

New Capital **Electronic** Signature
 Financial Reporting Exchange Rate
Legal Obligations
 Exchange Rate **TCC** Reporting Corporate Governance
 Conversion **Internal Controls** **Articles of Association** E-Bookkeeping
 Board of Directors Exchange Rate **Internal Audit** Reporting
Balance Sheet Turkish Accounting Standards **Compliance**
 IFRS Conversion **Internal controls** Program Management **Analysis**
Independent Auditor Shares **Articles of Association** Training Programs Signatories Accounting Systems
Transparency **Digital** Company
 Computer Forensics Corporate Governance
Enterprise Risk Management



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Latest Amendments in the New Turkish Commercial Code

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Changes to Some of the Important Dates

What It Was...

- ▶ There was a regulation regarding the by laws and regulations (Secondary Legislation) to be prepared pursuant to TCC to enter into effect within 12 months as of the publication date of the TCC (Until 14.02.2012).
- ▶ The provision regarding the mandatory information required to be made available in the company documents was supposed to enter into effect on 1.7.2012.
- ▶ The articles of association were to be made compliant with TCC until 14.08.2012.
- ▶ Articles 434 and 435 of TCC regarding voting rights and the occurrence of voting rights were supposed to enter into effect on 14.8.2012.
- ▶ General Assembly meeting and resolution quorums in the articles of association were supposed to be made compliant with TCC until 1.1.2013.
- ▶ It was mandatory for shareholders, who are indebted to the company in contrary to article 358 of TCC, to completely offset such debts by making cash payments until the date of 1.7.2015.

What It Has Become...

- ▶ A regulation has been made regarding the by laws and regulations (Secondary Legislation) to be prepared pursuant to TCC to enter into effect within 6 months as of the publication date of TCC (until **31.12.2012**). (**Law No. 6103 Art. 42/f1**)
- ▶ The provision regarding the mandatory information required to be made available in the company documents will enter into effect on **1.1.2014**. (**Law No. 6102 Art. 39/f2/ c2-c3-c4**)
- ▶ It shall be necessary to ensure that the articles of association is compliant with TCC until **1.7.2013**. (**Law No. 6103 Art. 22**)
- ▶ Articles 434 and 435 of TCC regarding voting rights shall enter into effect on **1.7.2013**. (**Law No. 6103 Art. 28**)
- ▶ General Assembly meeting and resolution quorums in the articles of association shall have to be made compliant with TCC until **1.7.2013**. (**Law No. 6103 Art. 26**)
- ▶ The provisions regarding shareholders, who are indebted to the company contrary to article 358 of TCC, to completely offset their debts by making cash payments until the date of **1.7.2015** has been **revoked**. (**Law No. 6335 Art. 47/ f3**)

Company Documents

What It Was...

- ▶ Information required to be printed on all kinds of papers and documents with respect to enterprise of the merchant were regulated.
- ▶ The required information, which needs to be on these documents were: Registration number, trade name, headquarters of the enterprise, subscribed and paid capital if the merchant is a trading company, address and number of the Internet site, in joint stock companies, limited companies, and commandite companies divided into shares; respectively names and surnames of chairman and members of the board of directors, managers, and executives.
- ▶ The provision regarding information required to be written in company letterheads were to enter into force together with TCC on the date of 1.7.2012.

What It Has Become...

- ▶ Information required to be written on commercial letters issued by the merchant with respect to his/her enterprise and documents on which the records in the commercial books are based **(Law No. 6102 Art. 39/f2)**
- ▶ In these documents the following shall have to take place in the letterhead: Merchant's registration number, trade name, headquarters of the enterprise as well as the registered website address in case the merchant is liable for opening a website (Council of Ministers will determine the companies that will be subject to independent audit). **(Law No. 6102 Art. 39/ f2)**
- ▶ The new regulation has been made stipulating that this provision shall become effective as of **1.1.2014. (Law No. 6102 Art. 39/f2/c2-c3-c4)**

Commercial Books and Financial Statements

What It Was...

- ▶ While keeping the accounting records as well as arranging the separate and consolidated financial statements of the company, it was determined to have full compliance with the obligation to apply the Turkish Accounting Standards (fully compliant with International Financial Reporting Standards) published by the Turkish Accounting Standards Board, accounting principles found within the conceptual framework, and interpretations, which constitute an integral part of the above.
- ▶ All commercial books were subject to opening and closing certification to be performed by a notary.

What It Has Become...

- ▶ Accounting records will be continued to be kept according to Tax Procedural Law. **(Law No. 6102 Art. 64/f5)**
- ▶ Only commercial books which are kept as hard copy are now subject to being certified by notary. The closing notarization is now only in question for the general journal and the financial resolution book of the board of directors, and is required to be obtained from the notary until the end of the third month of the following financial year. **(Law No. 6102 Art. 64/f3)**
- ▶ In case commercial books are kept electronically medium, notarization shall not be sought in the opening of these books, and the closing of the general journal and the resolution book of the board of directors. **(Law No. 6102 Art. 64/f3)**
- ▶ Articles with regard to separate and consolidated financial statements being prepared according to the Turkish Accounting Standards continue to be effective. However Public Oversight, Accounting and Auditing Standards Authority has been given with the authority to set special and exceptional standards. **(Law No. 6102 Art. 88/ f3)**

Conversion to TAS in Financial Statements

What It Was...

- ▶ All companies had to prepare their financial statements according to the Turkish Accounting Standards.

What It Has Become...

- ▶ With the amendment made in the Provisional 1st Article of TCC, the following companies are obliged to comply with TAS/IFRS and their interpretations:
 - a)** Companies whose capital markets instruments issued in accordance with Capital Markets Board trade at the exchange or any other organized markets, brokerage houses, portfolio management companies, and other companies subject to consolidation,
 - b)** Banks as defined in the 3rd Article of the Banking Law and their subsidiaries,
 - c)** Insurance and reinsurance companies as defined in the Insurance Law number 5684,
 - d)** Pension companies as defined in the Individual Pension Savings and Investment System Law number 4632,
 - e)** Companies, which prefer to implement TAS. **(Law No. 6102 Art. 1/f2)**
- ▶ Furthermore, as of **1.1.2013**, the Public Oversight, Accounting and Auditing Standards Authority shall have the authority to determine the companies, which will be obliged to comply with TAS/IFRS. **(Law No. 6102 Provisional Art. 6/fi)**

Companies which will be subject to Audit

What It Was...

- ▶ All corporations were subject to independent audit.
- ▶ Financial statements of corporations and conglomerates were to be audited by an independent auditor according to Turkish Auditing Standards, which complies with International Auditing Standards.
- ▶ Any financial statements and annual reports of the board of directors which had not been audited were deemed non issued and null.
- ▶ The independent auditor was required to be elected by the authorized body of the joint stock, limited, and commandite partnerships divided into shares at the latest by the date of **1.3.2013**.

What It Has Become...

- ▶ Now, the power to determine the companies to be subject to independent audit have been given to the Council of Ministers **(Law No. 6102 Art. 397/ f4)**
- ▶ Financial statements of corporations and conglomerates that will be subject to independent audit shall be audited by an independent auditor according to the Turkish Audit Standards issued by the Turkish Public Oversight, Accounting and Auditing Standards Authority, which is compliant with International Auditing Standards. **(Law No. 6102 Art. 397/ f1)**
- ▶ Those who are subject to audit are obliged to clearly disclose under the title of financial statements whether such financial statements have been audited or not and if audited include independent auditors report. This provision is also applied to the annual report of the board of directors. Any financial statements and annual reports of the board of directors, which have not been audited although subject to audit, shall be deemed non issued and null. **(Law No. 6102 Art. 397/ f2)**
- ▶ The independent auditor is required to be elected by the authorized body of the companies and enterprises to be determined by the Council of Ministers as being subject to audit at the latest by the date of **31.3.2013**. **(Law No. 6102 Provisional Art. 6/ f2)**

Auditors

What It Was...

- ▶ Large scale companies had to select an independent audit firm, whose partners held the titles of certified public accountant, or sworn-in tax advisor.

Midsized or small size companies were allowed to select as auditor one or more certified public accountants, or sworn-in tax advisors.

Again these companies, if they want to do so, were also allowed to select an independent audit firm, whose partners held the titles of certified public accountant, or sworn-in tax advisor.

- ▶ If an auditor assigned by an independent audit firm to audit a company had submitted audit reports for consecutive 7 years time for that company, then that auditor was obliged to be replaced for a minimum of 2 years time.

What It Has Become...

- ▶ An amendment has been made with respect to the determination of entities who may be an auditor to perform independent audit, which stipulates that such shall be from among persons who have received the titles of certified public accountant, or sworn-in tax advisor, both having been certified according to Law numbered 3568 and authorized by the Public Oversight, Accounting and Auditing Standards Authority in order to perform independent audit, or those corporations, whose partners consist of such persons. **(Law No. 6102 Art. 400/ f1/ c1)**
- ▶ Furthermore, with respect to auditor rotation; an amendment has been put into effect stipulating that an auditor (independent audit firm) selected for 7 years time within 10 years time as the auditor for the same company, can not be reelected as the auditor unless 3 years have passed. **(Law No. 6102 Art. 400/ f2/ c1)**

Qualities Sought in Managers

What It Was...

- ▶ The qualities sought for a minimum of one of the members of the board of directors of joint stock companies to be a citizen of the Republic of Turkey, and for his/her domicile to be in Turkey, for at least 1/4 to have completed their higher education, whereas in limited companies, at least one of the managers to have his/her domicile in Turkey.

What It Has Become...

- ▶ Conditions such as for a minimum of one of the members of the board of directors of joint stock companies to be a citizen of the Republic of Turkey, and for his/her domicile to be in Turkey, for at least 1/4 to have completed their higher education, whereas in limited companies, at least one of the managers to have his/her domicile in Turkey have been abolished. **(Law No. 6102 Art. 359)**

The Pulse of the new Turkish Commercial Code

(Including latest amendments in Law number 6335)

1 July 2012

- Effective date of the new TCC
- Effective date of the new TCC Implementation Law
- Effective date of the Amendment Law No. 6335

14 February 2013

- Entry into effect of provision imposing a limitation on the use of voting rights between affiliate - parent company as per governing Law Art. 19 TCC 201st article

31 December 2012

- Stocktaking
- Arrangement of opening balance sheets according to TMS *

2012

2011

2013

1 October 2012

- Gov. Law Art. 25: Last date for BoD members representing legal entity shareholders to resign and for the reelection of the legal entity or others in their place
- Gov Law Art. 9: Last date to remove compound interest provisions from contracts arranged pursuant to the old TCC Art. 8/(2)

1 January 2013

- Last date for TCC Secondary Legislation to enter into force
- Initiation of implementation of TMS/ TFRS in the preparation of separate and consolidated financial statements *

1 January 2014

- Entry into effect of provision regarding information, which is obliged to be made available in commercial letters and commercial books in the 2, 3, and 4th sentences of TCC Art. 39/(2)

2014

1 July 2014

- Gov. Law Art. 18: Last date to offset losses by parent company in case losses exist at affiliated companies within the scope of TCC 202nd Article

31 March 2013

- TCC Prov. Art. 6/(3): Last date to appoint auditors by companies subject to audit as determined by the Cabinet

2015

1 July 2013

- Gov. Law Art. 28/(7): Last date for limitations and special arrangements regarding the assignment of registered shares in the articles of association to become compliant with the Law
- TCC Art. 1534: Obligation to open an Internet site and to include information stipulated by the Law as per TCC Art. 1524 for companies subject to audit as determined by the Cabinet
- Gov. Law Art. 22: Last date to make the provisions of the Articles of association compliant with TCC
- Gov. Law Art. 26: Compliance with the Law of general assembly meeting and resolution quorums in the articles of association
- Gov. Law Art. 28/(1): Entry into force of Art. 434 voting right and Art. 435 emergence of voting right of TCC
- Gov. Law Art. 28/(5): Start of implementation of article regarding instances when privilege in votes may not be used as per TCC Art. 479/ clause (3)-c

14 February 2014

- Gov. Law Art. 20: Last date to increase the existing capital in joint stock companies and limited companies to the minimum capital stipulated in the Law
- Gov. Law Art. 28 / (3): Articles of association provisions contrary to Art. 479 / (1) paragraph regarding privileged voting rights becoming null and void in case not made compliant with TCC

Transaction Auditors

What It Was...

- ▶ There was a type of auditor in the law called the “transaction auditing”.
- ▶ The transaction auditor would audit the incorporation of the company, capital increase, decrease, mergers, spinoffs, change of kind, issue of securities, or any other company transaction or decision.

What It Has Become...

- ▶ Transaction auditors have been completely removed from the Law, as such the requirement to have an audit performed and report received from a transaction auditor with respect to the incorporation of the company, capital increase, and transactions such as mergers and spinoffs is not necessary anymore. **(Law No. 6102 Art. 400 and relevant articles)**

Independent Auditor's Opinion

What It Was...

► In instances when adverse audit opinion was reported by the auditor or disclaimer of opinion, it was arranged that the general assembly could not take either a direct or indirect decision especially with regards to the profit or loss announced based on such financial statements. Furthermore, the board of directors was required in such situations to request the general assembly to a meeting within 4 days as of the delivery of such an opinion report to the board of directors, and resign from its duties in a manner to become effective as of the date of the meeting. It was arranged for the new board of directors to have financial statements, which are in accordance with the law, articles of association, and standards, prepared and provide them to the general assembly together with the audit report.

What It Has Become...

► Now, only upon delivery by the auditor of a qualified audit opinion the board of directors is required request the general assembly to a meeting within 4 days as of the delivery of such an opinion report to the board of directors and the general assembly has to elect a new board of directors. Unless otherwise specified in the articles of association, ex-board members may be reelected. The new board of directors must have financial statements, which are in accordance with the law, articles of association, and standards, prepared and provide them to the general assembly together with the audit report within 6 months. **(Law No. 6102 Art. 403/ f5)**

Payment of Capital in Limited Companies

What It Was...

- ▶ It was required for the founders to unconditionally subscribe the entire capital and to fully and promptly pay the cash part.

What It Has Become...

- ▶ The feasibility granted to joint stock companies to pay 1/4th of the registered capital at the time of incorporation and the remaining part within 24 months has also been extended to limited companies. (**Law No. 6102 Art. 578/f1**)

Indebtedness to the Company

What It Was...

- ▶ It was prohibited for shareholders to become indebted with the exclusion of the following exceptions:
 - a) Debts arising from capital subscriptions
 - b) Debts subjected to same or similar conditions with its precedents, which have arisen from a transaction as a requirement of the field of the activity of the company and that of the operation of the shareholder
- ▶ Those who would become indebted contrary to this provision were penalized with a minimum of 300 days of punitive fines.
- ▶ It was prohibited for members of the Board of Directors, their relatives stipulated in article 393, proprietorships in which the members of BoD or their relatives were shareholders in, and trading companies in which members and the said relatives participated at minimum to twenty percent to be indebted. Likewise, the borrowing included both cash and in kind borrowing. Those who would become indebted contrary to this provision were to be penalized with a minimum of 300 days of punitive fines.

What It Has Become...

- ▶ It has been made possible for the shareholders to become indebted to the company, provided the following two conditions are met:
 - a) Shareholders having paid their due debts, which arise from capital subscription.
 - b) The total profit of the company together with free reserves must be at a level sufficient to compensate the previous year's losses (**Law No. 6102 Art. 358**)
- ▶ In cases of incurring debts contrary to this provision, the punitive fines are now to be applied to **lenders** rather than borrowers. (**Law No. 6102 Art. 562/f5**)
- ▶ It has been prohibited for non-shareholder members of the board, and their relatives up to third-degree to become indebted to the company by cash borrowings. (**Law No. 6102 Art. 395/f2**)
- ▶ It has also become possible for the shareholders and managers of limited companies to become indebted to the company, just as is the case in the joint stock companies. (**Law No. 6102 Art. 644/f1**)
- ▶ The provision as to indebted shareholders having to pay their debts in full and cash at the latest by **1.7.2015** has been **revoked**. (**Law No. 6335 Art. 47/f3**)

Internet Site Obligation

What It Was...

- ▶ Every trading company was required to establish an internet site.
- ▶ The contents to be published on the internet site was regulated in an extremely comprehensive manner by listing every item one by one (information regarding the interests of shareholders, payments made and benefits provided to managers, audit reports, etc.)
- ▶ A regulation was in place regarding directed messages to be stored in printed form, and the information to be contained at the Internet site to be put in text form and a notarized book (Internet book) to be kept by the company management.

What It Has Become...

- ▶ It has become obligatory for only those companies, which are subject to audit, as determined by the Council of Ministers, and not all trading companies to do so. **(Law No. 6102 Art. 1524/ f1/ c1)**
- ▶ The content to be published on the internet site has been simplified, and an amendment has been made with regards to only "publication of announcements mandatory to be done by Law" to be made. **(Law No. 6102 Art. 1524/ f1/ c1)**
- ▶ Provisions regarding directed messages to be stored in printed form, and the information to be contained at the Internet site to be put in text form and a notarized book (Internet book) to be kept by the company management have been abolished. **(Law No. 6102 Art. 1524/f1)**

Negligence and Burden of Proof

What It Was...

- ▶ Founders, members of the board of directors, executive officers, and liquidator would be faced with the burden of proving their innocence when alleged to have violated their liabilities arising from the law, and articles of association.

What It Has Become...

- ▶ Whereas now, the burden of proof rests with the persons alleging that founders, members of the board of directors, executive officers, and liquidator have violated their liabilities arising from the law, and articles of association. **(Law No. 6102 Art. 553/ f1)**

Crimes and Punishments

What It Was...

- ▶ The sanctions for many of the crimes defined in the TCC were either punitive fines or prison sentences. Furthermore serious criticisms were raised in the public opinion as to there being no proportion between the crimes and their punishments.

What It Has Become...

- ▶ Regulations regarding crimes and punishments have been reconsidered in line with the "principle of proportionality" and accordingly many of the crimes that required imprisonment from 3 month up to 2 years time have been converted to punitive fines. **(Law No. 6102 Art. 33, 38, 39, 40,41, 42, 43, 44, 45, 48, 53, 562, and 832)**

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