

*On January 13, 2011 the Turkish Parliament adopted the new Turkish Commercial Code<sup>1</sup> ("New TCC"), which governs the commercial transactions as well as the formation and governance of companies. The New TCC will enter into effect on July, 2012 and will radically alter many aspects of Turkish commercial and corporate life. This Newsletter highlights some of the amendments brought by the New TCC in the sphere of commercial companies.*

## Introduction

The current Turkish Commercial Code (the "TCC") regulates commercial enterprises, commercial companies, negotiable instruments, land and maritime transportation and insurance contracts. The TCC was enacted in 1956 and although various amendments had been made since its enactment, it cannot sufficiently meet the requirements of the contemporary commercial and corporate life. The New TCC was adopted to replace the half-century old TCC in order to bring it in line with the technological developments and contemporary business environment requirements. The New TCC also targets to increase the efficiency and transparency in corporations and to encourage investment in the country. This Newsletter aims to highlight some of the amendments introduced by the New TCC in the area of the formation and functioning of commercial companies, which will be of interest to investors in Turkey.

## Share Capital and Shareholding Structure

The New TCC increases the amount of minimum capital amount required for the establishment of limited

liability partnerships ("LLP") from the current applicable minimum amount of 5.000 TL (approximately U S D 3.150) to 10.000TL (approximately USD6.250). The minimum capital required for joint stock company ("JSC") remains as 50.000TL (approximately USD31.250).

The New TCC introduces major amendments with respect to the payment of the share capital. Under the TCC, one-fourth of the share capital subscribed by the shareholders to a JSC or a LLP may be paid within three months as from the date of incorporation and the balance may be paid within three years. The New TCC requires the payment of the entire amount of the share capital before the establishment of the LLP. With regard to the JSCs, the New TCC stipulates that one-fourth of the share capital will be paid before the incorporation and the balance may be paid within 24 months.

In respect to the shareholding structure, the New TCC introduces the concept of "single shareholder company". Contrary to the TCC, which requires a minimum number of two and five shareholders for LLP and JSCs respectively, the New TCC enables the establishment of both

LLPs and JSCs with only one shareholder. Accordingly, the investors will not be forced to find other shareholders and can make their investment alone.

## New Concepts

The current TCC does not deal with de-merge of commercial companies. This issue has been solely regulated by the tax regulations whereas the New TCC regulates the issue of de-merge of the commercial companies for the first time.

Another new concept introduced by the New TCC is the concept of "multi-company groups", which is stipulated to be formed when a corporation directly or indirectly has control over another corporation by way of having majority of the shares or voting rights or any other rights which gives the right of control. In such cases the corporation having control will be the parent company while the controlled company will be the affiliate company. The New TCC imposes various duties for the parent and affiliate companies such as notifying the relationship to the authorities and reporting the transactions between them.

<sup>1</sup> Turkish Commercial Code No.6102, published in the Official Gazette dated February 14, 2011 numbered 27846.  
<sup>2</sup> Turkish Commercial Code No.6762, published in the Official Gazette dated July 9, 1956 numbered 9353.

# NEWS

## Mandatory Web Site

With a view to bringing the corporate governance in line with the recent technological developments and to increase transparency, the New TCC requires all of the commercial companies to have a web site and announce certain matters on their web site. The statutory announcements, corporate announcements, important corporate resolutions, statutory notifications, financial statements, audit reports, annual reports and other important information stipulated by the law must all be published on the company web-site.

## Commercial Books and Records

Under the New TCC the commercial companies must be keep their commercial books in accordance with the Turkish Accounting Standards, which are identical to IFRS. The books may be kept in written or electronic form. According to the current TCC, the commercial books have to be approved by the Notary upon incorporation of the corporation and upon the closing of financial year. Under the New TCC, the Trade Registries may also approve the commercial books upon incorporation. The approval method for the books that are kept electronically will be regulated separately.

## Board of Directors of JSCs

The New TCC brings significant

changes in the area of formation, structure and functioning of the Board of Directors (“BoD”) of a JSC. Some of the changes introduced by the New TCC are as follows:

- Under the current TCC, the BoD of a JSC must be comprised of minimum three members. According to the New TCC, on the other hand, the BoD of a JSC may be comprised of one member only. The New TCC, on the other hand, requires the BoD to have at least one Turkish citizen and Turkish resident member although no such requirement was stipulated in the TCC. The companies that have BoDs that consist of foreign members must restructure their BoDs.

- Under the New TCC, minority shareholders and shareholders who form a class may be granted the right of nominating members to the BoD if such right is provided in the Articles of Association (“AoA”) of the corporation. General assembly cannot refrain from electing the members nominated by such minority shareholders or shareholders belonging to a class unless there is a valid cause for rejecting such election. The number of members of the BoD appointed according to this provision may not exceed one-half of the number of BoD members in publicly held companies.

- According to the current TCC, the BoD members must hold at least one share in order to start his/her duties as a member whereas the New TCC does not provide such requirement. Accordingly, non-shareholder real

persons or shareholder legal entities may serve as members of the BoDs. A shareholder legal entity may be represented by a real person appointed by that legal entity and such representative must be registered at the Trade Registry as the sole representative of that legal entity. In addition, the representative must also be posted in the website of the company and only that representative may participate in the BoD meetings and vote. One-fourth of the BoD members is required to have a university degree. Such requirement does not apply to one-shareholder companies.

- With respect to the management duties of the BoD, the New TCC brings the concept of “internal regulation”, whereby the BoD may partially or wholly delegate its management duties to one or more of its members or to a third party who is not a BoD member provided that such delegation is authorized by the provisions of the AoA. The “internal regulation” governs the management of the corporation and shows each duties and chain of reporting structure of the corporation. The BoD will inform the shareholders and the creditors of the company who provides satisfactory evidence of their receivables upon their demand.

- Similar to the current system, under the New TCC, the BoD may delegate its authority to represent the company to one or more directors or third parties as managers. However, at least one of BoD must have the authority to represent the company.

● Within the general aim of adapting to technological developments, the New TCC, enables the BoD to hold meetings electronically. The BoD resolutions, however, must be in the written form and signed by the members. It is possible to adopt the resolutions by way of circulation. In contrast to the current TCC, however, the New TCC does not require to have the signatures of each of the members on the same paper when adopting a resolution by way of circulation. Each member may sign the resolution on a separate paper, all of which may then be affixed to the company's ledger, which will substantially ease adopting resolutions in cases where each of the members resides in a different country. It is explicitly provided that the members cannot vote on behalf of one another or through a proxy.

● As to the meeting quorums, the current TCC provides that the meeting quorum is one member more than half of the number of the members whereas the New TCC provides the quorum as the majority of the members. Accordingly, as an example, in the case of a three member BoD, the meeting quorum would be three members according to the interpretation of the Court of Appeal under the current TCC whereas the quorum would be two under the New TCC. The decision quorum is majority of the members that are present.

## General Assembly and

## Board of Shareholders Meetings

The New TCC amends the procedure for the General Assembly and Board of Partners meetings of JSCs and LLPs. In the current system, the government representative must be present in the General Assembly meetings of all of the JSCs. According to the New TCC, it is stipulated that the types of companies that are required to have government representatives in the meetings shall be determined by a regulation to be issued by the Ministry of Industry and Commerce. Therefore, it is likely that such requirement will be abolished for some of the JSCs, in which case another bureaucratic step in the corporate governance will be eliminated. The New TCC also introduces the new concept of "professional proxy" for representing the shareholders in the General Assembly meetings, which will be useful particularly for minority shareholders.

With regard to the LLPs, under the current TCC, the LLPs do not have to hold annual shareholders meetings unless they have more than 20 shareholders. The New TCC requires all of the LLPs to hold annual meetings, but in the event that all of the shareholders so agree the resolutions may be adopted by way of circulating the resolution to all of the shareholders for their approval. The presence of the government representative is not required for Board of Partners meetings of LLPs.

## Auditors

Another significant change introduced by the New TCC is related to the JSCs auditors. The auditing function shall be carried out by independent audit firms or alternatively, medium and small scale companies may have the services of one or more than more than one sworn financial advisors or public accountants. Therefore in contrast to the current system real persons who may not have to be accountants or independent auditors cannot perform the duties of a statutory auditor. The audit must be conducted in accordance with international and Turkish Auditing Standards.

## Contacts

The content of this Newsletter does not constitute legal advice and may not be relied upon as such. Should you seek advice with regard to your specific circumstances, please contact any of the following persons:

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MARCH 2011 / 04

## ÖZKAN LAW OFFICE

Özkan Law Office is a business law firm based in Istanbul, TURKEY, focusing on all major aspects of business law matters. The firm offers a broad range of services to both local and international clients in different industries. Özkan Law Office is listed as a recommended firm for various practice areas including corporate and M&A, IP, project finance and litigation by Legal500 and similar independent legal guides.

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to serve the clients' particular needs and commercial objectives better. The firm works in association with various corresponding law firms in different cities of Turkey in order to be able to serve the clients' needs in all parts of Turkey efficiently.

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