



Merger Between a Commercial Enterprise and a Company

Authors: Dr. Gönenç Gürkaynak, Selen Ermanlı Sakar and Hakan Yalçın

ELIG Gürkaynak Attorneys-at-Law

Article 11 of the Turkish Commercial Code No. 6102 (“TCC”) defines a commercial enterprise as “an enterprise in which activities are carried out continuously and independently, aiming to generate income exceeding the limit set for tradesmen.” Under this definition, for an entity to be legally recognized as a commercial enterprise, the following cumulative conditions must be present:

- **Income Generation Beyond the Tradesman Threshold:** The enterprise must operate with the objective of generating income. In this regard, it is not required for the enterprise to continuously yield a profit in practice. Instead, the mere intent to generate income exceeding the threshold prescribed for a tradesman enterprise, which is determined by Presidential decree, is sufficient.
- **Continuity:** The underlying commercial activities must be intended to be carried out on a continuous basis. Even if the subject matter of the enterprise relates to seasonal or periodic operations, the continuity requirement is satisfied so long as the enterprise carries on its commercial activity systematically during the relevant periods.
- **Independence:** A commercial enterprise must conduct its transactions independently.

As per Article 40 of the TCC, a merchant is required to register their commercial enterprise and trade name within 15 days of its opening. While this registration is declaratory rather than constitutive regarding the absolute existence of the enterprise, it remains a statutory obligation. Because a commercial enterprise lacks a separate legal personality distinct from the merchant operating it, all rights and obligations arising from its transactions belong directly to the merchant. Likewise, the assets allocated to the commercial enterprise are considered an inseparable part of the merchant’s personal estate.

According to Article 124 of the TCC, commercial companies comprise collective companies, limited partnerships, joint-stock companies, limited liability companies, and cooperatives. For the purposes of this article, the term “company” specifically refers to capital companies, namely joint-stock and limited liability companies.

In line with the principle of freedom of cross-type restructurings adopted by the TCC, mergers between commercial enterprises and capital companies are allowed and explicitly regulated under Article 194/1 of the TCC and Article 132 of the Trade Registry Regulation. Pursuant to these provisions, a merger involving a commercial enterprise is subject to the fulfilment of the following specific conditions:

- **Existence of at least one commercial enterprise and one company:** The merger must take place between a commercial enterprise and a company.
- **The commercial enterprise must be the transferred party:** A commercial enterprise may only act as the transferred party in a merger transaction with a company. In this regard, it must be acquired by the company itself; a commercial enterprise cannot acquire a company.
- **Limitations relating to assets of the commercial enterprise:** The merger agreement to be executed between the parties cannot exclude assets that are permanently allocated to the commercial enterprise and are essential to its commercial integrity and continuity. Otherwise, the merger cannot be registered with the trade registry.

Moreover, Article 132 of the Trade Registry Regulation sets out specific documents requested by trade registry directorates for mergers between a commercial enterprise and a company, as listed below:

- A complete and itemized inventory list of the assets allocated by the owner to the commercial enterprise.
- Information on the specific public registries in which the listed assets are recorded, together with full details of such registrations (e.g., land registries, motor vehicle registries, or intellectual property offices).
- A valuation report prepared by a certified accountant showing the fair value of all listed assets, the total enterprise value (including goodwill), and, if the overall enterprise value has not been taken into account, a detailed explanation of the reasons therefor.

It is also significant to note that general merger provisions—such as the protection of shareholders’ rights, share capital increase requirements, interim balance sheets, the execution and content of the merger agreement, the preparation of merger reports, approval procedures, and the registration and legal consequences of the merger—must also be taken into consideration. Accordingly, mergers between a commercial enterprise and a company are not governed solely by the special rules applicable to commercial enterprises but are also subject to the general principles governing merger transactions under the TCC.

In accordance with Article 152/3 of the TCC, following the registration of the merger transaction with the trade registry, the commercial enterprise is removed from the registry, and the owners lose their individual merchant status, provided they do not operate any other separate commercial enterprise.

In conclusion, although the TCC has introduced an express statutory framework regarding mergers between commercial enterprises and capital companies, this mechanism remains subject to general provisions as well as a careful assessment in practice. This is due both to its fundamental legal distinction from a standard transfer of a commercial enterprise—as it operates on the principle of universal succession—and to the strict procedural, valuation, and documentary requirements imposed under the relevant secondary legislation.

Article Contact: Dr. Gönenç Gürkaynak
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E-mail: gonenc.gurkaynak@elig.com