

Amendments in the Section on Commercial Enterprises of Turkish Commercial Code

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A new commercial code has been enacted by the Grand National Assembly of Turkey on January 11, 2011, amending the current Turkish Commercial Code (Türk Ticaret Kanunu) (“TCC”) in its entirety. The new Turkish Commercial Code (“New Code”) will be effective as of July 1, 2012.

The amendments in the New Code are made to harmonize Turkish commercial law with European law and to fill the gaps in the TCC pursuant to the contemporary needs of business life in Turkey. The following topics constitute the main amendments made in the first section, named Commercial Enterprise.

Merchants

The main amendment in the section regarding merchants is the definition of commercial enterprise. Pursuant to the New Code, commercial enterprises are redefined with an emphasis on the concept of economic integrity.

In addition, under the TCC, foundations are not considered merchants. However, the New Code states that foundations are also merchants. This amendment allows foundations to operate commercial enterprises. Furthermore, institutions and organizations incorporated by special provincial administrations shall also be considered merchants.

Pursuant to the New Code, notifications between merchants regarding the termination of agreements or defaults may be made by a notary public, registered mail, telegraph or registered email by using a secure electronic signature. The TCC does not provide for the possibility of using an electronic signature. In addition, letters of confirmation are considered valid only if they are received by telephone, telegraph or verbally. However, by the amendment of the New Code, letters of confirmation may be received by any kind of information or communication or any other technological device.

Another amendment affecting merchants regards the termination right in commercial sales agreements. Pursuant to Article 23 of the New Code, the merchant may terminate a commercial sales agree-

ment if it is evident that the agreement will not be completed in whole or in part.

Trade Registry

The most significant amendment regarding the Trade Registry is the electronic registration system. According to the New Code, trade registry records shall be kept electronically and all content that is required to be registered and announced shall be stored in a common database. The principles and procedures of online registration are to be specified by a separate statute. In addition, pursuant to the TCC, 25% of the trade registry fee is to be transferred to the relevant chamber of industry and trade, however, this provision is revoked by the New Code.

Under the New Code, the Trade Registry shall deliver the application documents for corporate tax payers to the tax offices. Therefore, taxpayers are deemed to have completed the notice obligation to the tax office.

Furthermore, in the TCC, the civil court of first instance was the competent court, however the New Code provides for the commercial court of first instance to have jurisdiction for objections to Trade Registry Office decisions by the affected parties.

The penalties for misrepresentation in registration and records have also changed in the New Code. Pursuant to the new provision, the penalty is imprisonment for up to two (2) years or a punitive fine.

Commercial and Business Names

All the amendments cited below have been made to provide transparent and reliable information.

Although the amendments regarding commercial and business names are not significant, the New Code imposes an obligation for the use of commercial names. According to the relevant provision, a merchant is obliged to indicate the registration number; commercial name; head office; the stipulated and paid share capital, if the merchant is an equity company; and the website address and number in all papers and documents related to the enterprise. Furthermore, the names of the members and chairman of the board of directors and managers should be indicated if the enterprise is a joint stock, limited or limited partnership divided into shares. This information should also be published on the company website. This requirement in the New Code imposes the obligations of setting up a web page and including the crucial information about the enterprise in all documents related to the business of the enterprise.

Another amendment in the New Code is an obligation imposed on the Turkish Patent Institute. In addition to the courts, officers, chambers of industry and commerce, and public notaries, the Turkish Patent Institute is obliged to notify the trade registry office and public prosecutor if it finds out that the commercial name is not registered, illegally registered, or illegally used.

Unfair Competition

According to the TCC, acts and commercial practices against good faith and deceptive acts are considered illegal and unfair. Major acts and commercial practices that are unfair and illegal are defined in the article on unfair competition. However, the New Code provides a clearer definition of unfair competition and extends the scope of unfair and illegal acts and commercial practices and specifies such acts and commercial practices.

The New Code entitles the nongovernmental organizations that are involved in consumer protection and bodies with a public nature to file lawsuits regarding unfair competition. Furthermore, the liability of publishers for the publishing of content which contains acts of unfair competition is extended, taking technological developments into consideration. Legal entities shall also be responsible for acts of unfair competition if such acts are committed within the scope of the activities of such a legal entity. Therefore, the

security precautions applicable to legal entities may be taken in such a situation.

Moreover, to prevent unfair competition or remedy the results of such unfair acts, precautionary measures were regulated in the TCC. The New Code extends the scope of these precautionary measures to provide even more effective protection against unfair competition.

Commercial Books

The New Code provides some major changes regarding the commercial books. One of the fundamental changes regards the standards for the books. Pursuant to the new regulation, all commercial books shall be kept according to the Turkish Accounting Standards which are enforced according to internationally accepted financial standards. Moreover, all books shall be kept on paper, electronically, or another visual format.

The share ledger, daybook, general ledger, inventory register, minute book of the board of directors and minute book of the general assembly are specified as the commercial books according to the New Code. Books other than the daybook, general ledger and inventory register which are related to the accounting of the enterprise shall be specified by the Turkish Accounting Standards Board.

The requirements, methods, and features of the books are explained in detail in the New Code.

Current Account

The provisions of the TCC regarding current accounts remain the same. However, any objection to the calculation sheet issued annually may be submitted by an email which contains a secure electronic signature. This option is beneficial for the technological needs of commercial life.

In addition, the charging of compound interest is prohibited by a new provision in the New Code. Also, agreements containing compound interest shall be deemed invalid, pursuant to this provision.

Agency

The amendments regarding agents and agency agreements constitute some of the most significant amendments in the Commercial Enterprise section.

According to the amendment regarding the powers

of agencies, court decisions given as a result of lawsuits against the parties that the agency is acting on behalf of shall not be applied to such agencies. This amendment removes the liability of agencies in such lawsuits and court decisions.

Furthermore, transactions for which agencies are entitled to be paid are stated and limited in the TCC. The scope of transactions is extended by the related provision in the New Code. An agency may claim a fee for transactions that are conducted after the termination of the relationship with the agency. The conditions for such a claim are stated in the related provision of the New Code.

Pursuant to the additional provision of the article regarding the time of entitlement, the time of entitlement to the agency fee may be determined by the parties of the agency agreement. However, the agency shall be entitled to receive the fee at the time of the completion of the transaction. If the third parties are deemed not to have completed the transaction, the right of the agency to the agency fee will be forfeited. The amounts paid shall be refunded.

The New Code grants a right to agencies with respect to claiming interest. According to the relevant article, agencies may claim interest for advance payments and extraordinary expenses.

Moreover, the client is obliged to fulfill some obligations defined in Article 120 of the New Code, titled

“The Obligations of the Client.” Pursuant to this article, the client is obliged to notify the agency regarding the volume of business and whether it accepts transactions completed by the agency. Conditions deviating from those above shall be invalid to the extent that such conditions are against the interest of the agency. The agency is entitled to claim compensation under the name of equalization following the termination of the agency agreement if the client derives substantial advantages, or, following the termination of the agency agreement, the agency forfeits the right to claim its agency fee from the client’s transactions completed within a short period of time with customers who are provided by the agency; or the payment of agency fee is equitable if appropriate in the actual case. The amount of compensation to be claimed by the agency according to the conditions above is also limited by the relevant article of the New Code.

In addition to the amendments mentioned above, noncompetition agreements are regulated in the New Code. Pursuant to the new Article 123, a noncompetition agreement may be executed between the client and agency for two (2) years at most, for specified regions or a specified customer and regarding the issues that the agency agreement is executed for. Such a noncompetition agreement shall limit the activities of the agency regarding its enterprise, so the client shall pay reasonable compensation to the agency for the restriction of its competition.