made; and

d) in other circumstances that are specified by law.

Where a joint stock or limited liability company does not have one of the legally compulsory organs for some time or the board of director cannot hold a meeting, upon the termination request of one of the partners or the creditors, to the commercial court of first instance where the company head office is situated, the court will hear the managers and order the company to rectify the errors within a specified time, if the situation does not change, an order for termination will be made.

Where the conditions are satisfied any partner can request the termination of the company from the court. The court could order the payment of the true value of the shares belonging to the shareholder claimant and the discharge of this shareholder or some other suitable and acceptable solution, instead of the termination of the company. When a claim of termination is brought, the court could make the necessary preliminary orders upon the request of one of the parties.

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1 There are exceptions in limited liability companies.
2 According to Law numbered 6183 regarding the debt collection of the states.

Main Differences between Joint Stock and Limited Liability Companies

	Joint Stock Company	Limited Liability Company
Type of company	Stock corporation	Stock corporation
Min. number of members	1	1
Max. number of members	No limit	50
Minimum capital	TL 50,000/TL 100,000	TL 100,00
Company organs	Board of Director General Assembly	Members Committee General Assembly
Management	Directors	Director and members
Liability	Limited to the committed capital	Limited to the committed capital apart from obligations to public authorities such as tax, duty, etc.
Transfer of Shares	Allowed	Not allowed