

New Rules for Turkish Joint Stock Companies



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The new Turkish Commercial Code (the "New TCC") will take effect on 1 July 2012. In the previous issue of *PRIVATE* we have started to review the changes introduced by the New TCC that are of particular importance to foreign investors. In this article, we will review the new regulations introduced by the New TCC in respect of joint stock companies (JSCs), which belong to the most preferred capital company types for foreign investors.

Establishment of a joint stock company

According to the previous Turkish Commercial Code ("Previous TCC"), at least 5 real or legal persons were required to establish a joint stock company. Pursuant to article 338 of the New TCC, 1 real or legal person is now enough to establish a JSC.

In the New TCC, an obligation to provide a declaration of founders was imposed in order to ensure transparency in line with the policy of protection of the company and the capital. By means of this declaration of founders, responsibility arising from the establishment of a JSC is now regulated with effective liabilities.

Another change regarding the establishment of joint stock companies is the requirement of a transaction auditor report. This control relates directly to international standards.

Still another novelty is the establishment through public offering. A simple and practical system has been introduced in this area. Real or legal entities, who want to offer their shares to the public, will have to provide a commitment. The respective shares will then be offered to the public, and that part of the sold shares, which corresponds to the nominal value will be paid to the company, while all of the unsold shares will be left to the party who made the commitment. Public offerings will have to be performed in compliance with the Capital Markets Board (CMB) communiqués.

The minimum capital of a joint stock company is TRY 50,000. Another change introduced by the New TCC is that joint stock companies, whose shares are not publicly traded but which adopted the registered capital system, must have a minimum capital of TRY 100,000. The registered capital system makes it easier to increase capital for joint stock companies which are not open to the public.

Board of directors in JSCs

According to the Previous TCC, board of directors had to be composed of at least 3 shareholders, and a legal entity could not be a member of the board, while a representative of a legal entity could be elected as a board member instead. As per article 359 of the New TCC, board of directors can be composed of a single member. Also, it is no longer mandatory to be a shareholder of a company in order to be a board member and a legal entity can become a board member.

While eliminating the obligation of being a shareholder to become a board member, the New TCC imposes the requirement that at least 1/4 of the board members must have university degrees. This new provision paves the way for a professionalization of the management.

The requirement of a university degree will not be imposed on single-member boards of directors. According to the New TCC, at least 1 of the board members should live in Turkey and have Turkish citizenship.

Another change is that board meetings can be held electronically in order to facilitate such meetings. This will make it easier for the boards of directors to convene in foreign capital companies in particular.

General assemblies in JSCs

As per article 407 of the New TCC, shareholders use their rights relating to company affairs at the general assembly. Exclusive powers of the general assembly, which cannot be delegated, are shown together in the New TCC. Sole shareholders of a JSC can use all the powers of the general assembly and take decisions on their own.

Acquisition and acceptance as pledge of own shares by JSCs

Under the Previous TCC, a joint stock companies in principle could not acquire its own shares and accept them as pledge. Under the New TCC, JSCs can acquire their own shares and accept them as pledge for up to 10% of their capital. This regulation is also introduced in an attempt to harmonize regulations with EU legislation.

Conclusion

The ability to establish a JSC with a single shareholder is in line with the European Union directives relating to companies. The obligation of 5 founding partners in the Previous TCC caused problems for foreign investors planning to come to Turkey. Also, parallel to the single-shareholder JSC practice, single-member boards of directors are also allowed. This new structure is more realistic and reliable in economic terms. Also it is aimed at professionalizing boards of directors and change them from nominal organs to functional ones. With the New TCC, regulations relating to JSCs have been harmonized with EU legislation.

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