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TURKEY

Market entry

International organisations wishing to operate in Turkey need to be aware of two important sets of issues

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When entering a new market a vast array of issues enter the management process. We have chosen to highlight two that, in our experience, are common key considerations for international companies in Turkey. These broad topics can only be touched upon here; for further information please contact the author.

New commercial code

While the government has indicated that some amendments may occur, the expectation is that the New Turkish Commercial Code (NTCC) will come into force on 1st July 2012, as scheduled.

The current code has been in place since 1957 and a raft of changes have been enacted within the NTCC towards objectives such as creating a more transparent investment environment and closer alignment with corresponding EU legislation. The two main capital stock entity types, Limited Liability Companies (LLCs) and Joint Stock Companies (JSCs) remain.

One attempt at increased transparency that may be softened due to business sector reaction is the requirement for all companies to maintain a website. Information that must be published online is defined, such as audited accounts, irrespective of the company's private or public status.

Independent auditing is required for LLCs and JSCs, but a useful update is the compulsory adoption of International Financial Reporting Standards (IFRS) to replace the current Turkish accounting standards that have little credibility on an international stage.

A Turkish company can be wholly foreign-owned, although for a public or private JSC with two or more board members, at least one must be a Turkish national domiciled in Turkey. For LLCs, at least one of the managers must be domiciled in Turkey and have sole authority to represent the LLC.

The LLC has advantages over the JSC where a close relationship between shareholders is desirable, such as restriction of share transfer and right of first refusal if a shareholder wishes to sell. While a JSC must allow free share transfer in principle, control is also possible via a clause in the Articles of Association requiring approval of the board to transfer and a shareholder agreement asking for indemnification. This structure, however, unlike LLC, is not enforceable against a third party under the NTCC.

Within current regulation share transfer requests can be refused without explanation. NTCC insists that conditions and reasoning for any restrictions of transfer must be stated in the Articles of Association. These restrictions can only relate to two categories; economic independence and scope of business protection.

This becomes further regulated if the JSC is publicly traded, but transfer restrictions can still be considered in conjunction with a reasonable threshold trigger to refer for board approval.

Shareholders cannot be debtors to the company, unless related to the scope of business of both the company and the shareholder; then the transaction must be at 'arm's length' market conditions. A majority shareholder can be a debtor, however, as a holding/group company relationship exists. Any funds removed must be balanced by a counter-guarantee to protect minority shareholders and creditors.

Also, if the Turkish company is majority owned by entity A, and A in turn is majority owned by entity B, any wrongdoing by the company can be pursued by minority shareholders against both A and B.

Employment and immigration

Turkey is an employee-friendly legal environment, with a set-up that is conducive to lawsuits against employers due to the relative ease for employees to pursue claims. It is also worth noting that Turkish employment law generally does not recognise the validity of 'at will' employment contracts.

This is an area that can present a significant challenge to market entry if not handled appropriately. Depending on strategy, hiring a country manager locally can be advantageous to leverage networks and cultural understanding. It is often the case that an international company will deploy a member of its management team to Turkey instead, to oversee the establishment of the new business jurisdiction. Initially, it may be sufficient for that manager to enter Turkey on a business visitor visa for observation purposes, but naturally once the company is established it is usually preferable to have management in situ, which will require a work permit application to be filed with the Labor Ministry.

One of the more problematic work permit regulations encountered at this early stage is the requirement that the local entity have a ratio of five Turkish nationals to each foreign employee, unless the business fits with specific exemptions. This ratio is per worksite and evidenced by payroll records.

On a separate note, even with a work permit it is possible for some foreigners to remain on their home country payroll if a social security treaty exists between the countries, but confirmation that social security payments are submitted in that other jurisdiction may be required by the Turkish authorities. Once a work permit is granted, Turkish law generally considers a formal employment relationship to exist and all related rights and responsibilities become applicable.

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