



## **Capital Maintenance After Incorporation: The Two-Year Rule under Article 356 of the TCC**

**Authors:** Dr. Gönenç Gürkaynak, Nazlı Nil Yukaruç and Nilüfer Türkmenli

### ***Introduction and Scope***

Article 356 of the Turkish Commercial Code (“TCC”) introduces specific restrictions on certain acquisition and lease transactions carried out by joint stock companies within the first two years following their incorporation. The primary purpose of this provision is to safeguard the company’s share capital, which constitutes a fundamental guarantee for creditors.

In particular, Article 356 aims to prevent founders and shareholders from circumventing the strict statutory rules governing share capital contributions in kind. In the absence of these restrictions, founders could formally transfer their own businesses or assets to the company shortly after incorporation of the company.

Article 356 applies to the acquisition or lease of a business or asset concluded within two years from the date of registration of the company with the trade registry, provided that the transaction value exceeds one-tenth of the company’s share capital. In determining the scope of assets subject to this restriction, reference should primarily be made to the provisions governing contributions in kind. Articles 127 and 342 of the TCC list, in a non-exhaustive manner, assets that may be contributed as capital in kind, including movable and immovable property, intellectual property rights, rights of use and benefit, commercial enterprises and generally all transferable assets capable of monetary valuation.

In this context, shares in another company also fall within the scope of Article 356, since they constitute transferable assets with an objectively determinable monetary value and may be contributed as capital in kind under the TCC.

For Article 356 to apply, the value of the acquired or leased business or asset must exceed one-tenth of the company’s capital. In the event of a capital increase or decrease, this ratio must be calculated based on the updated capital amount. Similarly, in joint stock companies that have adopted the registered capital system, the issued capital should be taken as the reference point when calculating this threshold.

The legislator has expressly sought to prevent circumvention of the rule through contractual structuring. Accordingly, the artificial division of a single transaction into multiple agreements, each falling below the one-tenth threshold, would not remove the transaction from the scope of Article 356 and it such agreements may be evaluated collectively as a single transaction.<sup>1</sup>

The decisive factor for the applicability of Article 356 is the date on which the acquisition or lease agreement is concluded. The provision applies where the agreement is executed within the two-year period following registration, irrespective of whether the general assembly approval, the payment of the purchase price or the performance of the contract takes place before or after the expiry of that period. Given the mandatory nature of the rule, the two-year period cannot be extended or reduced through an amendment to the articles of association. Although the period cannot be extended, in practice, if a similar

---

<sup>1</sup> Canbaz, Türk Ticaret Kanunu’nda Kuruluşta Sonra Devralma, at page 111.

outcome is sought to restrict similar transactions of a joint stock company, special meeting and decision quorums, such as unanimity, may be stipulated in articles of association for acquisition or lease transactions.

### ***Validity Requirements for Post-Incorporation Acquisitions***

Acquisition or lease transactions falling within the scope of Article 356 are subject to strict validity requirements. First, the transaction must be approved by the general assembly and registered with the trade registry. Although publication is also required under the provision, it does not constitute a condition of validity; the transaction becomes legally effective upon registration.

Pursuant to Article 356/3 of the TCC, the quorum and voting requirements set out in Articles 421/3 and 421/4 apply to the relevant general assembly resolution. Accordingly, approval requires the affirmative vote of shareholders or their representatives representing at least seventy-five per cent of the share capital. The same qualified quorum is required if the decision is postponed to subsequent meetings.

Where the counterparty to the transaction is a shareholder, that shareholder, together with their spouse, ascendants, descendants and entities under their control, is deprived of voting rights at the relevant general assembly pursuant to Article 436 of the TCC.

In addition, prior to the adoption of the general assembly resolution, the board of directors must apply to the competent commercial court of first instance for the appointment of an expert to determine the value of the business or asset to be acquired or leased. The preparation of an expert valuation report is a constitutive requirement; failure to obtain such a report renders the transaction invalid.

Where a transaction falling within the scope of Article 356 is carried out without complying with these requirements, shareholders, creditors and other parties with a legitimate interest are entitled to bring an action for invalidity against the company. Such actions are not subject to any statute of limitations.

### ***Exceptions to the Rule***

Article 356 does not apply to assets or businesses that fall within the company's business purpose as stated in its articles of association, nor to acquisitions or leases carried out through forced execution. Transactions that are directly related to the company's field of activity are deemed not to involve an attempt to circumvent the provisions on capital contributions in kind and are therefore excluded from the scope of the restriction.<sup>2</sup> Likewise, acquisitions made through forced execution are exempt on the assumption that statutory oversight ensures objectivity and prevents abuse.<sup>3</sup>

Article Contact: Dr. Gönenç Gürkaynak

E-mail: gonenc.gurkaynak@elig.com

*(First published by Mondaq on May 5, 2026)*

---

<sup>2</sup> Göncü Döner, Anonim Şirketlerde Kuruluştan Sonra Devralma İşlemlerinin Örtülü Sermaye İadeleri Bakımından Değerlendirilmesi, at page 340.

<sup>3</sup> Acar, at page 12.