



Significant Amendments Made to the Turkish Commercial Code in the Second Quarter of 2024

Authors: Dr. Gönenç Gürkaynak, Selen Ermanlı Sakar, Ece Kayabaş

The Law Amending the Turkish Commercial Code and Other Laws numbered 7511 (“*Omnibus Bill No. 7511*”) was published in the Official Gazette on May 29, 2024 and it has introduced significant changes and novelties in terms of the Turkish Commercial Code No. 6102 (“*TCC*”) and Turkish corporate law practice. These changes and novelties pertain to (i) distribution of duties among members of the board of directors, (ii) calling board of directors to meetings, (iii) transition period as to minimum share capital requirement, and (iv) scope of non-transferable duties and authorities of board of directors, as examined in detail below:

(i) Distribution of Duties among Members of the Board of Directors

In accordance with the amended version of Article 366 of TCC, it has now possible to appoint chairman and vice-chairman of the board of directors throughout their term of duty (*i.e.* up to 3 (three) years).

Before the amendment introduced by the Omnibus Bill No. 7511, joint-stock companies had to elect chairman and vice-chairman on annual basis. Given that board of directors can be technically appointed for 3 (three) years unless otherwise stated in the articles of association or decided by general assembly, this requirement was not practical and in line with board of directors’ structure.

Accordingly, the amendment serves the need of joint-stock companies from corporate law perspective.

(ii) Calling Board of Directors to the Meeting

Before the Omnibus Bill No. 7511, Article 392/7 of the TCC was stipulating that each member of board of directors might request the chairman to invite the board to a meeting. The Omnibus Bill No. 7511 has introduced a well-designed mechanism for fulfilling this request in a detailed manner and has restricted chairman’s authority for the sake of board of directors and joint-stock company.

According to the newly introduced mechanism, if a board member requests the chairman to call board of directors for a meeting, the chairman may act in line with this request. However, if the majority of the board of directors conveys their meeting request to the chairman in written, then the chairman must do so within 30 (thirty) days. If the chairman fails to fulfil this duty due to any reason, the requesting board members may directly invite board of directors for a meeting. Pursuant to amended version of Article 392/7 of the TCC, it has also become possible to determine a different procedure in articles of association as to convention of the board of directors.

(iii) Transition Period as to Minimum Share Capital Requirement

In accordance with the Presidential Decree No. 7887 (“*Decree*”) published in the Official Gazette dated November 25, 2023 and further amended on November 26, 2023, the minimum share capital increased (i) from TRY 50,000 to TRY 250,000 for joint-stock companies and (ii) from TRY 10,000 to TRY 50,000 for limited liability companies to be applied as of January 1, 2024. Having said that the Decree, the TCC or another secondary legislation did not introduce any further provision, requirement or transition period for the companies to comply with this requirement. Therefore, increased share capital amounts had to be taken into consideration and implemented while incorporating a company or during other share capital increase transactions performed due to preference of the shareholders.

Provisional Article 15 included in the TCC with the Omnibus Bill No. 7511, provides significant provisions regarding the transition period and implementation of minimum share capital requirement. In this regard, pursuant to Provisional Article 15/1, joint-stock and limited liability companies having share capital below these thresholds (*i.e.*, TRY 250,000 for joint-stock companies and TRY 50,000 for limited liability companies) must increase their share capital to reach mandatory amounts by December 31, 2026. Companies fail to increase their share capitals this date will be deemed terminated.

Provisional Article 15/2 also explicitly states that general assembly meetings to be held to increase share capital will not be subject to any meeting quorum, the decisions might be taken with majority of the votes represented at the general assembly meeting, and no privileges will apply against these resolutions.

According to Provisional Article 15/3, the Ministry of Trade is authorized to extend the deadline (*i.e.* December 31, 2026) with one-year periods for two times at most.

Due to the changes in economic environment in Türkiye, the lawmaker has taken the first step in corporate law practice by increasing the minimum share capital of joint-stock and limited liability companies few months ago. This time the lawmaker has taken a step further and set a deadline for all companies with a severe consequence in case of the non-compliance.

(iv) Non-Transferable Duties and Authorities of Board of Directors

Non-transferable duties and powers of board of directors are set out under Article 375 of TCC. The Omnibus Bill No. 7511 has slightly modified the scope of these non-transferable duties and authorities. Accordingly, appointment and removal of branch managers are no longer amongst the non-transferable duties and authorities of board of directors. This means that board of directors may delegate this authority to one of the board members or third parties through issuance of an internal directive defining scope of the management authorities as per Article 367 of the TCC.

Article Contact: Dr. Gönenc Gürkaynak
(First published by Mondaq on June 10, 2024)

E-mail: gonenc.gurkaynak@elig.com