Joint venture structures Q&A: Turkey

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Country Q&A | Law stated as at 31-May-2021 | Turkey

This Q&A provides country-specific commentary on *Practice note, Joint venture structures: Cross-border*.

Joint venture structures

1. What are the most common legal structures for joint ventures? Have these structures changed as a result of Brexit, if relevant?

The term "joint venture" is used, in practice and in a broad sense, to cover contractual arrangements where two or more parties that are legally and economically independent from each other join their resources with a view to profit, by performing a specific task or project or by carrying out a business activity that may have some permanence, with or without incorporating a corporate vehicle.

The most common legal structures for joint ventures are:

- Simple partnerships (*adi ortaklık*), for contractual joint ventures.
- Corporations limited by shares (*sermaye şirketleri*), specifically (privately held) joint stock companies (*anonim şirket*) or limited liability companies (*limited şirket*), for equity joint ventures.

Simple partnerships

Contractual joint ventures generally qualify as simple partnerships and are governed by the provisions of the Turkish Code of Obligations (TCO).

Simple partnerships are a subsidiary business organisation form. Where a company does not fulfil the statutory criteria of a specific corporate form codified by law, it will be considered to constitute a simple partnership by default (*Article 620(2), TCO*; *Article 126, Turkish Commercial Code* (*TCC*)).

Unlike commercial companies under the TCC, a simple partnership is not an independent legal entity. Since it does not have a legal personality, a simple partnership is not separated from its partners in its relations with third parties.

This means that a simple partnership cannot acquire rights and undertake obligations on its own behalf, separately from its partners. A simple partnership cannot stand as a plaintiff or defendant in a lawsuit:

- A lawsuit to be filed against a simple partnership must be filed against all its partners.
- A lawsuit to be filed by a simple partnership must be filed jointly by all its partners on its behalf.

Companies

Companies are arguably the most common form of joint venture organisation in Turkey. They are legal entities that maintain their own separate relations with their shareholders and third parties, offering protection to their shareholders by limiting their liability. Companies follow an institutional structure template, with defined statutorily defined corporate bodies and governance rules.

Companies can acquire rights and obligations on their own behalf, separately from their shareholders. They have capacity to sue and be sued in their own name.

These entities would generally be governed by the TCC. For more on the common types of companies used for joint ventures, see *Question 5*.

Brexit

To date, we have not noticed any change to these structures as a result of Brexit.

2. Are there economic or financial incentives for foreign direct investments in a joint venture? Are these incentives different depending on whether the foreign investor is an EU, or non-EU, national or is incorporated in an EU, or non-EU, member state?

The Turkish investment incentive regime does not provide specific economic or financial incentives for foreign direct investments in a joint venture.

Incentive schemes consist of general, regional, priority and strategic investment incentive schemes. The availability of incentives will depend on the subject matter of the investment, its size and where it is carried out. It will not depend on whether the foreign investor is an EU or non-EU national, or on whether it is incorporated in an EU members state or a non-EU country.

3. What are the rules relating to validity and authorisation of joint ventures with foreign parties? Are these rules different depending on whether the foreign party is an EU, or non-EU, national or is incorporated in an EU, or non-EU, member state?

There are no specific rules relating to validity and authorisation of joint ventures with foreign parties. The Foreign Direct Investments Law, enacted in 2003, revoked the pre-approval system and adopted a more liberal system of equal treatment and a notification procedure.

Under the Foreign Direct Investments Law and its implementing regulation (FDI Regulation), Turkish companies with foreign investors are generally required, among other things, to:

- Register a list of their investors, shareholders and subsidiaries (if any) through an online system operated by the Ministry of Industry and Technology.
- Provide an annual report in the prescribed form.
- In the event of a share capital increase or decrease, or a transfer of shares, update their shareholding information within one month.
- Provide information on payments made as a result of a share capital increase or a share transfer, using the prescribed form.

(*Article 5, FDI Regulation*.)

The following general considerations would also apply:

- Formation of joint ventures (regardless of whether they are contractual or through a corporate vehicle) may trigger a clearance requirement from the Competition Authority (*Article 7, Law on Protection of Competition*).
- Entities incorporated in Turkey with foreign shareholders may be subject to restrictions on their ability to acquire real estate in Turkey (*Article 36, Land Title Act*).
- Entities with foreign shareholders may be subject to statutory limitations when operating in certain fields of activity (for example, broadcasting, maritime transportation between Turkish ports, and private education).

These rules are of general application and would apply regardless of whether the foreign investor is an EU or non-EU national, or whether it is incorporated in an EU member state or a non-EU country.

4. Are there mandatory minimum equity investments or contributions in kind thresholds for a foreign joint venture member? Are these different depending on whether:

- (i) the joint venture is set up as a corporate entity or a partnership; and/or

- (ii) the joint venture foreign member is an EU, or non-EU, national or is incorporated in an EU, or non-EU, member state?

As mentioned above, the Foreign Direct Investments Law has revoked the minimum investment requirements that existed under the previous system and has introduced the principle of equal treatment. The statutory minimum equity requirement or contribution in kind thresholds applicable under Turkish law would apply regardless of whether the foreign investor is an EU or non-EU national or whether it is incorporated in an EU member state or a non-EU country.

Key requirements are as follows:

- Limited liability companies may be incorporated with a minimum share capital of TRL10,000, while joint stock companies may be incorporated with a minimum share capital of:
  - TRL50,000 if incorporated under the registered capital system; or
  - TRL100,000 if incorporated under authorised capital.

  (*Articles 332 and 580, TCC*).
- If the joint venture is organised as a joint stock company, 25% (or any higher amount stipulated by the articles of association) of the capital and any share premium must be deposited in a Turkish bank in cash by the shareholders under the trade name of the joint stock company to be incorporated. It must be kept in a blocked account until registration of the joint stock company with the trade registry directorate (*Article 344(1), TCC*).
- If the joint venture is organised as a limited liability company, the amount of capital contributed by each of the shareholders need not to be equal. However, each shareholder must contribute at least TRL25. Share capital subscriptions must be in multiples of TRL25. Unless provided otherwise in the articles of association, each shareholder is entitled to one vote for each TRL25 subscribed to and paid by it (*Article 583, TCC*). The minimum nominal value allowed under law for a single share of a joint stock company is TRL0.01 (*Article 476(1), TCC*).
- Higher minimum share capital requirements may apply, depending on the business of the joint venture company and the statutory framework governing the company's activities. Where a joint venture is established for the purposes of a specific project work or tender, the project documentation can also provide contractual requirements in connection with minimum shareholders' equity.

The amount of equity investment in a joint venture would mainly depend on the preference of the parties, the availability of third-party finance and tax efficiency considerations.

These are rules of general application and would apply regardless of whether the foreign investor is an EU or non-EU national or whether it is incorporated in an EU members state or a non-EU country.

5. Are there different forms of corporate entity? If so, which form is most likely to be used for a joint venture?

The most common corporate forms used for a Turkish joint venture are (privately held) joint stock companies and limited liability companies.

Parties looking to establish a joint venture vehicle generally consider the following points when deciding whether to incorporate as a joint stock company or a limited liability company:

A limited liability company may not have more than 50 shareholders. No such limit applies to a joint stock company (*Article 574/1, TCC*).

Joint stock companies with a minimum share capital amount of TRL100,000 may, subject to administrative approval, adopt the so-called "authorised share capital" system, which allows the board of the company to determine the issued capital from time to time, up to the authorised ceiling amount determined by the general meeting (*Article 460, TCC*).

Shareholders in a limited liability company, unlike those in a joint stock company, may be held liable, in their capacity as shareholders, for amounts owed by the limited liability company to government authorities for taxes, duties and charges pro rata to their shareholding percentage (*Article 35, Law on Collection Procedures of Public Receivables*).

As a general rule, transfer of shares in a limited liability company must be approved by the general assembly. The transfer document must be executed in notarised form and the transfer must be registered with the trade registry (*Articles 595* and *598, TCC*). A share transfer in a joint stock company need not comply with these requirements.

- Although limited liability companies may issue registered share certificates to serve as proof of share ownership, these certificates do not carry any rights similar to the ones attached to the share certificates of joint stock companies (*Article 593(2), TCC*). Joint stock companies may issue registered share certificates (*nama yazılı pay senedi*), bearer share certificates (*hamiline yazılı pay senedi*) or provisional share certificates (*ilmühaber*) that represent shareholding rights. All three types of share certificate are legally qualified as negotiable instruments. This allows easier transfer of shares.
- In a limited liability company, the founders can structure the rules relating to the transferability of shares in accordance with their needs. The rules around transfer of shares can be relaxed, or transfers can be strictly limited or prohibited under the articles of association (*Article 595, TCC*). In joint stock companies, any share transfer restriction set out under the articles of association must comply with the statutory transferability regime to be valid and enforceable. Key points to consider relating to the statutory transfer restriction regime for (privately held) joint stock companies are as follows:
    - certificated bearer shares are freely transferable on notification and registration with the Turkish Central Securities Depository (*Merkezi Kayıt Kuruluşu*);

  - articles of association may provide that the company's consent (acting through its board) must be obtained for a valid transfer of registered shares. This consent requirement would fall away as and when the company enters into liquidation (*Article 492, TCC*);
  - articles of association of a privately held joint stock company may not provide more stringent transferability conditions for transfer of registered shares than those under the statutory transferability and restrictions regime (*Article 493/7, TCC*);
  - where articles of association require consent for transfer of shares, the company may refuse to grant its consent to a proposed share transfer by acquiring the transfer shares in its own name, or on behalf of its other shareholders or third parties (*Article 493/1, TCC*); and
  - articles of association may set out the just causes which constitute grounds for the company to deny its consent to a proposed share transfer. To be valid, these just causes must be cogent, having regard to the composition of the shareholders, the company's field of activity and its economic independence (*Article 493/2, TCC*).

- Shareholders of a limited liability company enjoy greater flexibility to tailor the company's articles of association according to their needs. The articles may provide for the purchase or repurchase of shares, put and call options over shares, limitation of share transfers, rights of exit from the company, additional payment obligations and secondary performance obligations and non-competition clauses. The articles of association of a joint stock company are more rigid. Although all provisions of the articles of association would be registered and published, only a limited number of those provisions would have binding legal effect vis-à-vis third parties (*Articles 354/1* and *36/1, TCC*).

6. Is the use of foreign language allowed in corporate joint venture constitutional documents or meetings (for example, shareholders' meetings)?

Turkish companies must prepare and keep their constitutional documents, books and records (including financial books and meeting documentation and minutes) in Turkish (*Article 65(1), TCC*; *Article 19, Communiqué on Commercial Books*; *Article 215, Tax Procedure Code*; *Article 1, Law on Compulsory Use of Turkish Language in Economical Enterprises*).

A Turkish corporate joint venture may, for information purposes, keep duplicates of records in a language other than Turkish.

7. Are there any minimum/maximum capital requirements? Can corporate joint ventures' share capital be indicated by making reference to a foreign currency?

See *Question 4* for minimum capital requirements. There are no statutory limits on the maximum amount of the share capital of a corporate joint venture.

A joint venture agreement may indicate the joint venture's share capital by making reference to a foreign currency. However, the registered share capital and all amounts listed in the constitutive documents must be expressed in Turkish Liras.

8. Can shares be issued in consideration for the contribution of assets or services (present or future)? Are any formalities required if shares are issued for non-cash consideration?

Corporate joint ventures

Personal labour, undertakings to provide services, commercial reputations or receivables that are not due may not be committed as capital contributions to joint stock companies and limited liability companies (*Articles 342* and *581, TCC*).

Unencumbered and freely transferable assets that are capable of being valued (including IP rights, permits, licences and virtual assets such as domain names and so on), may be contributed as in-kind contributions in consideration of shares (*Articles 342* and *578, TCC*).

In kind capital contributions must be indicated in the articles of association (*Articles 339(1)(e)* and *587(1)(f), TCC*) and their value must be assessed by a court appointed expert. The report of the court appointed expert must set out the appraisal method used, the exact value of the in-kind contribution, the number of shares and the Turkish Lira equivalent of the value of the shares. It must also confirm that the statutory requirements under Article 342 of the TCC relating to eligibility of assets for in-kind contribution have been met. Stakeholders may object to the findings in this report, but the expert opinion as approved by the court will be final (*Article 343, TCC*).

Any registration formalities relating to the assets contributed as an in-kind capital contribution (for example, where the assets are real estate, intellectual property rights and other similar assets subject to registration) must be completed for the company to acquire the power to dispose of them (*Articles 128, 342(2)* and *582(2), TCC*).

Contractual joint ventures

Joint venture partners in a contractual joint venture that would qualify as a simple partnership may contribute cash, assets, receivables or any other kinds of asset of service. Unless otherwise agreed under the joint venture agreement (that would operate as the partnership agreement), each joint venture partner's contribution should be equal and should be of a nature and significance required by the purpose of the joint venture partnership (*Article 621, TCO*).

Unless agreed otherwise under the joint venture agreement, the share of each joint venture partner in the profit and loss of the joint venture will be equal, irrespective of the value and nature of their contributions (*Article 623(1), TCO*).

9. Are there any specific restrictions on the form of management structure? Is a two tier board structure permissible and, if so, when is it adopted and why?

A joint stock company is managed by its board of directors. The board may be composed of one or more directors. A limited liability company is managed by one or more managers.

Legal entities may be appointed as director or manager. Where a legal entity is appointed, it must designate one natural person to attend meetings and cast votes on its behalf. The name of the representative must be registered with the trade registry and published in the Trade Registry Gazette.

With respect to joint stock companies, directors need not be appointed from among the shareholders. For limited liability companies, at least one shareholder should be designated as a manager with power to manage and represent the company.

Directors of a joint stock company can be appointed for a maximum term of three years (*Article 362, TCC*). There is no statutory maximum period of appointment for managers of limited liability companies.

Board members or managers are ordinarily appointed either by the articles of association or by a resolution of the general assembly. The general assembly has the exclusive and non-delegable authority to dismiss any member of the board or any manager (*Articles 359, 408(2)(b), 616(1)(b)* and *630, TCC*).

Board of directors and managers are mandatory corporate bodies. Their absence may result in the dissolution of the company.

Turkish law recognises the single-tiered board structure as the default management configuration. The concept of a supervisory board is not recognised under statute. However, the TCC provides a set of flexible delegation rules allowing a company to effectively form its board in a way similar to a two-tiered structure, with some directors performing executive functions and others acting in a non-executive capacity.

The following principles must be considered with respect to the management structure of a Turkish joint venture company:

- Directors of joint stock companies and managers of limited liability companies have a number of exclusive and non-delegable duties assigned to them by statute (*Articles 375* and *625(1), TCC*).
- A lawful delegation of authority and powers is possible only if allowed under the articles of association. It requires the adoption of an internal directive by the board (*Articles 367, 371, 623,* and *629, TCC*).
- At least one director or manager must have unlimited power to represent the company (*Articles 370(2), 623* and *629(1), TCC*).

Subject to these general principles, companies may set up management structures akin to a two-tiered board.

Two-tiered boards are rare in practice and would generally be used by joint stock companies that are required by law to have a minimum number of independent or non-executive directors on their boards, such as, banks or publicly held companies.

10. Are there any restrictions on the age, nationality or identity of directors or managers? Would more restrictive rules apply to non-EU nationals or companies incorporated outside the EU as opposed to EU nationals or companies incorporated within the EU?

There are no generally applicable restrictions on the nationality of directors or managers.

All members of the management body of a company (and representatives for legal entity members) must have full legal capacity (*Article 359(3), TCC*).

Conditions for legal capacity for Turkish nationals are determined under the Turkish Civil Code (*Civil Code*). A person who is of legal age, who is capable of judgment and who is not under legal custodianship has full legal capacity. A person will be deemed to be of legal age on achieving 18 years of age (*Articles 10* and *11, Civil Code*).

The legal capacity of foreign citizens will be determined based on their national law (*Article 9(1), International Private and Procedural Law*).

Special qualification requirements relating to education, professional experience or nationality may be imposed by law, depending on the field of activity of the company.

The articles of association may provide more stringent eligibility conditions or limitations for directors and managers, such as nationality, education and experience requirements.

Directors or managers would lose their office by law if they:

- Have their legal capacity limited by a court decision or by law.
- Are declared bankrupt (in the case of representatives of legal entities, this provision would apply to both the legal entity and its representative).
- Breach special eligibility requirements set out under any law.
- Breach eligibility requirements set out under the articles of association of the company.

(*Article 363(2), TCC.*)

These are general rules and would apply regardless of whether the foreign investor is an EU or non-EU national or whether it is incorporated in an EU members state or a non-EU country.

11. Do employees or shareholders have the right to appoint a certain number of directors?

Employees do not have a statutory right to appoint directors.

Unless the articles of association provide otherwise, the ordinary meeting and decision quorum requirements will apply during shareholders meetings for the appointment and dismissal of directors/managers, with a majority of shareholders being able to appoint all directors/managers (*Articles 418* and *620, TCC*).

Articles of association may provide that specific share classes, shareholders or minority shareholders owning a set percentage of shares are entitled to be represented on the board or management body of the company. This right to be represented may be structured in two ways:

- By requiring that a certain number of directors or managers be elected from among a specific class of shareholders, shares or a minority.
- By granting a specific class of shareholders, shares or a minority the right to nominate a certain number of directors or managers.

Shares incorporating these rights will be deemed privileged shares (*Articles 360* and *576(1)(c), TCC*).

12. What formalities are required for the establishment of a partnership?

Establishing a partnership is not subject to any registration or publication formalities. A partnership agreement may be written or verbal, or it can be implied by the dealings and conduct of the parties.

Unless the contribution of a partner is subject to a formal legal requirement (for example, where it takes the form of immovable property, trade marks or receivables), a joint venture agreement that is constitutive of a simple partnership agreement would not be subject to any formalities. If the transfer of the relevant assets contributed as capital is subject to formal requirements, then these must be followed.

13. Is the use of foreign language allowed in the constitutional documents or meetings (for example, partners' meetings) of a joint venture set up as a partnership?

The prevailing view today is that the obligation for a foreign company to use the Turkish language is limited to "transactions and correspondences made with Turkish citizens and the documents and books to be presented to the Turkish governmental authorities" (*Article 2, Law on Compulsory Use of Turkish Language in Economical Enterprises*). This requirement does not include agreements entered into with Turkish businesses. Accordingly, a joint venture set up as a partnership enjoys greater flexibility than a corporate joint venture to use a foreign language in a joint venture agreement or for documenting partners' meetings.

However, there has been some controversy on this topic resulting from conflicting appellate court decisions. One line of jurisprudence, criticised by various business law practitioners, suggests that, to be valid, arbitration agreements entered into with Turkish parties should be in Turkish, or executed together with a Turkish version. This would apply whether the arbitration agreement was executed under a clause incorporated within the underlying agreement or as a separate agreement. The appellate decisions related to Turkish businesses without distinguishing between different types of business organisation.

There are some indications that the jurisprudence of the Turkish appellate courts would be shifting to a more liberal interpretation of this law, more aligned with practitioners' views. However, the law is still in flux and it would be advisable to carefully scrutinise this topic.

In any dispute where an action is to be brought before Turkish courts, all documents in a foreign language will have to be translated into Turkish to be used as evidence (*Article 223, Code of Civil Procedure*).

14. Are there any restrictions on the age, identity or number of partners? Would more restrictive rules apply to non-EU nationals or companies incorporated outside the EU as opposed to EU nationals or companies incorporated within the EU?

There are no specific restrictions on the age (although full legal capacity is required; please see *Question 10*), identity or number of partners (which should not be less than two). The same rules apply to EU and non-EU nationals.

15. What is the extent of each partner's potential liability in respect of the partnership business?

A simple partnership is not a separate legal entity from the partners. Each partner is directly, primarily and jointly responsible, with the other partners, to third parties for all partnership debts, without any limitation (*Article 637, TCO*).

Partners who withdraw or who are expelled from the partnership remain liable for losses arising from partnership business that was commenced but had not been completed during their tenure as partners (*Article 636(1), TCC*).

16. In what circumstances is a partnership structure more likely to be used than a company for a commercial joint venture?

Partnerships are preferred for short-term or defined projects, such as performance of construction or EPC contracts and participation in public tenders. Incorporated joint ventures are preferred for activities taking place over a longer period or intended to have some form of permanence.

17. Are there any circumstances in which a contractual joint venture could be categorised as a partnership (and the parties therefore become jointly liable in relation to the substance of the contract)?

Contractual joint ventures generally qualify as simple partnerships (please see *Question 1*). As such, parties to a contractual joint venture would be jointly liable for the joint venture business.

18. Is it possible to have a limited partnership in your jurisdiction? If so, what are the main characteristics of a limited partnership?

A limited partnership (*komandit şirket*) is a recognised corporate form. It is established by agreement of at least one general partner (*komandite ortak*) and one limited partner (*komanditer ortak*).

Limited partnerships must be managed by the general partners (*Article 309(2), TCC*). Limited partners are not entitled to and have no obligation to manage the partnership's business. They have no right to object to managerial decisions taken by general partners. Limited partners may vote on extraordinary matters relating to the partnership, such as:

- Transactions out of the ordinary course of business, such as:
  - making donations;
  - standing as surety or providing other types of guarantees or securities;
  - appointing commercial representatives;

  - disposal of immovables (to the extent such transactions would not be within the corporate objective);
  - purchase of immovables; or
  - disposal of material production assets of the partnership, or any other disposals that would be tantamount to the liquidation of the partnership.

- Amendment of the partnership agreement.
- Corporate reorganisations (such as conversion to a different corporate type, mergers and demergers).
- Admission of new partners, expulsion of partners and share transfers.

(*Article 309(3), TCC.*)

Limited partners have a right to audit the partnership's annual financial statements (*Article 310, TCC*).

A limited partner's liability may not exceed, in principle, the capital contribution or commitment made by it (*Article 319, TCC*). However, a limited partner's liability will extend to debts predating the partner's admission into the partnership (*Article 321(4), TCC*).

Limited partners will lose the benefit of the statutory limitation of liability if:

- Their name is referred to in the trade name of the partnership (*Article 320, TCC*).
- They enter into any transaction on behalf of the partnership without informing the counterparty that they are acting in the capacity of a commercial representative, agent or another form of statutorily recognised commercial representation (*Article 321(1), TCC*).
- They enter into transactions with third parties on behalf of the partnership before the registration of the partnership with the trade registry, unless they can prove that the counterparty was aware that the relevant limited partner was acting under the benefit of limited liability (*Article 321(2), TCC*).
- They are improperly involved in the management of the partnership (*Articles 309(3)* and *321(1)* and *(5), TCC*).
- They declare in writing privately to specific third parties, or otherwise announce to the general public, that they will be liable for an amount higher than their capital contribution (*Article, 322(3), TCC*).
- They receive improper distributions or improper reimbursement of their capital contribution (*Article 323, TCC*).

General partners have unlimited personal liability against third parties if the assets of the partnership are not sufficient to satisfy partnership debts (*Article 325(1), TCC*).

19. What formalities are required for establishing a limited partnership?

A partnership agreement must be executed in writing. Either the signatures of the signatories must be certified by a notary public, or the parties must sign the partnership agreement before a trade registry officer (*Articles 305(1)* and *212, TCC*). The partnership agreement must be registered with the trade registry and published in the Trade Registry Gazette (*Articles 305(1)* and *215, TCC*).

The partnership contract must include the provisions prescribed by statute, including:

- Particulars of the partners (names, address, nationality).
- The designation of the corporate type as a limited partnership.
- The trade name and registered office of the partnership.
- The rules relating to authorised representatives.

(*Articles 305(1)* and *213, TCC*.)

The partnership agreement must also indicate the amount and type of capital contributions of each limited partner and their duties in relation to the management of the partnership. Limited partners cannot be given a right to manage the partnership business (*Article 305(2), TCC*).

Limited partners cannot offer to contribute personal labour or commercial reputation as their capital contribution (*Article 307(2), TCC*).

20. Are there any restrictions on the identity of partners or their role in a limited partnership?

General partners must be natural persons. Legal entities cannot assume the role of a general partner, but they may be a limited partner (*Article 304(3), TCC*). This requirement means that limited partnerships are rarely, if ever, seen as a joint venture vehicle in Turkey.

See *Question 18* for the role of partners in a Turkish limited partnership.

21. In what circumstances is a contractual joint venture more likely to be used than a company or a limited partnership for a commercial joint venture?

Contractual joint ventures are generally qualified as simple partnerships under Turkish law (see *Question 1*). For circumstances in which contractual joint ventures may be preferred, please see *Question 16*.

22. Is there a distinction between any statutory duty that a partner and a director owe stakeholders?

The partners in a simple partnership are, by operation of law, subject to a non-competition obligation and a duty of care. The non-competition obligation is a broad obligation, operating as a generic prohibition against acting contrary to the partnership's interests. By virtue of this statutory obligation, none of the partners may enter into transactions which may cause damage to, or which conflict with, the partnership's objectives (*Article 626, TCO*).

As part of their duty of care, each partner must act for the partnership's benefit by showing a level of care similar to the care and effort put into their own affairs.

Each partner must indemnify losses caused by its own fault, with no possibility of seeking a set-off of these losses against the benefits that it provides to the partnership. Finally, a partner who receives payment from the partnership for a specific duty must show the same level of care in performing that duty as an agent (*vekil*), in accordance with the provisions of the TCO on agency contracts (*vekâlet*) (*Article 628, TCO*).

The directors and managers of a company are subject to a broader set of duties, measured by different legal standards. The directors of a joint stock company and managers of a limited liability company are:

- Under a statutory duty of loyalty, according to which they must hold the interests of the company paramount. They may be held liable for breaching this duty (*Articles 369, 613(2)* and *626, TCC*). The official commentary on the interpretation of this provision defines the duty of care as acting as a "prudent director" (an objective baseline), and establishes that while exercising their duties, directors and managers are expected to be sufficiently competent and must act diligently to:
  - carry out the tasks they are assigned;
  - assess facts and information correctly; and
  - generally supervise and inspect the business practices and progress of the company.

  The reasoning of the law also refers to the principle of a "business judgement rule" (reflected under Articles 553(3) and 644(1)(a), TCC) as a defence against liability claims. In practice, the business judgement rule grants a wide discretionary power to the directors of a company. By virtue of this rule, directors who had no personal interest in the matter and had demonstrably acted in good faith, after seeking appropriate professional advice (where necessary), may not be held liable for resulting damages under an abstract duty of care or supervision, to the extent that a specific resolution and ensuing corporate action:
  - does not breach a mandatory provision of law;
  - falls within the corporate objective;

- is to the company's benefit; and
- was adopted and implemented in accordance with proper decision-making procedures and in respect of applicable quorums.

- Prohibited from transacting with the company on their own account or on the account of a third party, unless otherwise permitted by the general assembly (*Article 395, 613(2)* and *626(3) TCC*).
- Subject to a statutory prohibition from competing with the business of the company, unless permitted otherwise by the general assembly (*Article 396* and *626(2), TCC*).

Directors of joint stock companies are also prohibited from taking part in discussions and votes on matters related to their personal interest or the interests of their ascendants, descendants, spouses and relatives by blood or by marriage up to and including the third degree, if these matters conflict with the interests of the company. This restriction applies in cases where the principle of good faith should also prevent a director from attending a board discussion (*Article 393, TCC*).

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