

Major Amendments for Joint Stock Companies under the New Turkish Commercial Code

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On January 11, 2011, a new Turkish Commercial Code (“New Code”), replacing the entire current Turkish Commercial Code no. 6762 dated June 29, 1956 (“TCC”), the main legislation governing the corporate structure of companies, was adopted by the Grand National Assembly of Turkey. The New Code will come into effect on July 1, 2012. It will overhaul the Turkish business environment with its regulations that support fair competition, transparency, corporate governance, shareholders’ rights, better use of technology and integration of generally accepted accounting and auditing standards in the market. It will also ease the adaptation process of Turkish companies to the changing business environment by making strategic partnerships and strengthening foreign economic relations.

The New Code enacts many major amendments with regard to joint stock company law under Turkish commercial law. Herein, we provide a brief outline of the reforms that will take place with respect to joint stock companies with the implementation of the New Code.

Amendment on Foundation of Establishments

Gradual incorporation, which existed under the TCC, has been repealed by the New Code. The New Code eliminates the gradual incorporation method and replaces it with the public offer method. In gradual incorporation, part of the capital is subscribed by the shareholders and the other part of the capital is offered to the public. With the reform, immediate incorporation, in which all the share capital is subscribed by shareholders, is the only formation process for joint stock companies.

A Company Can be Established by a Single Shareholder

Pursuant to the TCC, a joint stock company must be formed by a minimum of five shareholders. The New Code amended this regulation to allow joint stock companies to be incorporated by only one shareholder. This reform also enables a shareholder to buy other shareholders’ shares and become the company’s sole shareholder.

Registered Share Capital for Joint Stock Companies

Pursuant to the TCC, non-public companies can be only established with stock capital, and the registered share capital system is regulated for public companies. The New Code enacts a registered share capital system as an option for joint stock companies. Particularly, it states that even joint stock companies which are not publicly held may benefit from this system. Both private and public companies may adopt registered capital as per the New Code. Under the current legislation, the registered share capital system is available only for public companies under the capital market law. With the New Code’s reform, a company which adopts the registered share capital system is required to have a minimum capital of TL 100,000 and the company may increase its capital without going through the burdensome procedure of holding a general assembly meeting. Instead, capital increases can be made by a board of directors’ resolution.

Variety of Invested Capital

Capital in cash and capital in kind are the main types of capital subscribed by shareholders. The New Code expands the definition of capital in kind which can be put into joint stock companies to include websites and domain names. The New Code implements a general principle for capital in kind, namely that the instrument must be alienable and may not be subject to any liens or legal executions. Furthermore, service performance, personal effort, commercial standing and undue receivables may not be invested as capital. Capital in kind, acquired businesses and other rights in kind shall be assessed by experts appointed by the competent court of first instance.

Share Transfer

The shares of a joint stock company will be more easily transferable, regardless of the type of the share. Under the current legislation, there is a share transfer restriction for shares which are subscribed as capital in kind. Shareholders cannot transfer shares obtained as a result of their subscription into the company's capital in the form of capital in kind within a period of two years from the subscription. Under the New Code, shareholders who have participated in a company by providing capital in kind are entitled to transfer their shares at any time. This reform brought the joint company law a transmissibility which simplifies share transfer.

Privileged Shares

Under the New Code, all shareholders of a joint stock company are to be treated equally under equal circumstances. The New Code recognizes privileged shares, defining privilege as an advantaged position with regard to rights such as dividends, liquidation shares, rights of first refusal and voting, or other shareholder rights not foreseen in the New Code. Herewith, "voting privileges" are recognized, whereby shares with equal nominal value are ascribed different voting powers.

Audit

The New Code requires companies to be audited in accordance with the International Standards of Accounting (ISA) regularly. Consequently, the statement of accounts and annual report shall be audited by the chartered auditor. Statements of accounts or annual reports which have not been approved by the auditor shall be deemed as invalid.

Acquirement or Receipt by a Joint Stock Company of its own Shares

The New Code has reduced the prohibition on a joint stock company's acquisition of its own shares or acceptance thereof as pledge. The new system softens the prohibition for useful acquisition possibilities while maintaining such prohibitions to avoid potential risks and abuses.

Board of Directors

Under the regulations of the New Code, the board of directors of a joint stock company can consist of a single member. The requirement for a board member to be a shareholder in order to start carrying out his/her duties has been removed. It is possible for a legal entity to become a board member. Also, the New Code regulates the liability of the board of directors in detail. The New Code imposes personal criminal liability on the members of the board of directors. Criminal records of judicial fines cannot be expunged from judicial records for five years even if the fines have been duly paid.

After fifty-five years of practice of the TCC, the New Turkish Commercial Code marks a new epoch in Turkish commercial law, which affects the Turkish business world directly. The practice of the New Code brings an opportunity for companies to reform their corporate structure under the principles of corporate governance, fair competition and transparency. Meanwhile, other regulations written according to the TCC need to be amended to come in line with the reforms of the New Code, which will lead to the modification of many Turkish laws.