

Employee Stock Option Plans under Turkish Law

Demet DOĞAN

Associate / GSI Meridian

In today's business environment, many multinational companies offer additional benefits to employees in order to increase their productivity and effectiveness, one of which is stock option plan. Although Turkey does not have a specific regulation on the stock option plans, provisions of stock option plans shall be in compliance with the Turkish Commercial Code, Code of Obligations and Capital Markets Law.

This article intends to review employee stock option plans o from Turkish law aspect and analyze applicability of stock options plans in Turkey in the light of the said three laws.

Pursuant to the **Turkish Commercial Code**, joint stock companies are banned from pledging and acquiring their own shares. According to Article 329 of the Turkish Commercial Code, agreements allowing the partnerships to acquire their own shares are void. There are several exceptions to this rule, stated in the Article 329 of the Turkish Commercial Code; however even in such exceptional cases, the acquired shares are restricted to be represented in the general assembly. Moreover, pursuant to the Article 405 of the Turkish Commercial Code, shareholders cannot request the return of their equity contributions which they paid to the company. Upon the evaluation of above mentioned provisions, it can be concluded that the related provisions of the Turkish Commercial Code stand as a barrier before employees in acquiring company shares in Turkey. However, the establishment of social welfare foundations is allowed under the Turkish Commercial Code and in the case of a partnership being formed between a such foundation and the company concerned , those obstacles may be indirectly defeated. . Nonetheless, in these cases, while the acquirement of shares by workers are indirect, ownership of the company belongs to the foundations.

Kardemir Karabük Demir Çelik Sanayi ve Ticaret Anonim Şirketi, as a good example of a company whose employees owns more than 50% of the company shares, achieved this structure by providing the equity contributions being paid by the employees. However, this sturture is achived under privatization law ??? not clear to me!

From the perspective of **Turkish Code of Obligations**, within the framework of Article 323 of the Code of Obligations,

it can be concluded that the agreements which entitles the employees to participate in the company profits are valid.

Besides the above mentioned restrictive provisions of the Turkish Commercial Code, employee stock option plans are also regulated by the Capital Market legislation and the

Decree numbered 32 (15d/ii) on the Protection of the Value of Turkish Currency Law (“Decree 32”). The Article 15d/ii of Decree 32 states; “Turkish resident legal entities and natural persons are permitted to purchase and sell securities as well as other capital market instruments traded in the foreign financial markets via authorized intermediary institutions in accordance with the banks and capital market legislations”. Furthermore, according to Decree 32, the exportation of securities and other capital market instruments by entities residing abroad, shall be done in accordance with the provisions of the capital market legislation.

In reviewing the related provisions of the **Capital Market Board Communiqué**, numbered 20 Series III, foreign securities which will be offered to the employees without initial public offering are required to be registered with Capital Market Board and the procedures regarding such application and registration process shall be done via intermediary intuitions. The price of the shares shall be transferred to abroad through bank and private financial intuitions.

The Draft Turkish Commercial Code introduces a new capital increase system, entitled “Conditional Capital Increase”. Conditional Capital Increase system will allow the general assembly to increase the share capital conditionally. In this system, creditors of the company or the creditors of group companies or the employees who are the owners of the bonds or similar debt instruments issued by the company may be granted with the rights to convert or purchase new shares. In this way, the capital of the company will automatically increase when the conversion or purchase right is exercised and the equity contribution is fulfilled via payment or barter. However, par value of the increase in capital amount shall not exceed the half of the capital. In this respect the articles of association shall include the number, par value, type of the shares and group who can exercise the conversion and purchase rights.

Finally, from the tax perspective, no specific rules are regulated under Turkish law regarding the stock options. Under the general tax provisions, options are taxable as employment income at the time of exercise. Additionally,, under certain circumstances, stock options might be subject to stamp tax and some social security contributions.

In the light of above, we can conclude that stock option plans in Turkey still does not have a clear legal outline and capital market law needs to be amended to cover the changes.