

# New Turkish Commercial Code – In General

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**E**ntering into force on July 1, 2012, and comprising of 1535 articles, the New Turkish Commercial Code ("New TCC"), was ratified by the parliament on January 12, 2011. The most important changes introduced by the New TCC can be summarized as below.

## 1. GENERAL PROVISIONS AS TO CORPORATE LAW

### A. Corporate Governance

The prevailing notion in the New TCC is to apply a set of corporate governance rules which are generally applied to companies listed on stock exchange to all companies to boost investor confidence. Thus, new provisions have been

for equity companies to launch a website. Those equity companies that already have a website are obliged to allocate an appropriate part of their on-line services to render information to the public.

The reason underlying the introduction of such new obligations on the part of the equity companies is to inform shareholders of limited and joint stock companies sufficiently and efficiently.

The content of such web sites would be composed of information regarding the company, such as information in which the shareholders, creditors and other stakeholders have interest, General Shareholders' Assembly documents and convocations, year-end and interim financial statements, balance sheets as to mergers and spin-offs, audit reports, valuation reports, tender offers for pre-emption holders, notices for liquidation, notices for annulment actions and etc.

### C. Joint Stock Companies and Limited Liability Companies with Single Shareholder

Under the New TCC, joint stock companies and limited liability companies are allowed to be incorporated by a single shareholder or partner.

In both types of company single shareholders or partners can assume the duties and responsibilities of the General Shareholders' Assembly and function as such. This new amendment provides commercial undertakings operated by sole proprietor the ability to transform into corporate types in which limited liability principle is controlling.

### D. Holding Companies

Holding companies are corporate types struc-



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provided for in the New TCC concerning internal management, internal and independent audit in equity companies (joint stock and limited liability companies), in a carefully drafted and comprehensible form. The main aspects of corporate governance rules in the New TCC are as follows: transparency, fairness, accountability and responsibility.

### B. Websites of the Equity Companies, Information-Based Society Services and Access Rights

The New TCC has introduced an obligation

tured to control multiple subsidiary companies in reliance of the procedures and guidelines set out by the management in the holding company. It is the first time that holding companies are regulated under Turkish legislation.

The New TCC has clarified definitions such as what constitutes a controlling company, affiliated company and subsidiary company. It has also clarified the distinctions between such corporate structures and their relations.

In order to bolster the transparency principle, the New TCC requires the controlling and subsidiary companies to disclose the relationships between them. Furthermore, controlling and subsidiary companies are under a duty to annually report their relationship to the public.

#### **E. Changes in Corporate Structures**

Mergers, spin-offs and change of corporate types are widely regulated by the New TCC, with the majority of provisions being related to the position of the creditors of target companies, and safeguarding the rights and benefits of employees. Different kinds of protection in terms of right of actions are provided in the New TCC for the benefit of specific persons in case of the mentioned types of restructuring.

#### **F. Turkish Accounting Standards Identical to IFRS, New Standards in Commercial Book Keeping and Accounting Standards Commission of Turkey**

The New TCC has introduced radical changes in relation to commercial books, and financial statements of equity companies and holding companies and annual reports of the board of directors.

The provisions regarding mandatory book keeping, inventory records, initial balances, financial statements, principles applicable to balance sheets, non-capitalization, provisions, periodic accounts, valuation and record keeping and submission of records introduce the new requirements set forth by the New TCC.

#### **G. Audit in Equity Companies**

One of the aims of the enactment of the New TCC is to establish confidence in the corporate arena within Turkey as well as globally, and to change Turkey's vision and view on matters related to the corporate landscape in Turkey. With such legislative mindset, the audits to be carried out from now on under the New TCC should be conducted by independent, professional, diligent auditors in compliance with the International

Audit Standards, abiding by the ethic rules in the sector, in a transparent manner with due attention.

## **2. JOINT STOCK COMPANY**

### **A. Incorporation**

In the first instance, the New TCC has abolished the system of incorporating joint stock companies through public offerings as set out under the current TCC, which was dysfunctional. Hence, the New TCC introduced a simple, applicable and effective system of incorporation through public offerings.

Going a step further and removing the barriers faced during the incorporation of joint stock companies, self-administrative governmental authorities have been stripped of their authority in terms of intervening in the incorporation and capital increase of joint stock companies.

Another amendment introduced in relation to incorporation is the founders' statement and self-policing mechanism, giving effect and functionality to liability arising from incorporation of the company. Under the New TCC, incorporation of joint stock companies should be audited by an ad-hoc auditor. Ad-hoc auditors should inspect the increases and decreases in share capital, mergers, spin-offs, changes of corporate type, and issuance of securities.

### **B. Private, Public and Listed Joint Stock Companies**

While the majority of the provisions in the current TCC are applicable only to private joint stock companies, the New TCC has introduced provisions to be applied to public joint stock companies and joint stock companies listed on stock exchanges. The intention behind the introduction of the mentioned provision with respect to capital markets is to abolish differences between the TCC and capital markets legislation in Turkey, bringing these two legislations into harmony.

### **C. Share Capital and Shares**

Whether public or private, the New TCC stipulates two share capital systems in joint stock companies--ordinary share capital system and registered capital system. Prior to the New TCC, registered capital system was applicable only to companies regulated under capital markets legislation, which are not private companies. Details as to the adoption of registered capital system and exiting from such system should be further regulated by the regulations to be put into force

by the Ministry of Industry and Trade.

Shares in joint stock companies can be issued in consideration of cash or assets. There is no lock-up period provided for in New TCC, whereas under the current TCC a lock-up period of two years for shares issued in exchange of assets exists.

Under the New TCC, it is set out that the minimum nominal value of shares could be TL 0,001.

As per the provisions of the New TCC the issuance of preferred shares in joint stock companies is permitted. However, further restrictions are stipulated for preference in voting and consequently, shares having preference in voting are not capable of preventing share capital increases under the New TCC. The reason behind this amendment is to mitigate the blocking effect of preferred shares in the functioning of companies. In comparison with the current TCC boundaries of privileges attached to preferred shares in convocation and meeting of General Shareholders' Assembly and adoption of decisions in General Shareholders' Assembly are clearly delineated and narrowed.

#### **D. Repurchase of Shares from Shareholders by the Company**

In terms of the current TCC, the creation of treasury shares is strictly prohibited. In other words, a joint stock company is neither allowed to repurchase nor take as collateral its own shares from its shareholders. However, this strict prohibition has been relaxed to a great extent under the New TCC for the sake of bringing Turkish commercial legislation into alignment with EU legislation. Thus, listed companies are protected against manipulative practices and also private companies would not have to bear the burden of useless statutory restrictions.

Such restriction remaining in force and being applicable even in the event that subsidiary companies acquire the shares of their parents, several exemptions are set out in the New TCC, in which case such repurchase by the companies is allowed.

#### **E. Board**

Amending qualifications for being a board member, the New TCC has abolished the precondition of being a shareholder in the company. Moreover, legal entities can become board members under the New TCC in contrast to the current TCC.

The said amendments are so vital that they

pave the way for the introduction of professionalized boards in companies. Election of board members outside the company, requirements as to the education levels of the board members are such provisions that serve to professionalize management in companies.

#### **F. General Shareholder's Assembly**

In a succinct and restrictive manner, the New TCC defines the duties which cannot be delegated to third parties and are solely ascribed to the General Shareholders' Assembly. However, exemptions are regulated such as share capital increases in the public joint stock companies or issuance of securities.

The New TCC has also introduced amendments as to who can convene the General Shareholders' Assembly for meetings. Moreover, the statutory auditor is no longer authorized to make calls for General Shareholders' Assembly meetings. Furthermore, minority shareholders are subject to shorter periods to make calls for General Shareholders' Assembly meetings. In addition to that, joint stock companies are under an obligation to set out and put into force their internal regulation regarding the conduct of General Shareholders' Assembly meetings.

#### **G. Share Capital Increase**

Having maintained the current methods in share capital increase, the New TCC introduces certain new methods in share capital increase, to bring more functionality to joint stock companies.

In addition to the share capital increase via subscription by shareholders, registered capital system and transformation of assets into share capital are newly introduced methods for share capital increase in joint stock companies. Another alternative under the New TCC is increasing the amount of share capital through issuance of convertible bonds and bonds with warrants.

Under this newly introduced method by the New TCC, joint stock companies have the option of issuing convertible bonds and bonds with warrants (hybrid securities), the exercise of which would lead to increases in the share capital. The terms and conditions relating to the issuance of convertible bonds and bonds with warrants are to be set out in the articles of association of the companies.

#### **H. Liability**

The New TCC stipulates provisions imposing legal and criminal liability applicable to certain

resolutions, statements or documents of joint stock companies.

Issues which may lead to legal or criminal liability under the New TCC can be summarized as the following:

- Illegality in documents and statements
- False representations on share capital and known insolvencies in terms payment of share capital subscriptions
- Valuation
- Raising of funds from public
- Liability attached to founding shareholders, board members, managers and receivers
- Liability attached to the performance and activities of the auditors

### 3. LIMITED LIABILITY COMPANY

The New TCC has introduced various amendments into the system set under the current TCC for limited liability companies, transforming limited liability companies into small-sized joint stock companies.

Under the New TCC the minimum amount of share capital is 25,000 TL and each partner can hold multiple interests in the company instead of a single interest in the company as mandated under the existing TCC.

Transfer of interests has been facilitated and

relaxed, partners being able to regulate the procedure on transfer of interests in the articles of association of the company at their own discretion.

#### A. Incorporation

The New TCC has introduced limited liability companies with single partner and incorporation has been simplified. In the articles of association, partners can set out provisions as to repurchase rights and pre-emption rights on interests in the company. Giving veto rights and superior voting rights to preferred partners, the New TCC has made it possible for partners to depart from the statutory provisions on voting and distribution of dividends.

#### B. Financial Soundness

The position of creditors and economic strength of limited liability companies has been solidified under the New TCC. In this context, payments of share capital should be made at once and in single payments, meaning that incorporation of limited liability companies cannot be consummated without share capital being paid in full.

Financial statements to be prepared in accordance with IFRS and to be audited as per the IAS are issues mandated under the New TCC, in order for the financial situation of the limited liability companies to gather strength.

