



Turkey: How to Change Company Type

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I. Introduction

Companies, for various reasons such as tax benefits, liabilities and as may be required by authorities, may decide to change their legal types. Turkish corporate law allows companies to change their types in accordance with Article 181 of the Turkish Commercial Code No. 6102 (the “TCC”) which sets forth which company types are allowed to convert into another.

As per the relevant provisions, companies change their legal type without transferring or making any changes in assets while keeping the economic unity and continuity of shareholders shares and rights. In the same vein, the new entity shall take up the old entity’s place. So, merely “the shell” of the company will be changed.

The companies and which types they can convert into are *numerus clausus* as per Article 181 of the TCC, and the said article prohibits conversion of a stock corporation to a sole proprietorship and a cooperative to sole proprietorship.

II. The Procedure

As per Article 184/1 of the TCC, the provisions pertaining to incorporation of the type under the TCC will be applicable during the conversion, save for minimum number of shareholders, share capital subscription in kind and signing of the articles of association of the shareholders in stock companies. In other words, although the provisions are similar, the “change of type” does not construe “incorporation”, however the legal requirements for each type will be upheld in each change.

Furthermore, if more than 6 (six) months had elapsed between the balance sheet date and the date of the change of company type or material changes has incurred, an interim balance sheet must be prepared. The change can only be based on valid and up to date balance sheet. Preparation of physical inventory is not required during this process.

The steps during a type change are briefly as follows:

1. **Articles of association:** The articles of association of the company must be amended to ensure that it is in accordance with the legal requirements of the new type.
2. **Type change plan:** As per Article 185 of the TCC, the managing body of the company changing its type must prepare a plan on the change. This plan must be in writing and it must be approved by the general assembly. The plan must include the following:
 - (i) the commercial name of the entity prior to changing type and the name after,
 - (ii) the articles of association of the new type,
 - (iii) the shareholders' number of shares, type of shares and shares' amounts or details on shareholders' shares after the change.
3. **Type change report:** As per Article 186 of the TCC, the managing body of the company changing its type must prepare a type change report in writing. This report must explain the following from legal and economic perspectives and their rationales must be provided:
 - (i) purposes and consequences of type change,
 - (ii) that the incorporation requirements of the new company have been fulfilled,
 - (iii) the new articles of association,
 - (iv) the percentages regarding the shareholders' shares they held prior to change and the shares they will hold subsequently,
 - (v) personal performance obligations and personal liabilities concerning shareholders due to type change, if any,
 - (vi) the obligations of shareholders which will arise as a result of the change of type.

The report on changing company's type can be excluded from the process of small and medium-sized enterprises provided that all of the shareholders approve to exclude.

4. **Shareholders' right to inspect:** As per Article 188, pursuant to shareholders' right to inspect, the company converting must submit the (i) type change plan, (ii) type change report and (iii) past 3 (three) years' financial statements, and interim balance sheet if any, for the shareholders' inspection, 30 (thirty) days prior to the general assembly decision regarding company type change at the headquarters and for publicly held joint stock companies, at the place where the Capital Markets Board sees fit. In addition, the company must inform the shareholders that the shareholders have the right to inspect. Moreover, copies of the said documents will be provided to the shareholders upon their requests.
5. **Decision of the shareholders:** The change plan as prepared by the managing body of the company must be approved by the general assembly of the shareholders as per the

relevant applicable quorums provided under the TCC or articles of association of the company (whichever provides a higher quorum).

- 6. Registration and announcement:** Pursuant to Article 189/2 of the TCC, the managing body of the company must register the change of type and the new articles of association with the relevant trade registry. The type change of the company will become valid upon registration. The decision on type change of the company will be announced in the Turkish Trade Registry Gazette.

III. Protection of Shareholders

As per Article 183 of the TCC, the shares of the shareholders and their rights shall be preserved during the type change. For the non-voting shares, shareholders will be given shares in equal value or shares with voting rights in return. For the privileged shares, shares in equal value shall be given or an appropriate compensation shall be paid.

As per Article 190 of the TCC, shareholders who are liable for company's debts shall remain liable for debts after the change. However, the debts must have arisen prior to announcement of the type change or the sources of the debts must have occurred prior to that date. The claims regarding shareholders' personal liabilities can be pursued within 3 (three) years from the date of announcement of the change of the company.

Liabilities regarding public bonds and other promissory notes shall continue until the date of redemption, unless the prospectus does not stipulate otherwise.

Rights of the employees arising from their contracts of service shall also be preserved.

IV. Conclusion

Changing the type of a company does not alter the company's status as a legal entity or its legal relations, therefore, the company will continue existing under a new type and all of the rights and liabilities of the previous company will automatically pass to the new company. In addition, it is ensured that changing company type cannot be used as a means to escape liabilities, and the rights of shareholders will not be adversely affected.

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