

***New Turkish  
Commercial Code***  
10 Questions, 10 Answers



## **1- What are the main changes introduced regarding the establishment of joint stock companies?**

The new Turkish Commercial Code (the “New TCC”), which will be effective from 1 July 2012, has abolished the mechanism of gradual formation, which exists in the current legislation, but is never applied. In addition, the New TCC allows the establishment of the joint stock companies (“A.Ş.”) or the limited liability companies (“L.Ş.”) with a single shareholder or partner, respectively.

As a requirement for protection of the company and its capital, the obligation for the declaration of founder has been introduced to ensure transparency. If capital contribution is made in-kind, or if capital in-kind or an enterprise is taken over, the founder’s declaration must include documents including justified and precisely stated explanations regarding the appropriateness of the values of the shares to be given to the founders in return for capital, and the benefits of this kind of capital or takeover to the company. In addition, benefits granted to the founders, if any, are to be explained in the declaration together with the underlying justification.

Another change introduced by the New TCC, regarding the establishment of the A.Ş., is concerned with the supervision mechanism. Within this context, one of the conditions introduced during the incorporation of A.Ş. is concerned with the receipt of a report from the special auditor appointed for the audit of the incorporation.

Regarding the establishment of a public offering company, the New TCC has introduced a system that is simple, straightforward, easily applicable and original. The real person or the legal

entity that provides a commitment to offer its shares to the public, only has to provide the commitment, and will not be obligated to invest one-quarter of the value of shares. These shares can be offered to the public at the value of the said commitment, or at a premium, and the portion of the cash derived from the public corresponding to the nominal value of the shares is paid to the company, with the outstanding difference belonging to the party who has made the commitment. Shares left unpurchased shall belong to the party who made the commitment. The party who has made the commitment is obliged to pay one-quarter of this total immediately. The public offering procedure is applied in conformity with the regulations of the Capital Markets Board (“CMB”).

## **2- What is a “single shareholder company”? How is it regulated? Which demands will the single shareholder company fulfil? What kind of changes are introduced regarding capital in kind and shares?**

One of the significant changes, introduced by the New TCC, concerns with the single shareholder A.Ş. and single member partner L.Ş. As is known, according to the current code, joint stock companies are established with minimum five shareholders, and limited liability companies are established with minimum two member partners.

The single shareholder or single member partner is allowed to exercise all the authorisations granted to the General Assembly, and can take all types of decisions. In addition, the Board of Directors of companies are allowed to be formed with the presence of just one person.

Single shareholder company were reflected to the Turkish legislation as a requirement of the 12th European Union (“EU”) directive concerning the founding of companies. The reason why the EU insists on the introduction of single shareholder company relates to the protection of small and medium size enterprises (“SMEs”). In this way, SMEs with single shareholder shall be discharged from unlimited responsibility. Turkish SMEs established with single shareholder also need such protection. In addition, the single shareholder company regulation means that institutions and corporations such as foundations and associations, which do not need to operate their goods and assets together with other shareholders, are also allowed to establish single shareholder A.Ş. and L.Ş. In this way an important change, particularly from the standpoint of foreign capital, has been introduced. This is because foreign investors want to invest in a country through a company exclusively belonging to themselves. Urging a foreign investor to accept a partner generally causes legal complications. In addition, if an existing A.Ş. or L.Ş. wishes to introduce a sub-industry in addition to its main field of activity, with the new regulation it will be able to do so. Besides, if companies founded with the participation of more than one shareholder, are subsequently restructured as a single shareholder company, the said type of company becomes able to continue its existence without becoming subject to the risk of dissolution.

Single shareholder company is a widespread application, particularly in European countries. Foreign investors are also granted the opportunity to initiate foreign direct investments in

Turkey, through the establishment of a single shareholder company with a single shareholder or single member partner.

The New TCC also allows the contribution of domain rights, including intellectual property rights, and of demand receivables, to capital. In order for an asset to be contributed to the capital, there should be no measures, pledges or similar encumbrances imposed on them. The registration of the capital in kind on behalf of the company is made directly to the title deed registry directorates, and the concerned asset is not accepted as capital in kind unless it is entrusted to a reliable person.

### **3- What kind of regulations introduced related to the group of companies?**

In the New TCC, the concept of group of companies, in other words, the relations between the parent company (companies) and its subsidiaries that are subject to the same principles and policies, and are gathered under the roof of the same management, have been regulated in Turkish legislation for the first time. On one hand, the new regulation protects the shareholders and creditors that remain outside of the group, and on the other, the executives of the subsidiaries, ensures transparency and balance between the benefits of the concerned parties.

### **4- What are the provisions that ensure transparency in the New TCC?**

First of all, the New TCC ensures transparency through company's web site. Accordingly, all equity capital companies are obliged to found a web site, and if such a site is available, to

allocate a section of the web site to the use of shareholders and society. The web site shall include all the reports and all the relevant data concerning creditors and investors; primarily all announcements that should be legally made by the company, annual reports, financial statements and audit reports. Penalties and sanctions shall apply if the company fail to fulfil these obligations.

### **5- What significant changes are introduced regarding the Board of Directors and the General Assemblies of joint stock companies? What does corporate representative at the General Assembly mean? How will this system operate?**

Under the New TCC, a Board of Directors can consists of just one member and the necessity that the board members have to be shareholders in the company has been abolished. Hence, legal entities are also granted with the authorisation to become board members.

Shareholding groups, share groups and minority shareholders are also granted with the right to be represented in the Board of Directors.

Board members are granted the right to transfer some of their responsibilities to other board members, third parties and the management. An internal audit mechanism has been developed in compliance with the principles of corporate governance. The provisions concerning finance management, financial supervision, financial planning and risk management have been envisaged for this purpose.

The quorum for board meetings of half-plus-one of the directors, a provision

that was criticised, has been abolished; instead reaching a majority of board members has been deemed adequate for the holding of the board meeting. In cases when the Board of Directors consists of more than one member, the requirement that at least one-quarter of the board members must be university graduates has been implemented.

The New TCC allows the board meetings to be held in electronic media. The board resolutions can also be signed with electronic signatures.

At the General Assembly, the mechanism of "corporate representation" has been introduced, for the purpose of representing collective shareholders. The corporate representative is not necessarily a shareholder. The corporate representative asks the shareholder to empower himself/herself with the authority of representing the shareholder in the General Assembly. Being a corporate representative is not a profession, and is performed at the initiative of the shareholders. The corporate representative requests authorisation for representation via a published written statement. This statement relates to the management and auditing of the company in accordance with the management, internal auditing, independent auditing and corporate governance principles of the joint stock company. This programme can comprise the fields of investment, investments that are to be relinquished, principles relating to the policies adopted by the company (such as financial policies, dividend distribution and marketing). Although the corporate representative is valid for all A.Ş. companies, it ensures the organisation of minority shareholders, particularly in publicly traded companies.

The New TCC allows the online audio-visual gathering of General Assemblies, and the use of online votes in General Assemblies. In the New TCC, it is stated that the online General Assemblies and the online use of votes shall be regulated with a separate communique. For publicly traded companies, availability of the option of online General Assembly is mandatory.

### **6- What are the auditing requirements introduced for joint stock companies? Who can be authorised as auditor and conduct independent audit?**

The New TCC envisages a system for the auditing of the firms that is completely new. Through the new regulation, the audit currently included among the mandatory organs of the companies, and exercised through an auditor who does not necessarily have expertise in the subject matter, is replaced by the independent audit mechanism which should be conducted by independent audit firms or by sworn financial advisers (Yeminli Mali Müşavir or YMM) or independent accounting financial advisers (Serbest Muhasebeci Mali Müşavir or SMMM). The scope of audit includes the audit of financial statements and/or consolidated financial statements and the annual report. The audit is required to be performed in accordance with Turkish Auditing Standards which are identical with International Auditing Standards (“ISA”). Another change introduced by the New TCC is the transaction auditor and hence audit of the transactions. These transaction auditors are auditors who will examine various transactions conducted by the company, such as incorporation, capital increase and reduction, merger, spin-off, conversion of type of the company or the issuance of marketable securities.

The New TCC also allows the application of special audits at the request of any shareholder. A special auditor will be appointed by the court if the General Assembly accepts the request for special audit request by a shareholder.

Under the New TCC, audits are to be performed by independent auditors. Independent audit firms are allowed to audit the financial statements of all companies regardless of the size of the company. For SMEs, the audit of the financial statements can also be performed by at least one YMM or SMMM.

The auditor that was assigned by the independent audit firm to audit a company must be replaced by another auditor for at least two years, if the auditor submitted audit reports for that company for seven consecutive years.

### **7- What are the responsibilities of the board members of the joint stock company regarding independent audits? How will the Board of Directors be affected by the results of independent audits? Who is in charge of publishing the Turkish Auditing Standards?**

The Board of Directors is responsible for the preparation of the financial statements and annual report in accordance with the Turkish Accounting Standards. The Board of Directors has to fulfil, this responsibility within the three months following the financial year-end and the reports are submitted to the General Assembly.

The Board of Directors of the company responsible for the preparation of the consolidated financial statements is obliged to present the financial statements of the group companies, their annual reports, the financial

statements of each individual firm, the annual reports prepared by the Boards of Directors of the companies, and if an audit has already been performed, the audited reports of the parent company and of the group companies, to the auditor who will be conducting the audit of the consolidated financial statements.

One of the indispensable responsibilities of the Board of Directors concerns the establishment of the mechanism required for the financial planning needed for the accounting operations, financial supervision and proper management of the company. Unaudited financial statements and unaudited annual report of the Board of Directors are considered not to have been prepared.

The auditor is appointed by the General Assembly. Following their appointment, the Board of Directors of the company registers the name of the auditor at the Trade Registry without delay, and announces the name of the auditor it has appointed in the Trade Registry Gazette and its web site. The auditor to be appointed for the audit of the accounts for the fiscal year 2013 in compliance with the New TCC should be appointed before 1 March 2013.

The Board of Directors is obliged to submit all the required data and all the documents that will constitute the basis of the said data to the auditor in order to enable the auditor to conduct his/her audit in accordance with the law and with due care and attention.

The General Assembly cannot adopt any resolution related directly or indirectly to the profit or loss stated in accordance with the financial statements over which an, adverse or disclaimer of opinion has been issued. In such cases, the Board of Directors calls for a General Assembly to be held within four work days following receipt of the opinion of the auditor,

and submits their resignation valid as of the date of the said meeting. Upon the resignation of the Board of Directors, the General Assembly is obliged to appoint a new Board of Directors. The new Board of Directors is responsible for the preparation of financial statements in conformity with the Code, the articles of association of the company and the existing standards, and presents these financial statements to the General Assembly, together with the auditor's report. In cases when a qualified opinion is submitted, the General Assembly has to reach a resolution concerning the required measures and revisions.

Until a Turkish Auditing Standards Board with a judicial personality is established, the Turkish Auditing Standards are determined by a board affiliated to the Union of Certified Public Accountants of Turkey (TÜRMOB) in harmony with ISA. Meanwhile, observation and audit of the auditors are conducted by the Ministry of Industry and Trade on behalf of the public sector, until the establishment and operation of a supreme board for the aforementioned duty.

### **8. Which accounting standards shall be taken as a basis for the preparation of the financial statements?**

The financial statements have to be prepared in conformity with Turkish Accounting Standards ("TAS") published by the Turkish Accounting Standards Board ("TMSK"), which are inline with International Financial Reporting Standards ("IFRS"). Within this framework, a further obligation has also been introduced regarding the preparation of consolidated financial statements. The TAS should be put into practice as of 1 January 2013; within this framework initially the opening balance sheet for the year 2013 should be prepared in compliance with TAS.

The TAS consist of the Turkish Accounting Standards, Turkish Financial Reporting Standards (TAS/TFRS) and its interpretations, and TFRS for SMEs. In the New TCC, it is stated that TFRS for SMEs can be applicable for SMEs. The TMSK can introduce specific standards for enterprises and sectors of different scales, in cases when different regulations are permitted by the IFRS. The institutions and boards established specifically by the law to regulate and to supervise specific areas can formulate regulations limited to details for the standards that will be valid for their own areas, provided they conform to the TAS and provided that they receive approval from the TMSK.

### **9. Which subjects are covered in the annual report? When are the annual reports prepared?**

The annual reports of the Board of Directors should reflect the flow of activities of the company and its financial position in all respects, in an accurate, complete, true and fair view. In annual reports, the financial position of the company is evaluated based on the financial statements. The report also explains clearly the details regarding the development of the company and the probable risks that might be encountered. The evaluations of the Board of Directors regarding these issues are also included in the annual report. In addition, any significant events following the year end; research and development activities of the company; and

benefits such as wages, premiums and bonuses granted to the board members and top-level executives of the company, as well as the payments, travel allowances, hospitality and entertainment expenses, opportunities granted in cash and in kind, insurance payments and similar guarantees are also explained in the annual report. The compulsory minimum contents of the annual report are determined and announced in detail by the Ministry of Industry and Trade with a specific communique.

The Board of Directors prepares the annual report, together with the financial statements and its attachments, within the first three months of the accounting period that follows the financial year-end and presents them to the General Assembly.

### **10. How are mergers, spin-offs and conversions in type of company regulated in the New TCC?**

The New TCC contains detailed regulations regarding the said three types of restructuring. The new provisions have been formulated in a manner that fully protects the interests of the company partners and shareholders and other stakeholders. Types of mergers and spin-offs have been acknowledged in the New TCC. These provisions have integrated the Turkish legal system with the legal systems of EU.



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