Joint Ventures

Contributing editors
Gavin Williams and James Farrell

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Gavin Williams and James Farrell

Herbert Smith Freehills

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For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

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Law Business Research Ltd
87 Lancaster Road
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Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

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Preface

Joint Ventures 2019

Second edition

Getting the Deal Through is delighted to publish the second edition of *Joint Ventures*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Argentina and Spain.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Gavin Williams and James Farrell of Herbert Smith Freehills, for their continued assistance with this volume.

London
October 2018

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Turkey

Elvan Aziz, M Togan Turan, Stéphanie Beghe Sönmez and Şansal Erbacıoğlu
Paksoy

Form

1 What are the key types of joint venture in your jurisdiction? Is the 'joint venture' recognised as a distinct legal concept?

The most common and standard forms of joint venture under Turkish law are contractual or simple partnerships, joint-stock corporations (JSCs) and limited liability companies (LLCs).

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

JSCs and LLCs are the most common types of joint venture model used by investors. In most cases, when the parties enter into a joint venture agreement or a shareholders' agreement, they create a contractual relationship to govern their relationships as shareholders of the company during the term of their joint venture. In both JSCs and LLCs, the joint venture partners' liability would be limited to the amount of capital they contribute into the joint venture entity. It is generally the case that JSCs are preferred over LLCs in joint venture transactions owing to the more flexible nature of JSCs, from both a corporate governance perspective and regarding shareholding relations of the partners, including transfer abilities. LLCs are preferred for small-scale operations.

Although joint ventures may be recognised by the Turkish Code of Obligations (Law No. 6098) as similar to a simple partnership structure, they are not specifically governed under Turkish law.

2 In what sectors are joint ventures most commonly used in your jurisdiction?

Joint ventures are often used in energy, infrastructure and healthcare projects, for public–private partnerships models, to participate in public tenders and in cases where the local know-how is crucial for the pursuit of the project.

Venture parties

3 Are there rules that relate specifically to foreign joint venture parties?

The fundamental principle of Turkey's investment regulations is that of 'equal treatment' between foreign investments and domestic investments. Foreign investors are subject to the same requirements as domestic investors.

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, there are some industry sectors that do have restrictions on foreign investors, such as the broadcasting, aviation and maritime transport industries. Also, the acquisition of real estate or rights in rem by companies holding more than 50 per cent of share capital or voting rights shall be subject to a background check before local governorships to identify whether there are any national security risks from directly or indirectly owning such immovable property.

4 What requirements are there to disclose the ultimate beneficial ownership of a joint venture entity?

The Competition Law (Law No. 4054) requires the parties to disclose the ultimate ownership of a joint venture (or the acquirer and the target, as the case may be) in a merger control filing; this is to decide on the controlling structure of the joint venture.

Apart from Competition Law requirements, unless the joint venture is established in a regulated sector, such as broadcasting or energy, or the tender requirements provide otherwise, there is no obligation to disclose the ultimate beneficial ownership in a joint venture entity.

Setting up and operating a joint venture

5 Are there any particular drivers in your jurisdiction that will determine how a joint venture is structured?

Joint ventures come in a number of forms, from 50:50 structures where each party enjoys equivalent management powers, to family-founded businesses in which the Turkish party wishes to retain management control with a strong financial or strategic minority partner, or entities where the foreign investor acquires control while the founding shareholders retain a minority stake in the company and continue to support the business in the short to middle term.

The differences in corporate culture must be taken into account when structuring a joint venture transaction between foreign and Turkish partners.

6 When establishing a joint venture, what tax considerations arise for the joint venture parties and the joint venture entity? How can tax charges be lawfully mitigated?

If the joint venture is established based on an existing capital company, the new partner or partners usually invest through subscription. In this case, valuation of the newly issued shares and calculation of share premium are the preliminary issues that should be taken into consideration from a local tax perspective (eg, the share price should not be reduced or inflated owing to another share deal or a toll manufacturing arrangement). In the case of debt financing, notional interest over the increased amount of capital may be partially tax-deductible at the level of the operating company.

Transfer of the existing shares to the new partner or partners could be another option, especially when the joint venture in Turkey is part of a global M&A transaction. This could be preferred instead of or in combination with subscription. The transfer of shares in a Turkish JSC may be tax-neutral if both the seller and the purchaser are non-residents.

Usually, tax treaties to which Turkey is a party require a one-year holding period for providing a capital-gains tax relief, and this applies to both JSC and LLC shares. Should the seller be a resident of Turkey, capital gains, if any, may be totally or partially exempt from taxation after two years of shareholding. There are a number of different value added tax (VAT) and stamp-tax exemptions for the investors.

For new investments, debt push-down arrangements are not allowed in Turkey; however, in order to promote equity substance in Turkey, investment-friendly enhancements have been made to the tax laws. Again, apart from certain transactional tax exemptions, notional interest over the share capital may be partially tax-deductible at the level of the operating company. Further, related-party financing may

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be provided to the joint venture in a tax-efficient manner up to a debt-to-equity ratio of 3:1.

7 Are there any restrictions on the contribution of assets to a joint venture entity?

A joint venture entity can be newly established by the parties, with each shareholder contributing cash or capital in kind (such as property, equipment and intellectual property (IP)), or the foreign investor can enter an existing company by subscribing to a capital increase or purchasing shares from the existing shareholders. Depending on the structure, this will be reflected in an investment, subscription or share purchase agreement, either stand-alone or as part of a broader joint venture agreement.

8 What is the interaction between the constitution of the joint venture entity and the agreement between the joint venture parties?

It is commonly agreed that the provisions of a joint venture or shareholders' agreement should be reflected in the company's articles to the extent permitted by the law.

The joint venture entity is usually not party to the agreement because this would trigger the obligation for the company to register and publish the agreement at the trade registry. There may, however, be cases in which the parties elect to have the company execute the joint venture agreement as well and become directly bound by its provisions.

Corporate governance matters, such as the composition of the board of directors or a qualified majority for board and shareholder decisions, can, in most cases, be fully reproduced in the articles; but the Turkish Commercial Code (Law No. 6102) (TCC) significantly restricts the possibility for share-transfer restrictions to appear in the articles of JSCs (even though the new rules have so far been unevenly enforced by trade registries in practice). Therefore, it will not always be possible for the company's articles of association to fully reflect tailor-made provisions on share-transfer restrictions agreed in the joint venture or shareholders' agreement. LLCs, on the other hand, are not subject to the same restrictions.

Generally, joint venture or shareholders' agreements are not considered binding with regard to the company from a corporate-law standpoint, but rather as separate documents evidencing a contractual relationship between the shareholders and entitling them to contractual remedies or recourse upon breach by one of the parties.

9 How may the joint venture parties interact with the joint venture entity? Are there any restrictions?

There are no restrictions per se on interaction between the joint venture parties and the joint venture entity. If the joint venture entity or its parties constitute a publicly traded company, the restrictions on insider trading may impact the interaction between the joint venture parties and the joint venture entity. If the joint venture entity is considered an affiliate within a 'group company', the provisions of the TCC on group companies shall apply.

The provisions related to group companies under the TCC prohibit the parent companies from abusing their control over their affiliates in any way that would result in their affiliates incurring losses (eg, through loss or the transfer of profit of the affiliate). The elements of abuse of control in agreements or transactions, however, do not invalidate such agreements or transactions, and the parent company is required to compensate the losses of the affiliate within the same financial year or provide a method for compensation within that financial year.

10 How may the joint venture parties exercise control over the joint venture entity's decision-making?

The provisions of a joint venture agreement or shareholders' agreement determine the corporate governance principles of a joint venture entity.

There are certain fundamental shareholders' rights that are enforceable without limitation, regardless of the amount of the shareholding in the company. These fundamental rights are granted to all shareholders in all companies and cannot be impaired or hindered by the actions of the majority. In case of infringement, the aggrieved shareholder is entitled to remedies to enforce its rights. The fundamental rights of the shareholders include, among others:

- the right to vote;
- the right to participate in shareholders' meetings and challenge shareholders' resolutions or board of directors' resolutions;
- the right to sue directors, managers and auditors; and
- the right to challenge merger, spin-off or conversion transactions.

In addition to the above-mentioned rights of shareholders, there is a special category of rights granted to minority shareholders holding 10 per cent or more of the capital of private companies and 5 per cent or more of the capital of public companies, and these can be exercised by shareholders satisfying such thresholds only. The minority shareholders' rights under the TCC are, among others:

- the right to call a general assembly meeting or add an item to the agenda of the general assembly meeting;
- the right to defer discussions regarding financial statements of the company and matters related thereto; and
- the right to request replacement of the independent auditor from the court.

The TCC further envisages the squeeze-out of shareholders from JSCs and LLCs.

11 What are the most common governance issues that arise in connection with joint ventures? How are these dealt with?

The TCC has been adopted with the aim of bringing Turkish corporate governance up to (and, in some respects, beyond) EU standards, particularly in the area of transparency. For example, companies that satisfy the criteria set out in the legislation must maintain a website that contains certain information, including financial statements, directors' reports, auditor reports, calls for general meetings and meeting agendas.

If the joint venture entity's shares are publicly traded, additional obligations (eg, compliance with corporate governance principles of the Capital Markets Board of Turkey, appointment of independent board member and public disclosure) also apply.

Other than the statutory rules, joint venture parties try to avoid any governance issues by providing special rights to each party through privileged shares. For instance, privilege on the right of representation on the board of directors, the right to dividends, the right to liquidation proceeds and voting rights are often established in the articles of the joint venture entity to avoid any governance issues at the project level.

12 With an incorporated joint venture, what controls exist in your jurisdiction in relation to nominee directors? How should a nominee director balance the potentially conflicting interests of the joint venture company and the appointing shareholder?

Under the TCC, the directors (and, more generally, third persons in charge of management) should act prudently and diligently in the performance of their duties, and must act in the best interests of the company.

The TCC forbids directors from engaging in activities similar to those of the company that could be considered as competing with the company's scope of activity. Directors cannot, therefore, be involved in other companies that are active in similar areas of business, in any capacity, including as an unlimited partner, director, employee or consultant. This prohibition may be lifted through authorisation granted by the shareholders in general assembly.

Directors are obliged to keep confidential all information obtained in the course of performing their duties. As a result, the directors are prohibited from disclosing any company secrets they may learn during board meetings or in the performance of their duties. The confidentiality obligation of the directors may be opposed to third parties.

Under the TCC, in case the directors fail, whether by wilful misconduct or negligence, to perform their duties set forth in the law or the articles of association, they will be liable against the company, the shareholders, and the company's business partners, such as corporate creditors and suppliers, provided there is a sufficient causal link between the director's negligent act or omission and the loss.

13 What competition law considerations are engaged by the formation and operation of the joint venture? Is approval needed?

An acquisition, merger or formation of a full-function joint venture falls within the scope of Communiqué No. 2010/4 on Mergers and

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Acquisitions Requiring the Approval of the Competition Board if it triggers a change of control in management of the target business or entity. Such transaction would be subject to a merger-control filing under the Turkish merger-control regime to obtain prior permission from the Turkish Competition Board (the Board) if the following turnover thresholds are triggered:

- the transaction parties' aggregate turnover in Turkey exceeds 100 million liras and the Turkish turnover of at least two of the transaction parties separately exceed 30 million liras; or
- the assets or operations of the target, or at least of one of the transaction parties in the case of merger, have a turnover in Turkey exceeding 30 million liras, and the worldwide turnover of at least one of the other transaction parties exceeds 500 million liras.

Turnover thresholds for the purpose of the above criteria are calculated by taking into account not only the direct parties to the transaction, but also certain related entities, such as the joint venture (parent) party and group subsidiaries.

As for the joint venture entities, a joint venture transaction (where the above-mentioned turnover thresholds are triggered) would be notifiable so long as the joint venture is a full-function joint venture. Under Communiqué 2010/4, a joint venture must be of a full-function character and satisfy two criteria: (i) existence of joint control in the venture; and (ii) the joint venture being an independent economic entity established on a lasting basis (ie, having adequate capital, labour and an indefinite duration) to qualify as a concentration, subject to merger control.

Additionally, a transaction can be subject to a short-form notification if the combined market share of the parties in any horizontally affected market does not exceed 20 per cent and if the market share of one of the parties in the vertically affected markets is below 25 per cent.

With respect to the review periods of the merger-control filings, there is an implied approval mechanism where a tacit approval is deemed if the Board does not react within 30 calendar days upon a complete filing. However, in practice, the Board almost always reacts within the 30-calendar-day period by either issuing a written request for information or – very rarely – by already rendering its decision.

The Competition Authority, upon its preliminary review (Phase I) of the notification will decide either to approve, or to investigate the transaction further (Phase II). Any written request by the Competition Authority for missing information will cut the review period and restart the 30-calendar-day period from day one as of the date on which the responses are submitted.

If the notification leads to Phase II (ie, if it is found to be problematic under the applicable dominance test), it becomes a fully fledged investigation. The investigation (Phase II) takes about six months. If deemed necessary, this period may be extended only once, for an additional period of up to six months by the Board. In practice, extremely exceptional cases fall for Phase II review, and most notifications obtain a decision within the first-phase review process.

At the operational stage, the joint venture entity must comply with the general competition-law principles depending on its operations, regardless of whether it is full-function. In other words, according to article 4 of the Competition Law, which prohibits restrictive agreements, it should not be the joint venture's objective to restrict competition among or between the parties and the joint venture itself, and nor should this occur as a consequence of the joint venture's operations.

14 What are the key considerations in your jurisdiction in structuring the provision of services to the joint venture entity by joint venture parties?

The joint venture parties provide financial and technical know-how, equipment lease or another administrative services to the joint venture entity through independent and individual agreements (also known as 'satellite agreements') entered into between the relevant joint venture partner and the company.

15 What impact do statutory employment rights have in joint ventures?

In general, Turkish labour laws and policies do not distort or impede investment in Turkey, are considered to be generally in line with similar laws of other European countries and do not allow for protection above and beyond what other countries typically provide. However, they do tend to favour employees, which may make amending or terminating employment contracts challenging. For example, often, employers must provide a valid reason to terminate an employment contract if they employ more than 30 employees, and they must generally provide their former employees with severance pay and two to eight weeks' prior notice, or otherwise make a notice payment based on the duration that the employee was employed. In addition, requesting re-employment is usually upheld by the courts, especially if it is based on the employee's performance.

Turkish law only allows the permanent transfer of employment contracts to another employer by way of the employee's written consent. Upon such transfer, the transferee employer (eg, the joint venture entity) shall be the new employer of employment contract with all of its rights and obligations. As it is, an employee's start date of employment under the transferor employer (eg, the joint venture partner) is taken into consideration in terms of all entitlements based on the employee's length of service.

16 How are intellectual property rights generally dealt with on the creation, operation and termination of a joint venture in your jurisdiction?

The joint venture parties may contribute IP rights (eg, trademark, patent, licence) to the share capital of the joint venture entity at its incorporation. If that is not the case, the IP rights held by one of the joint venture partners may be allowed to be utilised through licensing agreements to be entered into between the relevant joint venture partner and the company.

Funding the joint venture

17 How are joint ventures generally funded in your jurisdiction? Are there any particular requirements relating to funding and security packages?

Capital contributions, bank loans and shareholder loans are the most commonly used funding methods for joint ventures. Although joint venture partners' capital contribution and utilisation of bank loans are rather straightforward methods while funding a joint venture entity, the following items associated with provision of a shareholder loan should be carefully structured:

- transfer pricing (eg, the interest rate should be at market rate);
- thin capital (ie, related party debt-to-net equity ratio should meet 3:1);
- withholding tax;
- VAT; and
- the Turkish stamp tax.

There is no particular statutory requirement for security packages. The major security instruments used by Turkish companies are mortgage, share pledge, account pledge, pledge over movable assets, assignment of receivables and personal suretyships or guarantees of the shareholders.

18 Are any restrictions on the injection of capital into, or the distribution of profits or the extraction of cash by other means from, the joint venture entity imposed by law or regulation?

If a company has distributable profits, dividends are typically calculated and distributed in accordance with its articles after setting aside certain reserves prescribed by the TCC. Generally, dividends may only be paid to shareholders if there are no negative results left in the balance sheet of the company. An allocation of 5 per cent of the profits earned in the financial year must be made to create a legal reserve until the reserve reaches at least 20 per cent of the paid-up capital. An amount corresponding to 5 per cent of the paid-up capital can be distributed to the shareholders as the first dividend. If there are still distributable profits available following distribution of the first dividend, the company may further distribute a second dividend, provided that 10 per cent of the remaining distributable profits are set aside as additional legal reserve.

19 What tax considerations should be taken into account in the operation of the joint venture?

There is no tax consolidation or fiscal unity in Turkey.

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Corporate income taxation
The net basis corporate income tax rate in Turkey is 22 per cent. On top of the 22 per cent corporate income tax rate, dividend distributions from companies (to individuals and non-resident shareholders) are subject to local income tax through withholding at the level of the Turkish entity distributing dividends at a local rate of 15 per cent; treaty provisions are reserved.

In most tax treaties to which Turkey is a party, a one-year relief is provided with respect to capital gains from the disposal of interest in a Turkish company.

Related-party transactions
As a general rule, transactions between related parties must be made on arm's-length terms and are subject to transfer pricing and thin capitalisation rules.

Transfer pricing regulations, which are adopted from the Organisation for Economic Co-operation and Development's guidelines, are a part of Turkish corporate income tax law. The law provides that any profits from a transaction between related parties regarding the sale or purchase of goods and services that is not carried out at arm's length will be reclassified for local tax purposes as disguised profit distribution or a 'deemed dividend', and treated accordingly. The law also requires taxpayers to keep specially prepared reports and supporting documents with respect to annual transfer pricing in addition to periodically submitted forms in the attachment of their tax returns.

The Turkish tax authorities are generally inclined to challenge related-party charges, particularly with regard to related-party services charges (eg, management services), which Turkish tax authorities usually claim are not deductible for income tax purposes at the level of the local joint venture company or reclassify as 'royalties' owing to know-how elements in the services. Accordingly, the repatriation of profit through management fees or royalty charges is generally criticised in Turkey by the tax authorities, based on the argument that the service is not actually provided by, necessary for or beneficial to the local joint venture company.

According to Turkish thin capitalisation rules, if loans granted by shareholders or parties related to the shareholders (to a determined extent) exceed a 3:1 debt-to-equity ratio at any time in an accounting period, the excess portion of the borrowings is considered as thin capital. Any loan received from a related bank or similar (ie, a similarly qualified institution) will not alone be considered as thin capital until the borrowed amount exceeds six times the shareholders' equity (with the exception of loans received from credit institutions that only provide loans to their related companies). The amount of equity considered in the calculation must be either the initially registered capital (ie, throughout the first accounting period) or the net equity position at the beginning of any other accounting period. If the debt-to-equity ratio is exceeded, along with other tax-related implications, interest payments in excess of this safe harbour ratio will be determined as a hidden profit distribution or a remittance of profits and are, therefore, subject to the dividend withholding taxation.

VAT
Deliveries of goods and services in Turkey are subject to VAT rates varying from 1 per cent to 18 per cent. The general rate applied is 18 per cent.

Although VAT can be indefinitely recoverable, in principle, there is no cash refund to recover excess input VAT, except in a few situations such as exportation and selling with a reduced VAT rate.

Stamp tax
One of the costs of doing business in Turkey is stamp tax. All legally valid and exercisable documents that bear a signature, or a sign replacing a signature or electronic signatures, that are prepared for the purpose of proving any legal subject (such as a declaration of intention, agreement and acknowledgement) is subject to a stamp tax. Consequently, this tax applies to a wide range of documents, including agreements between parties. As a general principle, documents signed in Turkey are subject to stamp tax. In the case of a document signed abroad, however, stamp tax is incurred at the time of the document's submission to state offices or of its assignation to any party in Turkey, or at the time its terms are benefited from Turkey in any way whatsoever.

Stamp tax is calculated either by percentage or fixed amount, depending on the nature of the document. Percentage stamp tax is applied on documents with a stated value. The general stamp tax rate for contracts, commitments and deeds of assignment is 0.948 per cent over the monetary value that represents the undertaking. The reduced stamp tax rate for lease agreements is 0.189 per cent. The maximum amount of stamp tax per document is subject to a cap of 2,135,949.30 liras (for 2018).

20 Are there any noteworthy accounting or reporting issues for the joint venture partners regarding their investment in the joint venture?

There is no accounting policy specifically applicable to joint venture partners.

With respect to accounting policies, the TCC requires that auditing activities are to be done in accordance with Turkish Accounting Standards generally complying with the International Financial Reporting Standards. Companies are not required to have an internal auditor as a statutory organ, but certain companies are subject to independent financial auditing as determined by the Cabinet of Ministers. Currently, companies operating in specific fields, such as in regulated markets including energy, insurance and banking, and publicly listed companies, are subject to independent financial auditing. Also, those companies meeting at least two out of the three following criteria in two successive fiscal periods are subject to independent financial auditing:

- total assets equalling a minimum of 35 million liras;
- net sales equalling a minimum of 70 million liras; and
- at least 175 employees.

Those companies subject to independent financial auditing will only be excluded from the scope of an independent financial audit as of the following period if they remain below the limits of at least two of the aforementioned criteria by 20 per cent or more. Independent financial auditors will inspect and ensure that the company is in compliance with Turkish Accounting Standards, Turkish law and the provisions of the company's articles of association regarding its financial statements. Auditors are appointed by the company's general assembly.

Capital companies that are subject to independent financial auditing are required to establish an internet site within three months of their registration with the trade registry on which they reserve a part of the site for publishing the announcements that the company is legally required to make.

Deadlock, exit and termination

21 What deadlock provisions are commonly included in joint venture agreements in your jurisdiction?

If the parties cannot amicably settle their differences, the put and call options are the most common contractual solutions to resolve deadlock. The provisions of the put and call options are customary in 50:50 established joint venture entities. The relevant option and the procedures to follow (usually through appointment of an audit company to determine the fair market value of the shares representing the capital of joint venture) are included in the joint venture or shareholders' agreements.

22 What exit provisions are commonly included? Does the law restrict any forms of mandatory transfer provision or any basis of calculation?

Exit provisions in joint venture agreements ordinarily include:

- tag-along and drag-along rights;
- deferred put and call options; and
- rights upon a public offering.

As previously discussed in question 8, in JSCs, these rights entitle joint venture partners to contractual remedies or recourse upon breach, as opposed to LLCs, where the shareholders can actually enforce such rights at the joint venture entity level.

23 What are the tax considerations on termination of the joint venture?

Disposal of share
Corporate taxation
Tax analysis from non-resident joint venture parties' perspective
As per the laws on Turkish income tax, capital gains derived by non-residents from disposal of shares in Turkish companies are taxed in

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Turkey if the sale transaction that gives rise to capital gain is 'carried out' or 'benefited from' in Turkey.

The term 'carried out' means that either the transaction takes place in Turkey or the payment is made in Turkey. Signing of contracts, notarisation and registration with public authorities might also be deemed to be carried out in Turkey. In a nutshell, there should be no taxation rights if both the seller and the purchaser are outside of Turkey (ie, are non-residents) and the transaction (ie, signing of contracts, notarisation and registration with public authorities) is carried out outside of Turkey.

In all other cases, capital gains derived by a non-resident company from the sale of shares in a Turkish company, if any, are taxable in Turkey. The local consolidated rate is 33.7 per cent, and treaty provisions are reserved.

Tax analysis from Turkish tax-resident joint venture parties' perspective

In principle, the disposal of shares of Turkish companies is subject to corporate income tax at a rate of 22 per cent. Partial corporate income tax exemption can be benefited from by the resident party of the joint venture under certain conditions. As per the Corporation Tax Law (Law No. 5520), if the shares have been held by the resident company for at least two years, 75 per cent of capital gains resulting from the disposal of shares could be exempt from corporate income tax, provided that the exempted income is booked in a special reserve account for at least five years. After partial exemption, the effective rate of capital gains taxation at the level of the resident seller or sellers could be reduced to 5.5 per cent.

Other taxes

The transfer of share certificates is exempt from VAT. Share purchase agreements are exempt from stamp tax.

Asset deal alternative

Corporate income tax

There is no separate capital gains taxation in Turkey; hence, any gain derived from the sale of a joint venture entity's properties would be included in the corporate income and taxed at 22 per cent.

The 50 per cent partial exemption, which is applicable for ordinary companies on the sale of their properties, would not be applicable for joint ventures dealing with real estate trading.

VAT

The VAT exemption available for ordinary companies on the sale of their properties under certain conditions would not be applicable for real estate trading joint ventures. Sale of the properties of such joint ventures are generally subject to VAT at 18 per cent.

Other taxes

The total real estate transfer tax over the property disposal that has to be paid would be 4 per cent over the transaction amount.

If an asset purchase agreement is signed, the agreement would trigger stamp tax at a rate of 0.948 per cent over the highest monetary amount stated in the agreement.

Disputes

24 In your jurisdiction are there constraints on the choice of law or the method of dispute resolution provided for in joint venture agreements?

Under Turkish international private-law rules, parties to a contract may freely determine the law applicable to their contractual relationship. Under Turkish law, where the dispute is referred to the jurisdiction of the Turkish courts, the law chosen by the parties should be the law of a specific country. Therefore, reference to the international rules or similar sources of international law would not be accepted by the courts as a valid choice of law.

Turkish courts will recognise and give effect to the choice of foreign law by the parties to govern their contracts unless the subject matter is a matter in Turkey that can only be governed by Turkish law (eg, real property, company law, IP and bankruptcy). As such, the choice of foreign law would not exclude mandatory Turkish rules, regulations or obligations of a holder of a Turkish licence or permit. Generally, local courts respect the choice of governing law regarding commercial contracts; but, in some cases, the court may decide that the matter is governed by the mandatory rules of Turkish law.

As a practical matter, government entities insist on Turkish law and Turkish courts as the governing law and jurisdiction. Non-government Turkish counterparties, while they may prefer using Turkish law, tend to agree on choosing governing laws other than Turkish law. One example of an alternate jurisdiction that Turkish counterparties prefer to use is Swiss law, because some of the legal fundamentals of Turkish laws of contracts are derived from the Swiss legal regime.

25 What mandatory provisions of local law will apply irrespective of the choice of governing law?

In the case of a dispute, the court would apply the law chosen by the parties, provided that those rules are not contrary to Turkish public policy. Whether or not a specific provision is not contrary to public policy (eg, contractual provisions contrary to the use of foreign currency) is determined case by case.

26 Are there any restrictions on the remedies a tribunal can grant that would have a bearing on the arbitration of joint venture disputes? Are there any restrictions on the arbitration of shareholder claims?

At the joint venture level, there is an ongoing discussion between scholars on arbitrability of disputes arising from an agreement executed within the framework of the simple partnership structure. In addition, under the Turkish Code of Civil Procedures (Law No. 6100), Turkish courts have exclusive jurisdiction for disputes between shareholders arising from the TCC.

Paksoy

Elvan Aziz	**eaziz@paksoy.av.tr**
M Togan Turan	**tturan@paksoy.av.tr**
Stéphanie Beghe Sönmez	**sbeghe@paksoy.av.tr**
Şansal Erbacıoğlu	**scerbacioglu@paksoy.av.tr**

Orjin Maslak
Eski Büyükdere Caddesi
No. 27 K:11 Maslak 34485
Istanbul
Turkey

Tel: +90 212 366 4700
Fax: +90 212 290 2355
www.paksoy.av.tr

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However, if a shareholder's claim arises from a separate agreement executed between the parties (eg, a joint venture agreement or shareholders' agreement), such contractual claims can be freely submitted to arbitration.

27 Are there any statutory protections for minority investors that would apply to joint ventures?

See question 10 regarding minority-investor shareholders' rights.

28 How can joint venture parties have liabilities to each other beyond what is expressly agreed in the joint venture agreement?

As a general rule, liability of joint venture parties is limited with the provisions of their agreement. Such liability for joint venture entities is further restricted by the provisions of the TCC.

In a joint venture entity established in the form of a JSC, as a rule, the liability of shareholders is limited to the amount of share capital subscribed to in the JSC. Shareholders of a JSC are not personally liable for debts, taxes or other liabilities of the company.

In an LLC, the liability of the shareholders to third-party creditors is limited to the amount of share capital contributed to the company. However, the shareholders of an LLC may be held personally liable for public debts, such as taxes and social security premiums, in proportion to their shareholding in the company, if these are not duly paid by the company.

29 Are there any particular issues that can arise in joint venture disputes in your jurisdiction concerning disclosure of evidence?

No.

Market overview

30 What advantages does your jurisdiction offer for parties wishing to set up and operate joint ventures?

Turkey treats foreign investments and domestic investments equally. When investing in a Turkish company, foreign investors are subject to the same requirements as domestic investors. Also, foreign investors are allowed to make direct foreign investments in the country with no restrictions on the repatriation of capital and dividends.

Turkey provides a qualified and competitive labour force, and has the largest youth population in Europe (as at 2014). With a liberal and reformist investment-climate, investors can benefit from the tax benefits and incentives in technology-development zones, industrial zones and free zones, including total or partial exemption from corporate income tax, grants on employer's social security contribution share and land allocation. Further incentives are also available for strategic investments, large-scale investments and regional investments.

31 Are there any particular requirements or restrictions relating to joint ventures in your jurisdiction that could deter international investors?

No.

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