

# *The New Turkish Commercial Code is in effect*

## Latest amendments



## **General Terms and Amendment to Provisions relating to Joint Stock Companies and Limited Liability Companies**

Major changes contained in the New TCC Amendment Law No. 6335 are as follows:

- 1.** The New TCC charges all capital stock companies with independent audit liability; however, with the New TCC Amendment Law No. 6335 a new paragraph has been added to Article 397 of the New TCC and it has been ruled that the Council of Ministers will determine the companies that will be subject to independent audit.
- 2.** The New TCC obliges all capital stock companies to open a website and arrange its content in line with the Law; however, the New TCC Amendment Law No. 6335 solely requires capital stock companies subject to independent auditing to open a website, in addition to restricting the information to be posted on the said website. Upon this amendment it will no longer be necessary for companies to publish their financial statements and related reports on their websites. The amendment states that solely the announcements that should be made public as per the law, are required to be posted online. (The obligation to open a website has to be met within three months following 1 July 2013.)
- 3.** In accordance with the New TCC Amendment Law No. 6335, paragraph two of Article 39 of the New TCC which regulates the contents to be included in all types of documents has been amended as follows:

*“The registered trade name shall be written in a legible format at a place that is visible in the commercial enterprise. Commercial letters issued by the merchant with respect to his/her enterprise and documents on which the records in the commercial books are based shall indicate the merchant’s registry number, trade name, headquarters of the enterprise as well as the registered website address in case the merchant is liable for opening a website. This information shall be posted on the company website as well. This website shall also include the full names of the chairman and members of the board of directors (“BoD”) and subscribed and paid-up capital in joint stock companies; full names of the managers and subscribed and paid-up capital in limited liability companies; and full names of the company executives and subscribed and paid-up capital in commandite companies with share capital.”*

The second, third and fourth sentences of Paragraph 2 of Article 39 of the New TCC, as given in quotes above with its latest version, will be effective as of 1 January 2014.

- 4.** Article 358 of the New TCC No. 6102, which was introduced in line with the principle on protection of capital and prohibits shareholders from borrowing from their company, has been amended with the New TCC Amendment Law No. 6335 in the following manner:

*“Unless shareholders pay their debts due to the company that arise from their capital subscription and the company’s profit including free capital reserves does not meet the prior year losses, shareholders shall not borrow from the company.”*

Moreover, Paragraph 2 of Article 395 of the New TCC No. 6102, which prohibits company’s BoD members and their relatives from borrowing from the company, is amended as follows:

*“BoD members who are not shareholders, as well as their relatives who are not shareholders, and who are listed in Article 393 cannot borrow cash from the company. The company cannot issue guarantee, warranty and collateral for these persons, nor can the company assume their liability and take over their debts. In cases to the contrary, creditors of the company can legally pursue these persons for the company debts in the amounts for which the company is liable.”*

The New Turkish Commercial Code (“New TCC”) has come into effect as of 1 July 2012. Amendments made to the New TCC in June were announced on the Official Gazette on 30 June 2012 and became effective on 1 July 2012.

We have included here a document presenting a number of significant changes in the New TCC. For reference purposes the respective law numbers and names have been indicated below.

***Yours faithfully,  
PwC Turkey***

- **Turkish Commercial Code No. 6762 (“Old TCC”)**
- **Turkish Commercial Code No. 6102 (“New TCC”)**
- **Law on Effectiveness and Implementation of the Turkish Commercial Code No. 6103 (“Code on Effectiveness of New TCC”)**
- **Law No. 6335 Amending the Turkish Commercial Code and Law on Effectiveness and Implementation Form of the Turkish Commercial Code (“New TCC Amendment Law”)**

**5.** With the New TCC Amendment Law No. 6335, the time granted for amending the articles of association has been extended to **twelve months** as of the effective date of the New TCC (which corresponds to 1 July 2013).

**6.** With the New TCC Amendment Law No. 6335, provisions requiring a **transaction audit** and a report from a **transaction auditor** for transactions such as incorporation of a company, capital increase, merger and spin-off were repealed from the New TCC.

**7.** Temporary Article 7 has been added to the New TCC by means of the New TCC Amendment Law No. 6335, which requires a simplified procedure regarding **liquidation procedures** for companies that meet certain criteria.

**8.** The New TCC No. 6102 regulated how to keep the commercial books according to Turkish Accounting Standards; however, the New TCC Amendment Law No. 6335 has repealed the regulations on obligation of bookkeeping according to Turkish Accounting Standards and brought in an obligation of bookkeeping according to provisions of the Tax Procedural Law. However, according to Article 88 of the New TCC, it is compulsory to comply with and apply Turkish Accounting Standards, accounting principles and accompanying interpretations while issuing separate and consolidated year-end financial statements. Within this context, **financial statements** to be presented at the General Assembly should be prepared in line with the Turkish Accounting Standards, which are prepared in line with the international standards and will be announced by the Public Oversight, Accounting and Auditing Standards Board. The reference to international standards were International Financial Reporting Standards prior to the latest amendment.

**9.** It was obligatory to register and declare the financial statements, annual report, general assembly decision regarding dividend distribution and the independent auditor opinion on the trade registry gazette and to promulgate them on the website of the Company pursuant to **Article 524** of the New TCC No. 6102. However, this obligation has completely been repealed by the Law No. 6335 amending the New TCC.

**10.** Whilst closing approval was going to be applied on all commercial books in accordance with the New TCC No. 6102; it is regulated by New TCC Amendment Law No. 6335 **that the closing approvals will only be obtained for the journals and BoD resolution books**, from the notary public by the end of the third month of the following financial period.

**11.** The following paragraph has been added to the fourth paragraph of **Article 478** of the TCC, regulating privileged shares, by the New TCC Amendment Law No. 6335.

*“In joint stock companies, more than half of whose capital is solely or collectively owned by the state, special provincial administration, municipality or other public entities, trade unions, associations, foundations, cooperatives, and in joint stock companies owned by parent institutions and affiliates in which these companies have equal capital shares; no privilege regulated by this Law shall be granted to other shares, to shareholders composing a specific group, to specific share groups or minorities, except for the privileges they are granted. This provision shall not be applied to listed companies, to credit institutions as defined by Article 3 of Law No. 5411 nor to financial institutions.”*

**12.** The following qualifications that had to be held by members of Boards of Directors of joint stock companies in accordance with **Article 359** of the New TCC have been completely repealed by the New TCC Amendment Law:

- At least one fourth of the BoD members must have a graduate degree
- At least one BoD member who is authorized to represent the company must reside in Turkey and be a Turkish citizen.

**13.** For limited liability companies, the provision stipulating the requirement of having at least one of the company managers residing in Turkey and granting the sole representation power to such manager has been completely abolished with the New TCC Amendment Law No. 6335. ;

**14.** With the New TCC Amendment Law, it has been approved that **profit share** advance regulations and the prohibition to become indebted to the company for the BoD members are valid for limited liability companies. Similarly, the prohibition to become indebted to the company for shareholders of a joint stock company as explained under the fourth section above, are applicable to the shareholders of limited liability companies with the New TCC Amendment Law.

**15.** The regulations regarding capital contribution of joint stock companies are also valid for limited liability companies. Therefore, of the capital will be paid in before the registration and the remaining amount will be paid in within 24 months after the registration of the limited liability company. Prior to this amendment introduced by the New TCC Amendment Law No. 6335, the capital in cash of limited liability companies had to be paid up at once.

**16.** The deadline for companies subject to independent audit to appoint **their first independent auditor** has been extended from 01 March 2013 to **31 March 2013**.

**17.** Paragraph 1 of Article 553 of the New TCC has been amended as follows:

*“In the event that founders, board members, managers and liquidation officers breach their liabilities defined by the law and articles of association due to their fault, they shall be deemed responsible for the loss they cause against the company, shareholders and company creditors.”*

The phrase **“unless they prove that they have no fault”** was removed, and therefore if founders, BoD members, managers and liquidation officers are claimed to have breached their liabilities resulting from the law and articles of association, it will be the responsibility of the complainants to prove the existence of fault.

**18.** With the New TCC Amendment Law, the enforcement date of the secondary legislation has been regulated in a way to be implemented in the following six months.

*“Secondary Legislation be prepared in accordance with this Law shall enter into force within six months following the enforcement date of the Turkish Commercial Code.”*

**19.** Definition of the auditor and auditor rotation has been rearranged and Article 400 of New TCC No. 6102 has been regulated as follows:

The first and second paragraphs of Article 400 of the New TCC No. 6102 have been amended as follows and the fourth paragraph of the same article has been repealed.

*“An auditor performing an independent audit can be a sworn financial advisor or certified public accountant licensed in accordance with Law No. 3568 on the Professions of Certified Public Accountants and Sworn Financial Advisors, dated 1 June 1989, and persons and/or equity companies the partners of which are composed of these persons appointed by Public Oversight, Accounting and Auditing Standards Board. In case one of the following situations exists, a sworn financial advisor, a certified public accountant and/or the capital stock company and one of its shareholders, and persons working with its shareholders or person(s) with whom the persons mentioned in this sentence are working together cannot be an auditor in the concerned company. If one of the above-mentioned falls into one of the following categories, he/she cannot be an auditor.*

a) shareholder in the company to be audited

b) managing director or an employee of the company to be audited, or someone who has held this title within the last three years before being appointed as auditor,



c) the statutory representative or representative, board member, managing director, owner or shareholder owning more than 20 percent of the shares of a legal entity, of a commercial company or of a commercial enterprise having a connection with the company to be audited; or if he/she is a lineal consanguinity or is spouse or one of blood or in-law relation up to and including the third degree from a board member or a managing director of the company to be audited,

d) works for an enterprise which is connected with the company to be audited or which has more than 20 percent of the shares in such a company, or is working for a person holding more than 20 percent of the shares in the company of which he/she is to be the auditor,

e) is active in or has contributed to bookkeeping or organising the financial statements of the company to be audited, without carrying out an audit,

f) the statutory representative, representative, employee, board member, partner, owner of the legal entity or real person, or of one of its shareholders, who cannot be the auditor in accordance with paragraph (e) or is personally him/herself as the real person due to being active in or contributed to bookkeeping or organising the financial statements of the company to be audited, without carrying out an audit,

g) works for an auditor who cannot be an auditor because of meeting the conditions in paragraphs (a) to (f),

h) has earned more than 30 percent of his/her total income from his/her occupational activities related to auditing within the last five years from his/her auditing and consulting activities provided for the company to be audited, or to companies who have participated in such company through shares corresponding to more than 20 percent of the capital and if they expect to earn the same in the current year.

*(2) If the auditor has been appointed as auditor for a company for seven years in the last ten years, that auditor shall be replaced for at least three years. Public Oversight, Accounting and Auditing Standards Board is authorised to shorten these periods.”*

Furthermore, according to the third paragraph of Article 37 of Law No. 6335 Amending the New TCC, prior years of service of auditors appointed in accordance with the relevant legislation before the effective date of this paragraph shall be taken into consideration in calculation of the periods defined in the second paragraph of Article 400.

### **Some Amendments on Criminal Liabilities**

Article 562 of the New Turkish Commercial Code No. 6102 has been amended as follows;

**a)** Those who fail to fulfil the liabilities defined in the second and third sub-clauses of the first paragraph of Article 64 of this Code,

**b)** Those who fail to submit copies of documents in line with the second paragraph of Article 64 of this Code,

**c)** Those who fail to obtain necessary approvals in line with the third paragraph of Article 64 of this Code,

**d)** Those who fail to carry out bookkeeping activities in line with Article 65 of this Code,

**e)** Those who take inventory in contradiction with the procedure defined in Article 66,

**f)** Those who fail to submit documents in line with Article 86 of this Code,

**shall be subject to an administrative fine of TL4,000.**

*Those who act in contradiction with Article 88 shall be subject to an administrative fine of TL4,000.*

*Those who act in contradiction with the first and fourth paragraphs of Article 199 shall be subject to a judicial fine which may not be less than 200 days.<sup>1</sup>*

*Those who do not hand in or hand in incompletely the books, records and documents which are kept or held according to the provisions of this Code and the related information to the auditors authorised in line with the first paragraph of Article 210 regardless of whether such documents and information belong to the real or legal person subject to auditing; or those who prevent such auditors from performing their job shall be subject to a **judicial fine which may not be less than 300 days.***

**a)** Founders who make declarations contrary to Article 349 of this Law

**b)** Creditors who give debt to shareholders in contradiction with Article 358 of this Law,

**c)** Those who violate the provisions in the first or second sentences of the second paragraph of Article 395 of this Law,

**shall be subject to a judicial fine which may not be less than 300 days.**

*(6) If commercial books do not exist or contain any entries or which are kept in contradiction to this Law, those in charge shall be subject to a **judicial fine which may not be less than 300 days.***

*(7) Those who act in violation of Article 527 shall be punished according to Article 239 of the Turkish Criminal Code.*

*(8) Those who issue fake copies of the documents stated in Article 549 and those who intentionally include misstatements in commercial books shall be punished **with imprisonment from one to three years.***

*(9) Those who act in violation of Article 550 shall be punished **with a judicial fine or imprisonment from three months to two years.***

*(10) Those who act in contradiction with Article 551 shall be subject to a **judicial fine which may not be less than 90 days.***

*(11) Those who act in violation of Article 552 shall be punished **with imprisonment from six months to two years.***

*(12) Responsible members and managers who fail to open a website as stipulated in Article 1524 shall be subject to a **judicial fine between 100 to 300 days.** Those who fail to duly post the content required by the same Article on their website shall be subject to a **judicial fine up to 100 days.***

*(13) If there is no contrary decision, administrative fines within the scope of this Law shall be applied by the top civil administrator in the region .*

*(14) If one of the offences defined in this Law is repeated prior to the sentence of the administrative fine , the relevant real or legal person shall be subject to a double administrative fine. However, the amount of the administrative fine to apply in case of making a profit or causing a loss through the offence, may not be less than three times as much as the amount of such profit or loss.”*

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