

Turkey Moves to Improve the Investment Environment

Authors: Gönenç Gürkaynak, Esq., Nazlı Nil Yukaruç and Büşra Üstüntaş, ELIG, Attorneys-at-Law

I. Introduction

The Law on the Amendment of Certain Laws for the Improvement of the Investment Environment No. 7099 ("**Law**") was published in the Official Gazette last month (March 10, 2018) and introduced significant amendments to various laws, including the Turkish Commercial Code No. 6102 ("**TCC**"), the Tax Procedural Law, the Law on Legal Fees and the Law on Movable Property Pledges in Commercial Actions.

This article addresses significant amendments and new rules stipulated by the Law for the Turkish Commercial Code.

The Law aims to enhance Turkey's investment environment by reducing the number of transactions required to set up a company, by supporting investors, and by lowering the expenses associated with the incorporation of joint stock and limited liability companies.

Save for certain exceptions as explicitly stated in the Law, the Law entered into effect on March 10, 2018.

II. Explanations on amendments regarding the Turkish Commercial Code

By amending Article 40/2 of the TCC, the Law requires every merchant to submit its trade name and signature to be used under such trade name to the relevant Trade Registry. If the merchant is a legal entity, the trade name and signature specimens of persons authorized to sign documents on behalf of the legal entity must also be submitted to the Trade Registry. Signature specimens may be given in the presence of an authorized officer of any Trade Registry by submitting a written statement. This amendment repealed the notarization requirement for trade names and signature specimens before an authorized Notary Public prior to submission to the relevant Trade Registry. On the other hand, prior to this amendment, individuals residing outside of Turkey were permitted to have their signature specimens signed, notarized and apostilled abroad. However, following this amendment, individuals residing outside of Turkey will be required to sign their signature specimens in the presence of an authorized officer of a Trade Registry in Turkey.

Pursuant to the changes made to Article 64 of the TCC, opening approvals of company books of joint stock companies and limited liability companies shall only be processed by the Trade Registries. With this amendment, Notary Public officials are no longer authorized to carry out

opening approvals of company books. Therefore, investors are released from the requirement to pay additional notary fees for opening approvals of company books during the establishment of joint stock and limited liability companies.

Prior to the changes put into effect by the Law, if a company recommended a person affiliated with the company to its shareholders to represent them during shareholders' meetings, Article 428 of the TCC obliged such a company to recommend another person for the same position, who should be completely independent and neutral, and to announce both of these persons to their shareholders. In practice, this obligation caused substantial problems and put significant additional burdens on small-scale joint stock companies. In light of this, Articles 428, 430 and 431 of the TCC have been repealed in order to reduce the obligations imposed on small-scale joint stock companies. The justification of the abolishment decision also stipulates that representative appointments set forth under Article 428 were introduced for joint stock companies listed on the stock exchange and for public companies whose shares are distributed to numerous shareholders; however, due to the text of Article 428, this rule also created additional burdens for small-scale joint stock companies. It is also put forth in the justification that, since Article 428 will not be applicable within the scope of the Capital Markets Law No. 6362, as per Article 30 thereof, small-scale joint stock companies should not face additional costs due to the representative appointment rules as foreseen under Article 428.

In light of the amendments to Articles 575, 585 and 587, Notaries Public are no longer authorized to approve the signatures of founders and the articles of association of limited liability companies. The articles of association must be signed by the founders in the presence of authorized officers from the directorates of the Trade Registry. This amendment has entered into effect as of March 15, 2018. Thanks to these amendments, investors are no longer required to pay additional notary fees for the approval of the signatures of the founders and the articles of association of limited liability companies during the establishment of such limited liability companies.

Article 585 of the TCC has been amended and the requirement concerning the payment of at least one-fourth of the subscribed capital prior to the establishment of a company has been abolished for limited liability companies. This amendment has also entered into effect as of March 15, 2018.

As per Article 68 of the Law on the Amendment of Certain Laws for the Improvement of the Investment Environment No. 6728, published in the Official Gazette on August 9, 2016, Article 543/2 titled "Distribution after Liquidation" has been amended and the prescribed period for the distribution of a company's remaining assets to its shareholders following the latest announcement to the company's creditors has been decreased from one year to six months.

III. Conclusion

These amendments to the Turkish Commercial Code aim to improve the investment environment in Turkey, boost the national economy, and reduce the costs of company incorporation and doing business in Turkey. The Law also introduces significant amendments regarding the liquidation and incorporation of companies and secondary legislation may be required in order to bring uniformity to the practice of Notaries Public and Trade Registries in Turkey.

Article contact: Gönenç Gürkaynak, Esq.

Email: gonenc.gurkaynak@elig.com

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