Cross-Border Joint Venture and Strategic Alliance Guide (Turkey)

A Practical Guidance® Practice Note by Togan Turan and Nihan Bacanak, Paksoy

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This Cross-Border Joint Venture and Strategic Alliance Guide (Turkey) discusses relevant law and practice related to the formation and operation of cross-border joint ventures, including corporate and contractual joint ventures, in Turkey. For other jurisdictions see the Cross-Border Joint Venture and Strategic Alliance Resource Kit.

Structures

What are the standard forms of joint ventures / strategic alliances and common features of each?

The most common and standard forms of joint ventures (JV) under Turkish law are (1) contractual/ordinary partnerships (*adi ortaklık*), (2) joint stock corporations (JSC), and (3) limited liability companies (LLC).

Contractual/ordinary partnerships are generally used for short-term JV relations, mostly in cases where the partners are somehow personally involved in operations or financing of the project and therefore are comfortable in having broad liability in the partnership. The most important feature of a contractual/ordinary partnership is that it is a pass-through vehicle; the partners would be directly exposed to the profits and loss, including all liabilities of the partnership.

JSCs and LLCs on the other hand are the most commonly used company types. In both JSC (*anonim* şirket) and LLC (*limited* şirket), the JV partners' liability would be limited to the amount of capital they contribute into the JV entity. It is generally the case that JSCs are preferred over LLCs in JV transactions due to the more flexible nature of JSCs, taking into consideration both corporate governance rules and shareholder relations of the partners, including transfer abilities. LLCs are preferred for smaller scale operations in which there would be a single controlling parent entity or as special purpose vehicles.

What are some of the key corporate governance, tax, regulatory, and timing considerations that could impact the choice of structure?

From a corporate governance perspective, JSCs are generally considered to be more flexible because the managerial powers are exercised at the board of directors (board) level, whereas in the case of LLCs, most managerial powers are exercised at the shareholder level, which is then transferred to managers. Further, the limitation of liability of the shareholders is more favorable to the partners in JSCs; the shareholders would not be liable for the debt of the company, except in extreme scenarios (such as fraud) where the corporate veil could be lifted. In the case of LLCs, however, the shareholders would have secondary liability for the LLC's public debts, such as taxes and social security premium payments, pro rata to their shareholding in the LLC, if such public debts are not paid by the LLC.

The liability of the partners in a contractual/ordinary partnership is unlimited. Unless otherwise agreed between the parties, each partner is equally liable for profits and losses of the partnership, regardless of the value of their contribution.

Tax in general, is not considered to be a determining factor. In certain instances, a particular structure may be favored by the JV parties despite its potential negative tax implications. For example, using partnerships for construction projects may lead to potential value added tax (VAT) mismatch, since the input VAT stemming from the project expenditures would be generated in the hands of the partnerships, while the output VAT stemming from the sales would be reflected in the accounts of the partners themselves, pro rata to their partnership ratios. Nevertheless, given the limited term of the partnership and the simplicity and short time of formation, the ordinary partnership is often preferred for construction/development projects.

For regulated companies or investing in regulated sectors, use of JSC may be mandatory. Regulated sectors, such as banking, financial leasing, factoring, brokerage, insurance, asset management, independent auditing, and broadcasting in almost all cases require the licensed entities to be incorporated in the form of (or converted to) JSCs.

Can a joint venture or strategic alliance be formed for any purpose?

A JV can be formed for any and all kinds of economic purposes, to the extent that such purpose is not against imperative provisions of Turkish law, personal rights, public order, and public moral.

Are there any forms of joint ventures or strategic alliances that are more typically used in certain industries (such as real estate, pharmaceutical, or technology)? Why are such forms favored?

As briefly mentioned above, there are certain regulated industries where a particular form of company is required, mostly JSCs. In banking, financial leasing, factoring, brokerage, insurance, asset management, and independent auditing, the JSC form is mandated; LLCs cannot be used. The JSC form is also mandatory for publicly listed entities. Even in the absence of such legal requirement, JV partners often prefer JSCs over LLCs for JV transactions. This is usually because the corporate governance rules and shareholder relations, including share transfer restrictions, are more flexible in JSCs compared to LLCs.

On the other hand, although it is not legally required, contractual/ordinary partnerships are preferred in construction/development projects. In such projects, the JV partners have very specific roles in the construction phase for a very finite period of time. However, after completion of the project, the partners usually prefer not to remain in a JV corporation.

It also is very common to use a contractual/ordinary partnership during participation in public tenders. In practice, consortiums are often formed for large scale infrastructure projects allowing multiple partners to agree on jointly participating in a public tender, effectively strengthening their position in know-how, technology, or financing capabilities, etc. At that particular stage of the transaction, it would not be practicable, or desirable, to invest in a corporate entity. Therefore, before award of the tender, the partners usually opt to structure the JV as ordinary partnerships. The simplicity of terminating or liquidating a contractual partnership, compared to that of a JSC or an LLC, is another determinative factor. In practice, the contractual partnerships would be converted into JSCs if the JV is awarded with the tender.

Are there any industries that would not permit or would not be conducive to a joint venture or strategic alliance?

There are no particular industries that prohibit the formation of a JV.

How is a joint venture or strategic alliance structured to minimize potential liability? Are there instances where parties to a venture or alliance may knowingly choose a vehicle without limited liability and, if so, why would such party make that choice?

Utilizing a corporate entity to conduct a JV is the most desirable option available ensuring the limitation of liability. In the case of both JSCs and LLCs, shareholder liability would be limited to the amount of capital contributed. However, in the case of LLCs, shareholders would have secondary liability for the LLC's public debts, such as taxes and social security premium payments, pro rata to their shareholding in the LLC, if such public debts are not paid by the LLC.

Nevertheless, in certain cases, the shareholders may choose a contractual/ordinary partnership despite the fact that it exposes its JV partners to liability. As explained above, during joint participation of JV partners in public tenders, the preferred choice of JV structure would usually be a contractual partnership because the JV partners will not want to be locked into a corporate entity before the JV partners are awarded the tender. However, because the parties are typically required to provide certain representations, warranties, and covenants, and most importantly security in the form of performance bonds, it is advantageous to regulate the relationship between the JV partners under a written agreement to ensure that appropriate remedies are available to the JV partners in the event of a dispute.

Statutory Framework

What is the applicable statutory framework for each structure discussed above?

JSCs and LLCs are regulated in the Turkish Commercial Code No. 6102 (the TCC) and its secondary legislation. Ordinary partnerships are subject to the provisions of the Turkish Code of Obligations No. 6098 (the TCO).

In case one of the JV partners is a foreign person, the provisions of Foreign Direct Investment Law no. 4875 may also be applicable.

Are there statutory or other limits on the duration of a joint venture or strategic alliance?

In the case of JSCs and LLCs, unless a definite term is provided in the articles of association (Articles) of the relevant company, the JV company survives indefinitely, subject to the potential liquidation, termination, or bankruptcy of the company.

Ordinary partnerships, on the other hand, are not subject to any specific time limitations imposed by law. Rather, they are generally established for a limited period of time equivalent to the life of the relevant JV project.

Do joint ventures or strategic alliances have to be registered with any federal or local body other than the local trade registry where the charter or other organizational documents must be filed in order to effect the entity's formation?

Other than the formation requirements and filings to be made with the local trade registry, there are no further general filing obligations that would be applicable to formation of JVs. However, upon completion of incorporation/establishment procedures, necessary notifications and filings should be made with the tax office and Social Security Institution.

Depending on the field of activity of the JV, there might be certain additional regulatory approvals or filings required to be made prior to or post formation of the JV, such as consents that would be required from the Energy Markets Regulating Agency for certain licensed companies, the Capital Markets Board for listed entities, the Banking Regulation and Supervision Agency for banks or other financial institutions, the Ministry of Trade for insurance companies, the Information and Communication Technologies Authority for telecommunication licensed entities, the Radio and Television Supreme Council for broadcasting companies, the Ministry of Health for pharma companies, the Tobacco and Alcohol Market Regulatory Authority for licensed sale of alcoholic beverages, and in cases of antitrust concerns, the Turkish Competition Authority.

Furthermore, if the JV will be involved in manufacturing activities, according to the Industrial Registry Law No. 6948, it is required to register with the Industrial Registry Information System within two months following the commencement of production.

Lastly, in the event that one of the JV partners is a foreign entity, after incorporation of the JV company, a notification should be made to the General Directorate of Incentive Practices and Foreign Capital of the Ministry of Industry and Technology of Turkey to inform them of the amount of capital contributed by such foreign JV partner.

Regulatory Environment

Are joint ventures or strategic relationships specifically regulated?

There is no specific legislation regulating joint ventures under Turkish law. However, in case one of the JV partners is a foreign person, the provisions of Foreign Direct Investment Law No. 4875 may also be applicable.

Are there any antitrust matters to be considered in forming a joint venture or strategic alliance?

The formation of a joint venture that permanently meets all the functions of an independent economic entity (i.e., a full-function joint venture) must be notified to the Turkish Competition Board, provided that the transaction parties' financial turnover thresholds are exceeded. Cooperative joint ventures are also subject to a merger control notification and analysis, on top of an individual exemption analysis, if warranted. A joint venture is considered as fully functional if it (1) has the necessary resources to operate independently, (2) has a purpose other than to fulfill a function for its parents, (3) is not dependent on its parents for sales and purchases other than the start-up period, and (4) is formed to operate permanently.

The thresholds are provided in the Merger Control Communiqué No. 2010/4, according to which, if the following criteria are met, a filing will need to be made to the Turkish Competition Board to obtain its prior permission to the JV:

1. The transaction parties' aggregate turnover in Turkey exceeds TRY 100 million, and each of the turnovers in Turkey of at least two of the transaction parties exceeds TRY 30 million –or–
2. In an acquisition transaction, the assets or the operation of the acquired target, or, at least of one of the transaction parties in case of a merger transaction, has a turnover in Turkey exceeding TRY 30 million, and the global turnover of at least one of the remaining transaction parties exceeds TRY 500 million

The above turnover levels would be calculated by taking into account not only the JV partners, but also related entities of the JV partners.

Formation

What are the procedures in forming a joint venture or strategic alliance?

JSCs and LLCs can be established with one or more shareholder(s), which may be individuals, or legal entities that can be both Turkish citizens/residents or foreign individuals / legal entities. Both entities would require signing of the Articles by the founding JV partners and registration of the Articles, along with other standard corporate documents (such as documents/extracts required from the shareholders evidencing their good standing, activities, and authorized directors) with the local trade registry. Upon registration, the incorporation of the JV entity would be published in the Turkish Trade Registry Gazette. A company would be deemed to be established upon signing of the Articles by the founders, but would acquire its legal personality upon registration of the same with the local trade registry.

The minimum share capital requirement for JSCs is TRY 50,000 and TRY 100,000 for companies in a registered capital system. For LLCs, the minimum capital requirement is TRY 10,000. For JSCs at least 25% of the share capital must be paid up front before registration and the remaining amount must be paid within 24 months following the company's registration. For LLCs, there is no requirement to pay the capital prior to incorporation; it would need to be paid within 24 months.

The shares of a JSC may be in registered or bearer form and can be publicly traded; they should have a minimum nominal value of TRY 0.01 or its multiples. The shares of an LLC, on the other hand, cannot be publicly traded and are required to have a minimum par share value of TRY 25 or its multiples.

An ordinary partnership is formed via a written or oral agreement of two or more individuals or legal entities who join their efforts and/or goods to reach a common goal, which ultimately is to generate a profit. There is no restriction on legal structure or residency of the partners. Each partner should make a contribution to the partnership in the form of cash, receivables, goods, or efforts. If the contributions of a partner require specific formalities under Turkish law for their transfer to the partnership (such as real property or IP rights, which would be subject to signing of a land registry deed or a notarial deed, as applicable, and registration with special registries), such formalities would need to be complied with. Otherwise, there are no specific filing requirements or registrations required for contributions to be made to ordinary partnerships. However, in practice, partnership agreements are executed in a written form and often in the presence of notary publics for evidentiary purposes.

What documentation/agreements are required to form a joint venture or strategic alliance?

The primary document governing both JSCs and LLCs is the Articles, which sets out, among other things, the corporate title, registered headquarters, field of activity, share capital, type of shares (registered or bearer), composition of the board/managers, the meeting of the board/managers and shareholders, and other governance rights. Additional corporate documents would also need to be filed together with the Articles for incorporation, such as documents/extracts required from the shareholders evidencing their good standing, activities, and authorized directors.

For ordinary partnerships, the primary document would be the partnership agreement or the JV agreement, to the extent the JV partners decide to enter into one.

If there is no documentation forming the joint venture or strategic alliance, is there a standard form that exists by default? Are there any attendant risks of falling within that category?

For incorporation of a JSC or an LLC, in addition to the Articles and corporate documents referred to in answer to the question *What documentation/agreements are required to form a joint venture or strategic alliance?*, certain standard documents such as local trade registry and chamber of commerce filing forms would be required.

No such form/standard documents would be required for ordinary partnerships.

What filings with governmental authorities (if any) are required to form the joint venture or strategic alliance?

As previously explained, filing with the local trade registry is required for formation of JSCs and LLCs. Also following incorporation, a filing should be made with the relevant tax office and to the Social Security Institution for registration of the relevant entity.

Becoming a Member/Partner

What are the different levels of equity and voting participation in the various forms of joint ventures and strategic alliances? How flexible is each of the structures?

Both in JSCs and LLCs, unless there are voting privileges or restrictions in the Articles, shareholders would exercise their voting rights in proportion to the nominal value of their shares, provided that each shareholder has at least one voting right. In the case of a co-ownership of the shares, the voting right may only be exercised by a representative jointly appointed by such co-owners. Further, privileges can be granted to the shares or shareholders such as the right to dividends, liquidation proceeds, or the nomination of board members. However, certain restrictions may apply to regulated companies—for instance, broadcasting companies cannot issue privileged shares.

There are no other restrictions on the equity participation in JSCs or LLCs, subject to the minimum capital requirements described above in the question: *What are the procedures in forming a joint venture or strategic alliance?*

The same is applicable for ordinary partnerships; each partner may make a contribution to the partnership in cash or in the form of receivables, goods, or efforts. The parties may arrange their level of contribution and voting rights freely in the partnership agreement.

What forms of contributions (e.g., cash versus in-kind) may be made by members/partners?

In both JSCs and LLCs the shareholders can make contributions in either cash or in-kind. In the case of cash contribution, at least 25% of the share capital must be paid up front before registration of the incorporation (for JSCs) or the relevant capital contribution (for both JSCs and LLCs), and the remaining amount must be paid within 24 months following the registration. Contribution of capital in-kind (e.g., real property, intellectual property, shares in another company, outstanding loan and interest, machinery, equipment, and other goods) requires a pre-assessment of the value of the relevant assets by an expert appointed by the commercial court. Personal services, receivables that are not yet due, and commercial reputation cannot be contributed as capital.

For ordinary partnerships, each partner should make a contribution to the partnership in the form of cash, receivables, goods, or efforts. The details of the type of contribution and payment terms would normally be included in the partnership agreement.

Should contributions to the joint venture or strategic alliance be documented? If so, what is the typical form of documentation?

For JSCs and LLCs, the amount and type of contribution (i.e., in cash or in-kind) should be specified in the Articles. If the contribution is made in cash, this should be further evidenced via a bank receipt. If the contribution is made in-kind, a court-appointed expert valuation report should be obtained to determine and insert the value of the contribution in the Articles. After registration of the capital with the local trade registry, depending on the type of the asset contributed, further registration/annotation with special registries may be required for some in-kind contributions (e.g., real property, IP rights). For a more complete discussion regarding in-kind contributions, see answer to question above: *What forms of contributions (i.e., cash versus in-kind) may be made by members/partners?*

No separate contribution agreements are needed, but before each contribution the shareholders' approval and resolution (in the case of registered capital system, the board approval and resolution), including amendment of the Articles to reflect the new capital structure, would be required prior to registration of the capital with the local trade registry.

Are there any statutory or other requirements regarding the number (i.e., minimum or maximum) or type of members (as in age requirements or legal status, individual or juridical person) in the joint venture or strategic alliance?

There are no statutory requirements for shareholders of a JSC, except for regulated entities, which would vary depending on the type of the industry or the license held by such entity. However, in the case of LLCs, the maximum number of shareholders cannot exceed 50.

The same principle would be applicable to the board members in JSCs or managers in LLCs; no particular restrictions would apply either on the number of the members or the type of members, except in exceptional cases of regulated entities.

What documentation would typically govern the relationship between partners/members?

The Articles are the governing document for the JV company, but in practice the JV partners would also enter into a shareholders' agreement (SHA) governing the relationship between the JV partners. While the Articles would be a public document available to the review of everyone, the SHA could be kept confidential between the parties.

Clauses typically found in an SHA would be corporate governance (board and management representation, veto rights, reserved matters, approval of budget, and business plan), financing methods and commitments, reporting and shareholder information, share transfer restrictions (lock-up period, pre-emption rights), exit mechanisms (right of first refusal, tag-along, drag-along rights, put and call options, public offerings), deadlock resolution, indemnification, and non-compete undertakings.

The TCC broadly prohibits share transfer restrictions being included in the Articles of JSCs. Therefore, it may not always be possible for a JSC's Articles to fully reflect the tailor-made provisions of an SHA on share transfer restrictions. LLCs, on the other hand, are not subject to the same prohibition; therefore, all the shareholder relations, including share transfer restrictions, may be freely reflected to its Articles.

Can a public sector body be a member/partner in the joint venture or strategic alliance?

Yes, a public authority can be a shareholder in a JSC or an LLC, or a partner in an ordinary partnership. Also, the TCC provides the right/privilege to the public bodies (regardless of whether they are a shareholder in a company) to appoint a representative to the board of a JSC engaging in the provision of public services. This representative has the same rights and authorities as the members appointed by the shareholders.

What restrictions, other than contractual ones, are there on a member/partner transferring its interest in the joint venture or strategic alliance?

Transfer of bearer shares (which can only be issued if the capital contribution is fully paid) in JSCs cannot be limited or restricted in any way. For registered shares in JSCs, the TCC provides/allows the following transfer restrictions, in addition to the ones contractually agreed between the JV partners: (1) registered shares, which are not fully paid for, can only be transferred with the permission of the board; (2) transfers occurring as a result of an execution proceeding (i.e., sale of shares as a result of lien or attachment or in the outcome of a debt collection proceeding) or as heritage or marital property can only be rejected by the board if it is unclear that the transferee has sufficient funds to pay the consideration, or the security for such consideration is not provided upon the board's request; and (3) if the Articles require the board's consent, which can only be exercised if there are justified reasons explicitly provided in the Articles (except for transfers made as a result of an execution proceeding, heritage or marital property regime).

For LLCs, all share transfers are subject to execution of a notarial deed, approval of the shareholders, and registration with the local trade registry. Unless otherwise agreed to in the Articles, the shareholders may reject the share transfer without any reason.

Furthermore, depending on the JV's field of activity, further specific share restrictions may be applied. Energy Market Regulatory, Banking Regulation and Supervision Agency, Capital Markets Board, etc., all impose certain restrictions on the transfer of shares of the licensed entity.

What restrictive covenants can apply to members/partners relating to corporate opportunity, non-competition and non-solicitation?

Non-compete and non-solicitation clauses are common for SHAs, but cannot be reflected in the Articles.

Non-compete clauses are normally justified during the term of a JV and for a period up to three years following the exit of a JV partner. However, in case of transfer of customer loyalty, along with goodwill and know-how, the three-year period can be extended. Similarly, non-solicitation for the duration of the joint venture and up to three years after its dissolution would be considered acceptable.

Management

How is the joint venture or strategic alliance managed in the different structures? Are there statutorily mandated supermajority provisions?

JSCs are managed and represented by the board consisting of one or more individuals or legal entities designated by the Articles or elected by the shareholders. LLCs on the other hand are managed and represented by all shareholders according to its Articles. One or more manager(s) can be appointed and authorized to represent an LLC together with the shareholders, provided that at least one of the managers is a shareholder and must have signatory authority.

In the case where a legal entity is appointed as a board member/manager, an individual representative to such member(s) should also be appointed. At least one board member/manager must have signatory authority. Certain duties of the board/managers may be delegated to one or more board members/managers or third parties. However, the following activities are strictly in the board's/managers' authority and cannot be delegated to any third parties: (1) high level management of the company and instructions to that effect; (2) appointing the management team; (3) supervision of accounting and finances of the company and financial planning; (4) supervision of high level employees; (5) maintenance of a company's share ledger, board, and shareholders' meeting book; and (6) filing voluntary bankruptcy with the court.

The meeting quorum of the board/managers is a majority and the decision quorum is simple majority, unless higher quorums are set in the Articles.

The meeting and decision quorums of shareholders in JSCs relating to particular matters are as follows:

Item	Meeting Quorum	Decision Quorum
General rule	At least 25% of the share capital of the company*	At least a majority of the votes present or represented at the meeting
To change the nationality of the company; to impose obligations or secondary obligations on the shareholders to recover balance sheet losses	Unanimity	Unanimity
To change the field of activity of the company; to decrease the share capital; to create privileged shares; to restrict transfer of registered shares; to sell a significant amount of assets; to dissolve the company	At least 75% of the share capital of the company	At least 75% of the share capital of the company
To change the form of the company	At least two thirds of the share capital of the company	At least two thirds of the votes present or represented at the meeting
Restriction of subscription rights	At least 60% of the share capital of the company	At least 60% of the share capital of the company
Merger; Spin-off	At least a majority of the share capital of the company	At least 75% of the votes present or represented at the meeting
Other amendments to the articles of association, including capital increase	At least 50% of the share capital of the company**	At least a majority of the votes present or represented at the meeting

* In case the quorum is not satisfied at the first meeting, a second meeting may be held within one month following the first meeting, and there is no quorum requirement for the second meeting.

** In case the quorum is not satisfied at the first meeting, a second meeting may be held within one month following the first meeting, and the quorum at such second meeting shall be representation of at least one third of the share capital of the company.

The meeting and decision quorums of shareholders in LLCs relating to particular matters are as follows:

Items	**Meeting Quorum**	**Decision Quorum**
General quorum	-	At least a majority of the votes represented in the meeting
Changing the company's field of activity	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Winding up the company	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Creating privileged shares in voting	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Restricting, prohibiting or facilitating share transfer	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Increasing capital	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Restricting or eliminating pre-emptive rights	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Changing the company's headquarters	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Granting consent to the managers or shareholders to act contrary to their statutory duty loyalty or non-compete principles	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Applying to the court to squeeze-out a shareholder due to just cause or squeezing-out a shareholder due to a reason provided under the articles of association	Majority of all capital having voting rights	At least two thirds of the votes represented in the meeting and the affirmative votes of the shareholders representing at least the majority of the share capital
Capital decrease	-	Affirmative votes of the shareholders representing at least 75% of the capital
Merger and spin-off	-	Affirmative votes of 75% of all shareholders, provided that they hold shares representing at least 75% of the capital

Conversion of corporate form	-	Affirmative votes of at least 75% of the shareholders, provided that they hold at least 75% of the capital
Requesting additional obligations from the shareholders	-	Unanimously

Unless otherwise agreed between the parties, all partners of an ordinary partnership have the right to manage and represent the partnership, but may delegate their representation and management authority to one or more partners or third parties. Subject to agreement between the partners, resolutions regarding ordinary and extraordinary business are adopted unanimously.

What mechanisms are there for resolving deadlocks on major decisions?

There are certain legal remedies available in the TCC for resolving deadlocks in both JSCs and LLCs—please also refer to answer to question below: *How does a partner/member exit a joint venture or strategic alliance?*

Also, in LLCs, although in practice typically not exercised, the chairman of the managers would have a casting vote.

What procedures apply for electing and removing managers in joint ventures and strategic alliances?

The board is elected and can be dismissed or replaced at any time by the shareholders in both JSCs and LLCs. In JSCs, the board members can be elected for a maximum term of three years and unless otherwise set out in the Articles, may be re-elected. In case of a vacancy, the board may elect a replacement that meets legal requirements to temporarily serve until such board member is approved by the shareholders at the first upcoming general assembly meeting. The membership of a board member, which goes bankrupt or loses the legal conditions/qualifications required for being a member as stipulated in the Articles, would automatically terminate.

The term of office of managers in LLCs is determined in its Articles or by the shareholders, which can be indefinite. The managers cannot appoint members in case of vacancy even if on a temporary basis.

Allocating Profits, Losses and Distributions

How are profits, losses, and distributions allocated among partners/members? Are there legal or regulatory restrictions that may limit the ability of the partners/members to make such allocations on their own?

The shareholders are free to distribute the profits of a JSC or an LLC after deducting corporate income tax, pursuant to the Corporate Income Tax Law No. 5520 (Corporate Tax Law), setting aside the legal reserves and paying dividend withholding tax (when applicable), as long as they have sufficient profits to cover all the accumulated losses of the company. Profit distribution is based on annual profits under Turkish law. However, under the Corporate Tax Law, companies are allowed to distribute interim dividends based on quarterly profits, in an amount up to 50% of the profits, after having deducted the legal reserves, statutory accounting provisions, and all accumulated losses, provided that they have the authorization in their Articles.

Ordinary partnerships are not considered corporate income taxpayers within the meaning of the Corporate Tax Law, but would still be required to keep their financial books separately (then of their partners) for VAT purposes. The ordinary partnership would be a pass-through entity for tax purposes. Therefore the partners would declare gains or losses of the ordinary partnerships pro rata to their ownership ratios.

Indemnification

What indemnification provisions would apply in a joint venture or strategic alliance?

Pursuant to Article 553 of the TCC, in case the board members/managers fail, by willful misconduct or negligence, to perform their duties set forth in the law or the Articles, they would be liable against the company, the shareholders, and the company's business partners (such as corporate creditors and suppliers), provided there is sufficient causal link between the board members'/managers' negligent act or omission and the loss. Differentiated liability principle would be applied (i.e., they may be sued separately, in proportion to their degree of negligence), being liable only for the amount attributable to his/her negligence, rather than for the entire amount of the loss. In case of appointment of a legal entity board member, liability would rest with the legal entity, not its real-person representative.

The board members/managers also have secondary liability for public debts of the company, such as unpaid tax. This liability is of second degree, whereby the directors/

managers would be personally and severally and jointly liable together with the company, if the company is unable to pay or becomes insolvent.

Further, under the TCC, if the shareholder of a JSC or an LLC fails to pay its subscribed share capital amount, upon notifying the shareholder of such default, the board/managers may resolve to annul such shareholders' shareholder rights (including voting rights). If the defaulting shareholder continues not to pay the subscribed amount and its accrued interest, the shareholders may resolve to terminate the rights of the relevant defaulting shareholder in relation the number of shares it owns in the company.

No specific indemnification remedies are available to ordinary partnerships.

Exit or Termination

How does a partner/member exit a joint venture or strategic alliance?

The main exit mechanism would be share transfer.

In JSCs, shares can be either in registered or bearer form. Registered shares may be transferred freely unless otherwise provided in its Articles. If share certificates are issued to represent the registered shares, the transfer would be made via endorsement of the share certificate and the delivery of the same to the transferee. If no share certificates are issued to represent the registered shares, the transfer would be made by written agreement between the transferor and the transferee, by way of assignment of receivables. The transferee would then be registered as the holder of shares in the share ledger of the company. The transfer of bearer shares, on the other hand, is effectuated through physical delivery of the share certificates representing the shares.

For a valid share transfer in an LLC, a share transfer agreement must be signed before a notary public. The transfer must be approved by at least a majority of the shareholders of the JV. Afterwards, the transfer would need to be recorded in the company's share ledger and registered with the local trade registry.

In addition to share transfers, the TCC allows JSCs to squeeze out its shareholders in two scenarios: (1) where the minority causes a nuisance (as further described below) or (2) in the context of a merger. In the former option, if a shareholder holds 90% or more of the voting rights and the minorities frustrate the company's activities, act against bona fide conduct rules, or create a nuisance or disturbance for the company, squeezing out of the minorities is possible. A squeeze-out in the context of a merger would require consideration at a fair value to be paid to the minority shareholders, as set out in the merger agreement approved by majority shareholders in the merged entity holding 90% or more of the shares.

In LLCs, a shareholder can be squeezed out through a shareholders' resolution, provided that the reasons for squeeze-out are set forth in the Articles. Alternatively, even if an LLC's Articles do not specifically provide for it, an LLC may file with the commercial court for squeezing out its shareholders based on just cause (e.g., breach of non-competition duty or fiduciary duties).

A squeeze-out can also be imposed by a commercial court, among other measures, against a shareholder who has filed a lawsuit for termination of a company (both in JSCs and LLCs) due to a just cause. If the court decides on squeezing out the minority rather than termination of the company, it will also decide on the fair market value to be paid to the shareholder.

Exit from an ordinary partnership is also possible, to the extent consented by all partners. Similarly, transfer of contributions of the partnership to a third party is also subject to the consent of all partners; otherwise, such third party cannot become a partner and cannot participate in management of the ordinary partnership. The reasons for an exit or squeeze-out of a partner from an ordinary partnership provided in the TCO are (1) termination notification of a partner to the other partners, (2) restriction of a partner's power of disposition, (3) insolvency of a partner, (4) foreclosure of a partner's liquidated shares, or (5) death of a partner. In the event of exit or squeeze-out of a partner from the ordinary partnership, the contribution of such partner is automatically transferred to the other partners pro rata to their shares.

How is a joint venture or strategic alliance terminated?

A company may be terminated voluntarily upon the decision of its shareholders or via a court order, or involuntarily in the case of bankruptcy, expiration of the definite term of the company, realization of a specified purpose, or the occurrence of specific termination cause.

The voluntary liquidation process must be initiated with a shareholders' resolution approved by the affirmative votes of shareholders holding at least 75% of the share capital. Upon registration and announcement of such shareholders' resolution, the liquidation would officially commence and the corporate title of the company would be modified to include words that indicate the company's liquidation status.

The creditors would be provided with at least a six-month objection period from the date of announcement of the liquidation to claim their debt from the company.

Unless one or more liquidation officers/administrators are appointed by the shareholders or required under the Articles, the liquidation procedure may be carried out by the board/managers. At least one liquidation officer needs to be a Turkish citizen and must be a resident of Turkey. Liquidation officers would initially prepare a liquidation balance sheet reflecting the assets and financial condition of the company and make an announcement to creditors of the company. The liquidation officer(s) would assess whether the assets of the company are sufficient to pay the company's debts. If not, liquidation officers must notify the commercial court of such deficiency. The court will verify the accuracy of this information and if confirmed, will declare the company bankrupt. In such case, the liquidation would convert to bankruptcy proceedings. If the assets of the company are sufficient to pay its debts, the sale of such assets would be handled by the liquidation officer(s). The liquidation officers would pay the creditors from the proceeds of the sale of its assets. During this process, if the capital of the company has not yet been fully paid by the shareholders, the liquidation officers would have the right to request the shareholders to complete such payment. Following the payment of the company's debts in full and upon expiration of the objection period of the creditors, the liquidation officers prepare a final liquidation balance sheet, which must be submitted to the shareholders for approval and registered with the relevant local trade registry. Any liquidation surplus remaining after full payment of the company's debts and repayment of the capital contributions to the shareholders would be distributed to the shareholders pro rata their shareholding, unless otherwise (privilege) provided in the Articles. Following the distribution of the liquidation surplus, the shareholders must adopt a resolution on the finalization of the liquidation, which would be registered with the relevant local trade registry and announced in the Turkish Trade Registry Gazette. Following such registration, the company ceases to exist and will be deregistered from the trade registry. The tax office would also be notified of such deregistration.

Furthermore, the shareholders, the creditors and the Ministry of Trade can file a lawsuit to terminate a company if (1) the shareholders cannot convene (ordinarily or extraordinarily) at least once a year consecutively for five years or (2) there is an absence of statutory corporate bodies (e.g., board/managers). Also, in the event of just causes, the minority, holding at least 10% of a company's share capital, may file a lawsuit for termination of the company as well. The courts would generally consider terminating a company as a last resort and may choose to rule (ex officio) on squeezing out one of the shareholders.

Liquidation of ordinary partnerships is set out in the TCO. Ordinary partnerships may be terminated due to the following reasons, in addition to agreement of the JV partners: (1) if the target of the ordinary partnership is achieved or becomes impossible to achieve; (2) the death of a partner, unless the descendants of such partner are authorized to continue the partnership; (3) unless provided otherwise, if a partner is restricted of its powers, or insolvent or a partner's liquidated share is foreclosed; (4) by unanimous decision of all partners; or (5) upon expiration of the term determined for the partnership.

Is the termination of a joint venture or strategic alliance subject to the approval of any governmental body?

For JSCs and LLCs, the resolution adopted by the shareholders would be registered with the relevant local trade registry and announced in the Turkish Trade Registry Gazette. Following such registration, the company ceases to exist and will be deregistered from the trade registry. The tax office would also be notified of such deregistration.

There are no registration requirements for termination of an ordinary partnership, other than filing with the tax office and the Social Security Institution.

Foreign Members/Partners

What statutes or rules govern joint ventures or strategic alliances with foreign parties?

The TCC, TCO Foreign Direct Investment Law, and their secondary legislation govern joint ventures / strategic alliances with foreign parties.

What are the material provisions of such statutes or rules?

There are no separate rules applicable to foreign investors in setting up a JV. Foreign investors are allowed to freely invest in Turkish companies, except for regulated entities, which would vary depending on the type of the industry or the entity. The same principle applies with respect to the board members in JSCs or managers in LLCs.

Examples of restrictions applicable to regulated entities are as follows: (1) foreign shareholders that directly own an interest cannot hold more than 50% of the paid-in-capital of a media service company, (2) a foreign investor may only be a direct shareholder in a maximum of two media service companies, (3) a foreign legal entity may not be a shareholder of more than one private radio and television broadcasting corporation, (4) the majority of a company's share capital must be held by Turkish shareholders in the aviation sector, and (5) certain maritime activities are reserved for Turkish citizens and entities only, such as transportation of passengers and cargo between Turkish ports.

What constitutes a "foreign" member or partner of a Joint venture or strategic alliance? If there is an attribution rule that traces the ultimate ownership of a local member/partner to a foreign entity, what are the equity-holding and voting-rights thresholds for deeming "control" at each ownership chain?

Generally any entity incorporated or established outside of Turkey or any foreign citizen would be considered "foreign."

For assessment of control though, Turkish law does not recognize territorial limits. Pursuant to the TCC, the concept of group companies consists of controlling and dependent companies. The controlling (parent) company, which sustains control and the dependent company (affiliate), which is under the control of the parent, are clearly defined and the legal status of these companies and their relationships are specified. "Control" pursuant to the TCC may be ensured not only via majority shareholding, but also through any means providing control/dominance over an affiliate (such as voting arrangements, representation in the board, or other contractual arrangements).

Do such statutes or rules have any limitations regarding foreign members/partners in a joint venture or strategic alliance (for instance, levels of participation, investments, management, etc.)?

As a general matter, foreign entities may freely establish, acquire, and dispose of interests in business enterprises and the amount of foreign ownership in companies is unlimited. However, as explained above, there are some restrictions imposed on foreign investors in specific regulated sectors, such as the purchase of real estate, broadcasting, aviation, and maritime transport industries.

Also, direct ownership of real property in Turkey by foreign legal entities is prohibited, except as permitted under specific laws, namely the Petroleum Law, the Tourism Encouragement Law, and the Industrial Zones Law. For indirect ownership of real property by foreign persons through their shareholding in Turkish legal entities, restrictions apply. The relevant city governorship's approval is required for the acquisition of property and/or creation of rights in rem by Turkish legal entities having 50% or more of their share capital (or voting rights) held by foreign persons, real persons, or legal entities. The purpose of the prior approval of the governorships is to determine whether the property is located in a strategic, military, or security zone. The governorship will seek the opinions of the General Staff of the Turkish Armed Forces and the General Directorate of the Police Department to that end.

Similarly, if 50% or more of a Turkish entity's (having a freehold ownership of real estate) share capital (or voting rights) is directly or indirectly controlled by a foreign person as a result of a share transfer, there will be a "background check" conducted by the same authorities after transfer of the property. In case the governorship determines concerns as to national security arising from ownership of such property, it may request the relevant acquiring entity to dispose of its shares or the relevant Turkish entity to dispose of the property within six months.

What permits, consents, or registrations are required by foreign members/partners of a joint venture or strategic alliance?

The fundamental principle under Turkey law and investment regime is "equal treatment" between foreign investments and domestic investments. When investing in a Turkish company, foreign investors are subject to the same requirements as domestic investors; there are no permits or consents required. However, in the event that one of the JV partners is a foreign entity, after incorporation of the JV company a notification should be made to the relevant department of the General Directorate of Incentive Practices and Foreign Capital of the Ministry of Industry and Technology of Turkey to inform them of the amount of capital contributed by such foreign JV partner. This is aimed at collecting data on movement of foreign capital in and out of Turkey.

Are there any economic incentives for foreign direct investments in a joint venture or strategic alliance?

There are certain types of incentives that are available to investors in order to promote private investment in Turkey. However, these incentives are not specifically designated for the foreign direct investments and are available for both Turkish resident and non-resident investors. The investment incentives scheme in Turkey has been comprised of general, regional, large-scale, and strategic investment incentive schemes that may provide corporate income tax rate reduction; value-added tax, income tax, stamp tax, and social security premium contribution exemptions; land allocation; and interest support on financing. Furthermore, there are incentives for research and development activities, technology development zones, and free trade zones.

Turkey also introduced corporate and income tax exemptions for regional management centers with the aim of promoting the use of Turkey as a regional hub by the multinational groups for management of their subsidiaries located in surrounding jurisdictions.

Are there mandatory minimums or maximum equity investments or contributions for a foreign joint venture or strategic alliance member/partner?

There are no separate rules for foreign investors. The minimum capital requirements set forth in the question: *What are the procedures in forming a joint venture or strategic alliance?* apply to both Turkish and foreign shareholders.

Are there any restrictions regarding distributions to, or repatriation of profits by, foreign partners/members?

Foreign investors can freely transfer or repatriate profits, dividends, and proceeds of sale or liquidation with respect to all or a part of their investment, as well as compensation payments, license, management fees, or similar agreements, and reimbursements and interest payments arising from loans through banks or special financial institutions.

Togan Turan, Partner, Paksoy

Togan Turan is the partner heading the antitrust and competition practice at Paksoy and successfully advising clients in antitrust matters such as cartel and abuse of dominance investigations and assist them in merger control, individual exemption and negative clearance applications as well as counseling on general competition law matters.

Togan has also corporate/M&A extensive experience on acquisitions and corporate law matters in Turkey. He has experience in a variety of international clients in retail, energy, gas, telecommunications, tobacco, banking, insurance, healthcare, food and steel sectors. His experience covers all aspects of transactions from due diligence investigations, contract drafting, and negotiating and structuring deals to advising on regulatory aspects such as competition board filings for those transactions. He also takes an active role in privatisations and banking and finance matters in many industries for his clients.

Nihan Bacanak, Counsel, Paksoy

Nihan Bacanak is the counsel specialises in mergers and acquisitions as well as corporate and commercial law.

Ms Bacanak advises strategic investors and private equity clients on mergers and acquisitions, joint ventures and corporate governance.

She takes active role in due diligence reviews, drafting and negotiation of share and asset sale and purchase agreements, joint venture and shareholders agreements, and other ancillary documents relevant to acquisitions or foreign investments.

Ms Bacanak has extensive experience in cross-border transactions, corporate structuring and international business transactions. She represented many foreign and domestic clients in a variety of sectors including retail, manufacturing, healthcare, logistics, aviation, food, fashion and financial services.

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