A NEW WAY OF DOING BUSINESS IN TURKEY

THE NEW TURKISH COMMERCIAL CODE
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BEYOND THE NUMBERS
FOREWORD

The New Turkish Commercial Code (the new TCC) came into force as of 1 July 2012. The Turkish business world is entering into a new era with the new TCC of which the main column is corporate governance. The new TCC introduces many radical changes within the context of corporate governance such as democracy among shareholders, responsibilities of board of directors, group of companies, the use of information technology, internal controls, internal audit, risk management, international standards in accounting, auditing and financial reporting.

The investment opportunities in Turkey are vast and very exciting. Turkey has already been ranked as the 17th largest economy and one of the fastest growing countries in the world for many years. However, various requirements under the old Turkish Commercial Code were burdensome to foreign investors. Taking into account the aforementioned deep-rooted changes that will integrate the principles of transparency, accountability, fairness and responsibility to Turkish business, we believe that the new TCC will create a sustainable development and a more foreign investor friendly environment and will facilitate the increase of the capital flow to Turkey.

The objective of this booklet is to provide foreign companies that have invested or plan to invest in Turkey and their advisors with a basic understanding of the main areas of the new Turkish Commercial Code and to facilitate the communication with their Turkish accountants and lawyers. Obviously, this booklet does not cover all aspects of the new Turkish Commercial Code and it contains simplifications and generalizations.

In addition, the reader should be aware that the law has just become effective and the secondary legislation has not yet been fully issued at the time of this publication. The reader should take specific advice from a qualified professional in each particular case. Needless to say, the partners of CEREBRA would be delighted to provide such specialized services in areas of corporate governance, accounting and financial reporting, internal controls, internal audit, independent audit and corporate finance and they look forward to working with you.

On a final note I would like to thank Dr. Nesrin Akın Sunay for her contribution to this booklet.

On behalf of CEREBRA, I wish you a prosperous future in Turkey.

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Partner
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JOINT STOCK COMPANY (JSC) .......................................................................................................................... 13

Incorporation and basic principles .......................................................................................................................... 13
Minimum capital amount .......................................................................................................................................... 13
Incorporation ................................................................................................................................................................ 13
Founders .................................................................................................................................................................... 14
Liability of shareholders .............................................................................................................................................. 14
Minimum number of founders .................................................................................................................................. 14
Articles of association .................................................................................................................................................. 15
Capital in kind ............................................................................................................................................................ 15
Payment of share prices ............................................................................................................................................. 16
Share premium ........................................................................................................................................................... 16
Founders declaration .................................................................................................................................................. 16
Registration and announcement of the company ....................................................................................................... 16
Acquiring legal personality ......................................................................................................................................... 17
Prohibition of shareholders becoming indebted to the company .......................................................................... 17

Board of directors .................................................................................................................................................... 17
General ....................................................................................................................................................................... 17
Management and representation ............................................................................................................................... 19
Authority to represent ................................................................................................................................................ 20
Responsibilities of board of directors ...................................................................................................................... 21
Board meetings .......................................................................................................................................................... 24
Remuneration of board members .............................................................................................................................. 25
Prohibition to conduct transaction and to become indebted .................................................................................... 25
Non-compete obligation .......................................................................................................................................... 25

Audit .......................................................................................................................................................................... 26
General ....................................................................................................................................................................... 26
Subject and scope ......................................................................................................................................................... 26
Auditor ....................................................................................................................................................................... 26
Liability to presentation and right to information ...................................................................................................... 28
Audit report ................................................................................................................................................................ 29
Opinion letters ........................................................................................................................................................... 29
Auditors responsibility regarding confidentiality ..................................................................................................... 29
Disagreements between company and auditor ......................................................................................................... 30
Appointment of a special auditor regarding group of companies ........................................................................... 31

General assembly .................................................................................................................................................... 31
General ....................................................................................................................................................................... 31
Duties and authorizations .......................................................................................................................................... 31
Meetings ........................................................................................................................................ 32
Calling general assembly meetings .......................................................................................... 33
Holding general assembly meeting ....................................................................................... 34
Shareholder’s personal rights ................................................................................................. 36
Cancellation of general assembly resolutions ...................................................................... 41
Nullity of resolutions ............................................................................................................. 42
Financial statements and reserves ....................................................................................... 42
Financial statements and annual reports of board of directors ......................................... 42
Financial statements and annual report of group of companies ...................................... 43
Reserves .............................................................................................................................. 44
Legal responsibilities and criminal liabilities ...................................................................... 45

LIMITED LIABILITY COMPANY (LLC) ........................................................................... 49
Definition and incorporation ................................................................................................. 49
General provision .................................................................................................................. 49
Number of partners .............................................................................................................. 49
Articles of association .......................................................................................................... 50
Capital .................................................................................................................................... 51
Capital shares ........................................................................................................................ 51
Redeemed shares .................................................................................................................. 51
Incorporation .......................................................................................................................... 52
Amendment to the articles of association ......................................................................... 54
General .................................................................................................................................. 54
Special amendments ............................................................................................................ 54
Rights and duties of partners ............................................................................................... 54
Capital share as a subject of transactions ............................................................................ 54
Prohibition to refund .......................................................................................................... 56
Responsibility of partnership ............................................................................................... 56
Liability of shareholders ....................................................................................................... 56
Additional payment and secondary performance liabilities ............................................. 56
Dividend and other relevant provisions ............................................................................... 56
Acquisition of its own capital shares .................................................................................... 57
Loyalty duty and non-compete obligation ......................................................................... 57
Right to information and inspect ........................................................................................ 57
Partnership bodies ............................................................................................................... 58
General assembly ................................................................................................................ 58
Management and representation ........................................................................................ 61
Capital loss and excess of liabilities over assets ................................................................. 63
Dissolution and withdrawal ................................................................................................. 63
Reasons and consequences of dissolution ............................................................................ 63
Protection of creditors and employees ................................................................. 88

Common provisions .............................................................................................. 89
  Inspection of company shares and rights ............................................................ 89
  Cancellation of merger, division and conversion ............................................... 89
  Responsibility .......................................................................................................... 89

Merger and conversion of commercial enterprise ............................................. 89

COMMON PROVISIONS ....................................................................................... 91
  Commercial books and bookkeeping obligation ............................................... 91
  Financial statements and annual report preparation obligation ...................... 92
  Turkish Accounting Standards ........................................................................... 93
  The Public Oversight, Accounting and Auditing Standards Board ................... 93
  Information included in documents prepared by merchants ......................... 94
  Website ..................................................................................................................... 94
  Profit share advance .............................................................................................. 95
  Electronic general assembly and board meeting ................................................ 95
A joint stock company is a company whose capital is fixed and divided into shares. Joint stock companies may be incorporated for all kinds of economic purposes and scopes but may not be formed for an unlawful purpose.

INCORPORATION AND BASIC PRINCIPLES

Minimum capital amount
The capital as subscribed in the articles of association may not be less than fifty thousand Turkish Liras. In companies where an authorized capital system is adopted, the minimum level is one hundred thousand Turkish Liras. This minimum capital amount may be increased by the Council of Ministers.

Incorporation
A joint stock company can be incorporated based on the founders declaration. This declaration states founders decisions to incorporate a joint stock company in the articles of association which are prepared in accordance with law and in which the founders are unconditionally committed to pay the entire capital and their signatures are notarized.
The articles of association, the declaration of founders, the valuation reports and the contracts made with the founders and other people are the incorporation documents. These documents must be placed in the registration file and a copy of each be kept by the company for a period of five years.

Founders
Founders are real persons and legal entities who have subscribed a share and signed the articles of association. If the founders conduct the aforementioned transaction on behalf of a third party, this person may be considered as a founder in terms of liability arising from incorporation. The third party may not state that he or she was not aware of the matter that is known or is required to be known by the person who acts on behalf of the third party.

Liability of shareholders
Shareholders are solely responsible to the company and their responsibilities are limited by the shares they have subscribed except for the public receivables such as tax or social security premium receivables. In accordance with the “Law on the Procedure for the Collection of Public Receivables”, the shareholders of joint stock companies are directly responsible for public receivables which may not be collected from the company in proportion to their capital share and be subject to legal proceeding as per the provisions of this law.

Minimum number of founders
The new TCC states that “one” or “more” shareholder founders are required for incorporation of a joint stock company. This single shareholder joint stock company is a significant change introduced by the new TCC that satisfies a major need in the establishment of a joint stock company.
In cases where the number of shareholders decreases to one, the board of directors must be notified of this matter in writing within seven days from the date on which the relevant transaction causing this matter. Within seven days from the date of receipt of this notification, the board of directors must register and announce that the joint stock company is a single-shareholder joint stock company.
Furthermore, in the case where the joint stock company is incorporated by a single shareholder or the shares are held by a single person, name, domicile and nationality of the single shareholder must be registered and announced. In case of failure with the registration and announcement requirement, the shareholder who fails to make the announcement and the board of directors that fails to make the registration and the announcement may be held responsible for any damages.
**Articles of association**

A joint stock company is established by a contract among the shareholders. The contract must be in a written form and signatures must be authenticated by a public notary. The contract used for the incorporation of a joint stock company is called “Articles of Association”. The articles of association must state the followings:

- Trade name and location of the headquarters,
- Scope of activity,
- Capital, the nominal value of shares, the conditions of payment,
- Whether share certificates are registered or bearer, privileges given for certain shares and transfer restrictions,
- Non-monetary assets and rights that are contributed as capital, their values, amount of shares to be provided for such contributions, in the case of an acquisition of a business and acquisition in kind the value thereof, the price of goods and rights purchased by the founders in the account of the company for the incorporation of the company, and amount of the fee, the allowance or the bonus that needs to be paid to those who provided services during the incorporation of the company,
- Benefits to be provided from the company’s profit to the founders, members of the board of directors, and other persons,
- Number of members of the board of directors, those members who have signing authority in the name of the company,
- Rules related to general assembly meetings,
- Duration of the company if the company is formed for a limited period,
- The form of announcements of the company,
- Types and amounts of the capital that each shareholder has subscribed for,
- Accounting period.

The members of the first board of directors must be assigned with the articles of association.

The articles of association cannot depart from the provisions of the new TCC unless the related departure is explicitly allowed in the new TCC.

The articles of association in accordance with the new TCC must be amended within twelve months subsequent to the effective date of the new TCC (which corresponds to 1 July 2013).

**Capital in kind**

Assets including intellectual property rights and virtual environments with no restricted right, distress and measure may be contributed as capital in kind. Such assets should be appraisable and transferable. Personal efforts, commercial reputation, undue receivables...
and service performances cannot be contributed as capital. Companies and non-monetary assets to be acquired during incorporation as capital in kind must be appraised by experts assigned by the commercial court of the first instance at the location of the company’s headquarters.

Payment of share prices
Shareholders must pay at least twenty-five percent of the nominal value of the shares subscribed in cash before registration and the remaining amount must be paid within twenty-four months after registration. The provisions in the Capital Market Law relevant to the payment of share prices are reserved. Cash payments must be made into a special account to be opened in the name of the incorporated company at a bank which is subject to the Banking Law.

Share premium
A share cannot be issued at a price less than its nominal value. For the issuance of shares at a price above the nominal value, there must be a provision in the articles of association or in the general assembly resolution with respect to this matter.

Founders declaration
Founders should sign a declaration regarding the incorporation of the joint stock company. The declaration must be prepared accurately and completely in accordance with a true and fair view. The declaration may include information such as a capital in kind, securities acquired and the benefits of founders.

Registration and announcement of the company
The articles of association of a joint stock company must be registered with the trade registry at the location of the company’s headquarters and announced in the Turkish Trade Registry Gazette within thirty days subsequent to the incorporation of the company. The following points are registered and announced:

- Date of articles of association,
- Company’s name and headquarters,
- Duration of the company, if any,
- Company’s capital, the method and terms of its payment and the nominal values of shares, privileges, if any,
- Types of shares, whether they are bearer or registered shares,
- Representation of the company; extent and restrictions,
- Members of the board of directors, names and surnames, titles, domiciles and nationalities of those who are authorized to represent the company,
- Form of announcements to be made by the company; the way the decisions of the board of directors must be notified to shareholders in cases where there is a provi-
sion relevant to this in the articles of association.

• Branches must be registered with the trade registry at their location by reference to the trade registry record of the headquarters.

Acquiring legal personality
A joint stock company acquires legal personality upon registration at the trade registry. Those who conduct transactions and enter into commitments in the name of the company before registration may be personally responsible for these transactions and commitments unless it is proven that transactions and commitments have been carried out in the name of the company.

Prohibition of shareholders becoming indebted to the company
This article was introduced as part of the principle of capital protection. In accordance with the new TCC, shareholders must not borrow from the company unless shareholders pay their debts arising from their capital subscription and the company’s profit including free capital reserves does not cover prior year losses.

BOARD OF DIRECTORS
A joint stock company is managed and represented by the board of directors. The board of directors and the management (to the extent delegated) are authorized to make decision with regard to all kinds of business and transactions required to perform the company’s scope of activity, excluding those which are subject to the authority of the general assembly according to law and articles of association.

General
a) Composition of board
   (i) Number and qualifications of members
A joint stock company may have a board of directors which consists of one or more persons assigned by the articles of association or elected by the general assembly. As a result, having a single member board in a joint stock company is possible with the new TCC.
There is no obligation in the new TCC for the members of board of directors to reside in Turkey and to be a Turkish citizen.

(ii) The legal entity as a board member
In the case where a legal entity is elected as a member of the board of directors, only one real person who is determined by the legal entity in the name of such legal entity must be registered and announced along with the legal entity. In addition, the informa-
tion regarding the registration and announcement must be posted immediately on the company's website. The registered person may only participate in and vote on behalf of the legal entity at the meetings.

(iii) **Representation of certain groups on the board of directors**
In cases where it is stated in the articles of association, certain share groups, shareholders composing a certain group according to their qualities and properties, and minorities may be granted the right to be represented on the board of directors. The shares entitled to be represented on the board of directors in this way are considered as privileged shares.

(iv) **Insurance (Directors and Officers Liability Insurance - D&O)**
There is no requirement in the new TCC with respect to the D&O. In the new TCC there is only a reference to D&O in cases where the joint stock company is a publicly held company. Accordingly, if the joint stock company is a publicly held company and if the damage is incurred as a result of the failings of board members, is insured with a price exceeding twenty five percent of the share capital of the joint stock company, this matter must be announced in the bulletin of the Capital Market Board and the bulletin of the stock exchange. Such matters may be considered in the assessment regarding the compliance with the corporate governance principles.

(v) **Term of office**
Board members are elected to hold office for a maximum of three years. Unless other-
wise specified in the articles of association, the same person may be re-elected.

b) Vacancy on the board
If for any reason a vacancy on the board occurs, the board of directors elects a person who should meet the legal requirements as a board member. This election is on a temporary basis. The board submits the elected board member for approval at the first general assembly. The member who is elected in this way performs their duty until the general assembly meeting and in cases where the membership is approved, the elected board member completes the office term of the predecessor.
The board membership automatically terminates in the case where the board member goes bankrupt or loses the legal conditions or the qualifications required to be a member as stipulated in the articles of association.

c) Dismissal from office
The board members who have been assigned through the articles of association may, at all times, be dismissed from office by the resolution of the general assembly. The legal entity who is a board member may, at any time, replace the person registered in his/her name.

Management and representation
a) General

(i) Division of duties
The board of directors must elect a chairman and at least one vice chairman who may replace the chairman in case of his/her absence every year. It is possible that the articles of association may include a provision whereby the election of the chairman and the vice chairman or one of them can be made by the general assembly.

(ii) Committees and commissions
The board of directors may establish committees and commissions in order to (a) monitor the course of business (b) to have reports prepared regarding matters that are presented to the board (c) enforce its decision and (d) to execute internal audit activities in the company.

(iii) Delegation of management
The board of directors may be authorized to delegate management partially or fully to one or more board members or to a third party. This delegation must be made through an internal regulation and included in the articles of association.
This regulation organizes the management of the company. It defines the duties required for management, indicates their positions, and particularly specifies who is subordinated to whom and who is obliged to provide information.
Based on the request the board of directors must inform the shareholders and certain
creditors of this regulation in writing. If the management is not delegated, the company is managed by all board members.

(iv) Duty of care and duty of loyalty
In accordance with the new TCC the board members and third parties in charge of management are liable for performing their duties with due care of a prudent manager and to protect the company’s interests in good faith. The prudent manager is a new concept in the new TCC. In accordance with this concept, the board members and third parties in charge of management must exercise reasonable care, skill and diligence in performing their duties. This means the care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected in carrying out the functions in relation to the company.

Authority to represent
a) General
The authority to represent the joint stock company is exercised by the board of directors by affixing two signatures unless otherwise stipulated in the articles of association or the board of directors does not consist of one member. Representation authority may be delegated to one or more executive directors or to third parties as manager. At least one board member must have the authority to represent.

b) Scope and limitations
Persons who are authorized to represent the company may conduct all kinds of business and legal transactions on behalf of the company and may use the trade name of the company for this purpose. The company’s right to recourse is reserved related to the transactions which do not comply with law and articles of association. The third parties in good faith may have a claim arising out of the transaction against the company, although this transaction conducted by those who are authorized to represent does not comply with the articles of association or the general assembly resolution. The limitations regarding the representation authority are not effectual against third parties in good faith.

c) Form of signature
Persons who are authorized to sign on behalf of the company must sign under the trade name of the company. The head office of the company, the location where it is registered and the registration number must be indicated in the documents prepared by the company.
d) Registration and announcement

The resolution regarding the persons authorized to represent the company should be notarized and a copy of this resolution must be submitted to the trade registry by the board of directors for registration and announcement.

Responsibilities of board of directors

a) General

The board of directors and management (to the extent delegated) are authorized to make decisions regarding the business and transactions of the Company apart from those which are subject to the authority of the general assembly in accordance with the articles of association and the new TCC.

b) Non-delegable and indispensable duties of the board of directors

The board of directors’ non-delegable and indispensable duties and powers cannot be delegated to a third party or even to the general assembly. These duties and powers are as follows:

- Top level management of the company and giving instructions in this regard,
- Determination of the management organization,
- Establishment of the necessary system for accounting and internal audit as well as financial planning (the financial planning mechanism is established to the extent required for the management of the company),
- Appointment and dismissal of managers and persons performing the same function and authorized signatories,
- Oversight of management if they comply with law, articles of association, internal regulations and written instructions of the board of directors,
- Keeping share book, resolution book of the board and book of general assembly meeting and discussion, the preparation of the annual report and corporate governance disclosure and submission of them to the general assembly, the organization of general assembly meetings and execution of general assembly resolutions,
- Notifying the court regarding the insolvency of the company.

Non-delegable and indispensable duties of the board of directors are defined first time in Turkish law

c) Going concern uncertainties and bankruptcy

(i) Liability to call general assembly and notify

- If the last annual balance sheet indicates that half of the sum of the paid-in capital and reserves is lost as a result of accumulated losses, the board of directors must immediately summon the general assembly and submit the remedial measures.
- If the last annual balance sheet indicates that two thirds of the sum of paid-in capital and reserves is lost as a result of accumulated losses, the board of directors...
must immediately summon the general assembly. If the general assembly does not decide to fully supplement the capital or to be satisfied with one third of the capital, the company may automatically terminate.

- In the case where there are going concern uncertainties as the company’s liabilities exceed its assets, the board of directors prepares (a) an interim balance sheet based on going concern principles and (b) an interim balance sheet based on the liquidation method. If the related assets are not sufficient to cover the receivables of creditors of the company, the board of directors must notify the commercial court of the first instance at the location of the company’s headquarters of this situation and must claim for bankruptcy of the company provided that before the bankruptcy decision, the creditors whose receivables total to the amount adequate to cover the company’s deficit and to eliminate the state of excess of liabilities over assets, must accept in writing to be ranked after all other creditors and that the legitimacy, authenticity and validity of this declaration is verified by experts assigned by the court. Otherwise, the application made to the court for an expert inspection must be considered as notification for bankruptcy. When management comes back with an explanation of the impact of the uncertainty and what the impact would be on the financial statements and the disclosures, then the accountant evaluates the reasonableness of that information.

(ii) Postponement of bankruptcy
The board of directors or any creditor may request the postponement of bankruptcy by presenting a plan to the court that may indicate the objective and actual sources and measures including the new capital contribution in cash.

d) Risk management
In accordance with the new TCC the board of directors of listed companies is obliged to establish a committee to detect and manage risks that may cause a going concern problem for the company. The board of directors is also obliged to run and develop the risk detection and management system.

In other companies, this committee (if deemed necessary and the board of directors are notified in writing by the independent auditor) must immediately be established and the committee must submit its first report at the end of the month following its constitution. The committee submits its report to the board of directors bimonthly. In the report the committee evaluates the situation and shows the dangers and the related remedies. The report should also be sent to the independent auditor.

e) Company’s acquisition of its own shares
The company may acquire its own shares or accept as a pledge up to a maximum of 10%
of the company capital. For this acquisition, the general assembly must give an authorization to the Board with respect to this matter. This authorization is exercised within a maximum of 5 years by the Board. The authorization indicates the lower and upper limits which may be paid for shares to be acquired and the total nominal values of the shares to be acquired or accepted as a pledge.

Furthermore, after the prices of the shares to be acquired are deducted, the company’s remaining net assets must be at least equal to the sum of basic or issued capital and the reserves which are not allowed to be distributed in accordance with the articles of association and the law.

The aforementioned provisions may also be applied in the acquisition of the parent company’s shares by its subsidiary. The Capital Market Board can make regulations on the grounds of transparency and the price pertaining to the companies whose shares are listed in the stock exchange.

The new TCC also regulates the following matters regarding the joint stock company’s acquisition of its own shares and acceptance as a pledge:

- Prevention of an imminent and serious loss,
- Gratuitous acquisition,
- Disposal of acquired shares,
- Disposal in case of an acquisition contrary to the law,
- Shares that cannot be disposed of to be redeemed through capital decrease,
- Prohibition of subscription of its own shares,
- Exercise of rights in the general assembly meeting quorum.
Board meetings

a) Resolution
The board of directors must meet with the majority of all members and make its decisions with the majority of the members present at the meeting unless otherwise stated in the articles of association. This is also applicable in cases where the board of directors meeting takes place in an electronic environment.
The members of the board cannot vote as representative of each other and are not allowed to participate in the meeting by proxy.
If the voting results in a tie-up, that issue must be left to the next meeting. If the voting results in a tie-up in the second meeting, the issue is deemed to be rejected.

b) Null and void resolutions
The court may be requested to determine if the board resolution is null and void. Certain resolutions are defined by the new TCC as null and void (for example; resolutions contradicting with the principle of equal treatment, or resolutions not complying with the basic structure of the joint stock company or do not protect the capital).

c) Right to information and inspect
Each board member may request information, ask questions and perform an inspection with respect to all transactions of the company. Any request of a board member regarding legal books, records, contracts, correspondences, or documents for inspection and discussion in the board meeting cannot be rejected. If rejected, the matter will be brought to the board within two days. If the board does not meet or rejects this claim, the member may apply to the commercial court of the first instance at the location of the company’s headquarters. The court may review the claim and make its judgment.
In addition to board members, management and committees may also be liable to provide information at board meetings. Any request by the board member in this respect cannot be rejected.
Each board member may request information outside of the board with the permission of the chairman. The chairman cannot obtain information and inspect company books and files outside of the board meetings without permission from the board. If rejected, the chairman may apply to the court.
The board member’s rights to access information and inspect cannot be restricted or abolished. The board of directors and the articles of association may extend the related rights.
Each member of the board may ask the chairman in writing to convene the board meeting.

d) Prohibition to participate in discussions in cases of conflict of interests
A board member cannot participate in discussions with respect to himself/herself and
related parties as defined by the law (a person of his/her lineal consanguinity or his/her spouse or one of his/her blood and in-law relatives up to third degree, including the third degree) on matters which may lead to a conflict between the company’s interest and personal interests. If integrity requires non-participation of the board member in discussions, then the prohibition may be applied. In cases where there is doubt, the board should vote to make the final decision. The member concerned cannot participate in this voting.
In cases where the conflict of interest is not known by the board, the concerned member is obliged to declare it and abide by the prohibition.

**Remuneration of board members**
Members of the board may be paid honorarium, salary, bonus, premium and a portion of the annual profit. The amount of these benefits must be determined by the articles of association or the general assembly resolution.

**Prohibition to conduct transaction and to become indebted**
Without obtaining permission from the general assembly the board member cannot conduct any transaction with the company directly or indirectly. If such permission is not obtained, the company may claim that the concerned transaction is invalid. The counter party may not make such a claim.
Board members who are not shareholders and their relatives who are not shareholders, and a person of his/her lineal consanguinity or his/her spouse or one of his/her blood and in-law relatives up to third degree, including the third degree cannot borrow cash from the company. The company cannot (a) take over their debts, (b) issue guarantee, warranty and collateral for these persons and (c) assume their liability. In cases to the contrary, creditors of the company may directly pursue these persons for the company debts to the amounts for which the company is liable for.

**Non-compete obligation**
Board members cannot conduct any transaction of a commercial nature that relates to the scope of the company’s activity in his or her name or in the name of any other persons without obtaining permission from the general assembly. Furthermore, board members cannot be involved in a company that has the same type of business as a partner with unlimited liability. On the contrary, the company can claim compensation from the board member. Alternatively, instead of the compensation, the company may consider the concerned transaction as it was made in the name of the company and claim any benefits arising from that transaction.
AUDIT

General
In accordance with the new TCC it has been ruled that the Council of Ministers will determine the companies that will be subject to independent audit. The financial statements of the joint stock companies and the group of companies (that are determined by the Council of Minister for the independent audit) must be audited in accordance with Turkish Auditing Standards issued by the Public Oversight, Accounting and Auditing Standards Board. These standards are in line with international auditing standards. The scope of the audit includes the fact that whether the financial information as included in the board of directors’ annual report is consistent with the audited financial statements and has a true and fair view. The financial statements and the board of directors’ annual report that must be audited in accordance with the new TCC are treated as ‘not prepared’ if they have not been audited.

Subject and scope
The audit of the company’s and group of companies’ financial statements and the annual reports of their boards of directors include:

- Inventories
- Accounting system and internal audit as required by the Turkish Auditing Standards
- Reports issued by the risk management committee
- Annual financial report of the board of directors

The auditor must prepare a separate report for the risk management explaining whether or not (a) a risk detection and management system has been established by the board of directors properly in accordance with law and (b) if established, the structure and applications of the system is appropriate. The auditor will submit the report to the board of directors together with the audit report.

Auditor

a) Election, dismissal and termination of the contract

- The auditor is elected by the company’s general assembly. The auditor of the group of companies is elected by the parent company’s general assembly.
- The auditor must be elected for every financial period and in any case before the end of the period in which the auditor will perform the engagement. Subsequent to election, the auditor must be registered at the trade registry by the board of directors and be announced in the Turkish Trade Registry Gazette and on its website by the board of directors.
- The auditor who is elected to audit the financial statements of the parent company may also be considered as the auditor of the group of companies financial statements unless another auditor is elected.
- The auditor may be dismissed from the duty to audit only in the manner set forth in

New standards in the audit of companies: International Standards on Auditing
law and provided that another auditor has been appointed.

- Based on the claim of (a) the board of directors and (b) the shareholders representing five percent of the capital in the public companies and ten percent of the capital in the private companies, the commercial court of the first instance may appoint another auditor by hearing the related parties and elect an auditor in cases where there is a fair reason of the claim and there is a suspicion that the auditor conducted his/her duty subjectively.

- The action regarding dismissal and appointment of a new auditor must be filed within three weeks from the date on which the auditor election is announced in the Turkish Trade Registry Gazette. In order for the minority shareholders to file this action, it is required that:
  - They have voted against the election of the auditor at the general assembly,
  - Their opposing votes have been recorded in the minutes, and
  - They have been in the position of the company's shareholders for at least three months prior to the date of the general assembly at which the election was made.

- If an auditor is elected within the first four months of the financial period, an auditor must be appointed by the court based on the request of any shareholder, of each member of the board and of the board of directors. The same rule may be applied in other cases such as if the elected auditor rejects the position or terminates the contract. The order of the court is final.

- The auditor can only terminate the audit contract in the case of the existence of a
just cause or only if an action for the dismissal is filed. A disagreement with respect to audit is not considered as just cause.

- In cases where the auditor gives an appropriate notice of termination, the board of directors must elect a temporary auditor with immediate effect and must inform the general assembly of the termination notice and request the approval of the general assembly for the elected auditor.

b) Persons who may be auditors
An auditor can be:

- A sworn financial advisor or certified public accountant licensed in accordance with Law No. 3568 on the Professions of Certified Public Accountants and Sworn Financial Advisors, and
- Persons and partnership firms in which the partners are composed of these persons appointed by the Public Oversight, Accounting and Auditing Standards Board.

The new TCC introduces the concept of independence implying that the auditor has no connection with the company. The rule is explained in the new TCC in detail indicating who cannot be an auditor in a joint stock company.

c) Auditor’s rotation rule
If the auditor has been appointed by a company for seven of the last ten years, that auditor must be replaced for at least three years. The Public Oversight, Accounting and Auditing Standards Board has authority to shorten these periods. If the auditor was appointed before the effective date of this provision, these prior years will be taken into consideration in the calculation of the periods.

d) Services impairing independence of auditors
In accordance with the new TCC the auditor is not allowed to provide any services, excluding tax consultancy and tax audit, to the audited company. Such prohibited services cannot be provided to the audit clients through one of the audit firm’s affiliated firms or persons.

Liability to presentation and right to information
The board of directors has the financial statements and annual report prepared and forthwith provides them to the auditor. The necessary working condition should be maintained by the board where the company’s books, accounts, vouchers, assets, liabilities, cash on hand and securities could be audited by the auditor.

The auditor can request from the board of directors any information and documentation necessary to conduct an audit in accordance with the new TCC and the required standards. The auditor may use these authorities for the subsidiaries and parent company if needed.

The board of directors responsible for having the financial statements prepared must submit to the auditor the consolidated financial statements (a) financial statements of the group of companies (b) annual report of the group of companies (c) financial statements
of standalone company (d) annual reports of companies board of directors (e) the audit report of subsidiaries and parent company if audited.

**Audit report**
The auditor will prepare the following reports:
- A report regarding the financial statements in comparison with the previous year.
- A report regarding evaluation of the information as included in the annual report of the board of directors regarding the company’s or group of companies and conditions as to the consistency with the financial statements. In this report the auditor will express his/her opinion on the board of directors’ examinations pertaining to the financial condition of the company or group of companies.
- A report regarding evaluation on the risk detection and risk management.

The following points are clearly specified in the main section of the audit report:
- The compliance of the bookkeeping method, the company’s (and group of companies) financial statements with the provisions of law and of the articles of association with regard to the financial reporting,
- Whether or not the board of directors has provided the documents and explanations requested by the auditor during the audit engagement,
- Whether or not the financial statements and the books (a) were kept in accordance with the chart of accounts (b) reflect the company's assets, financial and profitability position based on the true and fair view principle in accordance with Turkish Accounting Standards.

Upon finalization, the auditor report is signed off by the auditor and submitted to the board of directors.

**Opinion letters**
The results of the audit engagement are stated in an opinion letter by the auditor. The auditor may express his/her opinion in the following formats:
- Clean (unqualified) opinion
- Qualified opinion
- Adverse opinion
- Disclaimer of opinion

If adverse opinion or disclaimer of opinion is expressed, the board of directors must call the general assembly to convene within four business days from the date of the opinion and the general assembly must elect a new board of directors. The previous board members may be reelected unless otherwise stated in the articles of association. The new board must have the financial statements prepared in accordance with law, the articles of association and the relevant standards within six months and must submit them to the general assembly together with the independent audit report.

**Auditors responsibility regarding confidentiality**
Auditors, special auditors, their assistants and representatives are obliged to conduct their audit in an honest and unbiased way and not to disclose company confidential informa-
Auditors cannot use, without permission, any information regarding the business of the audited company. Those who breach this obligation deliberately or by negligence may be responsible to the company in cases where the audited company may incur any losses as a result. If the losses are caused by more than one person, they are collectively liable for such losses.

For each audit, the compensation for the damages due to negligence may amount up to one hundred thousand Turkish Liras with respect to unlisted companies and up to three hundred thousand Turkish Liras for the listed companies for auditors. This limitation is applied when (a) more than one persons are engaged in the audit (b) more than one action that have occurred result in the responsibilities and (c) some of the persons engaged have acted deliberately.

This compensation obligation cannot be cancelled or limited by a contract.

Disagreements between company and auditor
There may be disagreements between the company and the auditor regarding the followings:

- The year-end accounts,
- Financial statements of the company and the group of companies,
• Annual report of the board of directors, and
• Interpretation or implementation of administrative acts or provisions in the articles of association.

In such a case, upon the request of the board of directors or the auditor, the commercial court of the first instance at the location of the headquarters of the company award a judgment without hearing. The judgment is final. All legal costs that may be incurred as a result of the aforementioned legal procedures are borne by the company.

Appointment of a special auditor regarding group of companies
In the case of the following situations, based on the request of any shareholder, the commercial court of the first instance at the location of the headquarters of the company may appoint a special auditor to inspect the company’s relations with the parent company or with one of its subsidiaries as follows:

• A qualified opinion or disclaimer of opinion have been expressed with respect to the relations of the company with the parent company and with the group of companies,
• The board of directors disclosed that the company suffered losses because of the transactions made with the group of companies and such losses have not been compensated properly in accordance with the new TCC.

GENERAL ASSEMBLY
General
Shareholders exert their rights regarding company business in the general assembly. It is obligatory that managing director and at least one of the board members must be present at the general assembly meeting. Other board members may also attend the general assembly meeting. The independent auditor of the company must also be present at the general assembly. The board members and the auditor may declare their opinion on related subjects.

Duties and authorizations
a) General
The general assembly adopts a resolution in case of conditions clearly stated in laws and articles of associations.

The following duties and authorities of the general assembly cannot be delegated to any parties including management or the board of directors:

• Amending the articles of association,
• Electing of the board members and determining duty period, salaries, remunerations, bonuses of board members,
• Adopting resolution for releasing board members and removing board members from office,
• Appointing and dismissing the independent auditor (apart from the exceptions as included in law),
• Adopting resolution with regard to financial statements, annual report of the board
of directors, determination on distribution of dividend as well as the appropriation of reserves to capital or distributable profit,

- Dissolving the company apart from the exceptions as stated in law,
- Selling of significant amount of assets.

b) Non-delegable duties and authorities in the case of single shareholder joint stock company

In the case of a single shareholder joint stock company, the shareholder has all the aforementioned authorities of the general assembly. All resolutions adopted by a single shareholder joint stock company must be in written form. Otherwise these resolutions may not be valid.

Meetings

General assembly meetings are convened either ordinarily or extra-ordinarily. Ordinary general assembly is held at least once a year within three months following the fiscal year end of the company. In these meetings discussions are held and resolutions are adopted regarding the following matters:

- Election of the organs of the joint stock company,
- Determination of financial statements, annual report of the board of directors, the form of profit allocation, ratio of distributable profits,
- The release of board members,
• Other matters regarding the relevant financial period and any other matters that needs to be discussed among the shareholders.

Extraordinary meetings can be held whenever it is deemed necessary. The general assembly is convened at the headquarters of the company unless otherwise stated in the articles of association.

Calling general assembly meetings

a) Authorized bodies to call general assembly meetings

A general assembly meeting can be called in the following ways:

• The board of directors of a company may call a general assembly of the company even in the case where the term of office of board is due,
• The general assembly may also be convened by the liquidation officer for issues related to his/her duty (such as in the case where a company is in liquidation),
• In the case where the board of directors cannot meet or if it is not possible to constitute a quorum or a quorum is not present, a shareholder owing one share may convoke the general assembly with the permission of the court. The court decision is final.

b) Minority rights to call general assembly meetings

(i) General

Shareholders having at least 10% of the capital in unquoted companies and 5% in quoted companies may call the general meeting of shareholders by requesting from the board of directors stating the reasons for such a call and the proposed agenda. If the general meeting is already due to be held, the aforementioned minorities may request from the board the inclusion of the proposed resolutions into the meeting agenda to be passed in the meeting.

The request regarding the inclusion of items in the meeting agenda must be communicated before the date on which the payment is made for the call announcement as published in the Turkish Trade Registry Gazette. The requests for the meeting call and items to be included in the meeting agenda must be made through a notary. Upon acceptance of the call request, the board of directors must call the general assembly to convene a meeting to be held within 45 days. Otherwise, the call is made by the shareholders who have requested the meeting.

(ii) Court decision to call general assembly meetings

In cases where the requests of shareholders as to the call of a general assembly or the matters to be included in the meeting agenda by the board of directors are rejected or no positive answer is given to the request within 7 days, the commercial court of the first instance at the location of the company’s headquarters may rule to call the general assembly to convene the meeting upon requests of minority shareholders. If the court considers that the meeting is necessary, it appoints an administrator to prepare the meeting agenda and to make the call in accordance with the provisions of law. The court decision indicates the duties and authorities of the administrator to prepare re-
quired documentation for the meeting. The court awards a judgment without hearing if there is no requirement. The court decision is final.

c) Agenda

The agenda of a general assembly meeting is determined by the person(s) who called the assembly.
The items which are not included in the agenda cannot be discussed in the meeting and for such items resolutions cannot be adopted.

d) Forms of the call

(i) General

The general assembly is called to convene the meeting, as specified in the articles of association, through a notice published on the website of the company and the Turkish Trade Registry Gazette. This call must be made two weeks before the meeting date, excluding the notice date and meeting date. The shareholders must be informed of the date of the meeting as well as the agenda and the newspapers where the notice has been published or will be published by the registered and reply paid letter.

(ii) Shareholders authorized to attend to the general assembly meeting

The shareholders whose names are included in the list of attendees prepared by the board of directors may attend to the general assembly meeting.

(iii) General assembly without a call

Shareholders owing all shares or their representatives may convene as a general assembly without compliance with the call procedures in law provided that no shareholder has an objection. In this meeting resolutions may be adopted in the case where a quorum is present. In the general assembly held without a call, new agenda items may be added to the meeting agenda with unanimous consent of the shareholders. Any contrary provision as set out in the articles of association is not valid.

Holding general assembly meeting

a) Attendees list

The board of directors prepares an attendees list for the general assembly meeting. The board of directors prepares the attendees list with respect to the shareholders which have been dematerialized by the Capital Markets Board of Turkey based on the shareholders to be provided by the Central Securities Depository.
The attendees list is signed by the board chairman and made available at the location where the meeting will be held. The list particularly indicates names and surnames of shareholders or their titles, addresses, the number of shares owned, the nominal value of shares, share groups, main capital as well as paid-up portion and issued capital of the company and the signatures of attendees.
The list signed by the shareholders who attended the general assembly is called as “attendees list”.

| 34 |
b) Meeting quorum
The general assembly meeting quorum is constituted with the participation of sharehold-ers representing at least one fourth of the nominal value of share capital of the company in person or by proxy unless a higher meeting quorum is required by law and articles of association. It is mandatory that this quorum must be present during the meeting. If a meeting quorum is not present in the first meeting, no quorum is necessary in the second adjourned meeting.
Resolutions are adopted by the majority of votes present at the meeting.

c) Chairman and internal directive
The general assembly is chaired with a person who is elected by the general assembly unless otherwise stated in the articles of association. It is not necessary that the chairman be a shareholder. The chairman determines a secretary, a scrutineer and an assistant chairman if deemed necessary.
The board of directors of the joint stock company prepares an internal directive that includes policies, procedures and working practices of the general assembly. The minimum content of such an internal directive is determined by the Ministry of Customs and Trade. The directive becomes effective when it is approved by the general assembly.

d) Adjourned meetings
The general assembly meeting can be adjourned, with the decision of the meeting chairman, for a month for discussion of financial statements and related matters upon requests of shareholders having at least 10% of the capital in unquoted companies and 5% in quoted companies. There is no requirement for a resolution of the general assembly to approve this decision. The adjourned meeting is communicated to the shareholders through the notice in accordance with law and published on the website of the company. The general assembly is called for the next meeting according to the procedures as described by law.

e) Meeting quorum requirements in amending articles of association
- The general assembly meeting quorum required to amend the articles of association is constituted with the participation of shareholders representing at least half of the nominal value of share capital of the company. The related resolution should be adopted by the majority of votes present at the meeting.
- If at the first meeting to consider the resolution, a quorum is not present, a second meeting may be held within a month at the latest. In the second meeting the participation of shareholders representing at least two thirds of the nominal value of share capital of the company is required to constitute a quorum.
- The provisions as set out in the articles of association that decrease the quorum or stipulate proportionate majority are invalid.
- The following amendments in the articles of association require unanimous consent of the shareholders (in person or by proxy):
  - Obligation and secondary obligation for compensating balance sheet losses,
- Moving of company headquarters out of the country to a foreign country.

- The following amendments in the articles of association require the participation of shareholders (in person or by proxy) representing at least 75% of the nominal value of share capital of the company:
  - Changing the company’s scope of activity,
  - Introducing capital shares with privileged voting rights,
  - Restriction on the transfers of registered shares.

- If a meeting quorum is not present in the first meeting, the same meeting quorum is required in the following meeting.

- In order for the general assembly of a quoted company to decide on the following matters, the resolution requires the votes of one fourth of shareholders present in person or by proxy. If a meeting quorum is not present in the first meeting, no quorum is necessary in the second meeting:
  - Increase of capital and the registered capital ceiling,
  - Merger, division and conversion.

f) Minutes of Meeting
Minutes of meeting indicates the shareholders and their representatives, number of shares owned by them, their groups, nominal values, questions asked in the general assembly meeting and answers, resolutions adopted positive and negative votes for each resolution. The minutes must be signed by the chairman of the assembly and ministry commissar; otherwise they are not valid. The board of directors is liable to submit the notarized meeting minutes to the trade registry without delay and register and announce the issues that are subject to registry and announcement.

g) Impact of resolutions
Resolutions adopted at the general assembly meeting are binding for those who are not present at the meeting or those who voted negatively.

h) Resolution with regard to the approval of balance sheet
The resolution approving the balance sheet results in the release of management and auditors unless otherwise stated in the resolution. Nevertheless, if certain issues have not been stated or not stated to the extent necessary on the balance sheet or the balance sheet has not been prepared in accordance with a true and fair view and this has been done intentionally, the approval does not result in the release of management and auditor.

Shareholder’s personal rights
a) Attendance to general assembly
   (i) Principle
   A shareholder may attend to the general assembly to exercise his or her shareholding rights. Furthermore, the shareholder may be represented at the general assembly by a person who may or may not be a shareholder. The provision that requires representa-
tives to be a shareholder is not valid. Shareholding rights, registered shares and certifications are exercised by persons who have been authorized in written form. A person proving the possession of bearer shares is authorized to exercise shareholding rights.

(ii) **Representation of shareholders**

**General**
A person exercising the attendance rights (representative) must comply with the instructions. Noncompliance with instructions does not make the vote invalid. The principal's rights against the representative are reserved.

A person who has bearer share as a result of pledge, custody contract etc may exercise the shareholding rights only if this person has been authorized with a special written document.

**Institutional representative**
Institutional representation is a shareholders initiative. This role cannot be executed as a profession or for a consideration. This position should be considered as an initiative to coordinate opposition which will result in improved shareholders democracy in the general assembly.

The institutional representative demands representation authority with a memorandum. This memorandum is a plan with respect to the management and audit of the joint stock company and corporate governance principles. This plan may also consist of financing, investment, profit distribution etc. The institutional representative must comply with the instructions as stated in this memorandum. The representative cannot act in contrary to the policies and principles in the memorandum including voting in the general assembly.

Before at least 45 days as of the date of the announcement of the general assembly meeting call published at the Trade Registration Gazette, the board of directors serves notice to all shareholders to inform the company of the proposed institutional representative's identity, addresses, electronic mail and telephone and fax number within 7 days at the latest. In the same notice, person(s) who wish to be institutional representatives are requested to apply to the company. The board of directors announces and publishes on the web site the identity, address and the contact information of the institutional representatives through the meeting call. The representation authority cannot be taken without complying with the rules as stated in this provision.

**Depositor representation**
Shareholders may deposit shares to representatives such as fund managers and custodians etc. Such representatives who have the right of attendance and shareholding rights on behalf of the shareholders must apply to the shareholders prior to the general assembly meeting in order to obtain the instructions. If the instructions are not obtained in a timely manner, the representative uses the general instructions provided by the depositing shareholders. In the absence of general instructions, voting is used in
accordance with the recommendations of the board of directors. The policies and procedures as well as the content of representation document with respect to the representation within the context of this provision are determined by the Ministry of Customs and Trade.

**Other related provisions**
Institutional representatives should declare the content of the representation document and the information relating to whether they will vote positively or negatively through television, radio, newspaper or other means together with their rationales. Furthermore, representatives (institutional and depositor representatives) should inform the company of the number of shares being represented, types, nominal values and groups. The meeting chairman should declare this information at the meeting; otherwise each shareholder may apply to the court to cancel this resolution.

**b) Attendance without authority**
It is not valid to transfer shares or to give shares to others for the purpose of eliminating restrictions with regards to exercising voting rights or making them ineffective. Each shareholder may make an objection to the meeting chairman and the board of
directors for attendance without authority and have this objection noted in the meeting minutes.

c) Voting rights
(i) General
- Shareholders exercise their voting rights proportionate to the nominal value of their shares.
- Each shareholder has at least one vote right even if he or she only owns one share. In addition, the number of votes granted to a shareholder who has more than one share may be restricted in the articles of association.
- Voting rights occur with the payment of the least amount of a share determined by law or articles of association.
- The Ministry of Customs and Trade will issue a communiqué for public companies with regard to policies and procedures related to cumulative voting.

(ii) Prohibition on exercising shareholding rights
A shareholder and the related parties as defined by law cannot vote on resolutions with respect to personal matters or transactions.
The Board members as well as persons who have signing authority in the management cannot exercise the shareholding rights on resolutions related to the release of board members.

d) Right to information and inspect
- Stand-alone and consolidated financial statements, annual report of the board of directors, audit reports and the dividend distribution proposal of the board of directors are made available to shareholders at the company’s headquarters and branches 15 days before the general meeting takes place. The financial statements are kept for 1 year at the company’s headquarters and branches in order that shareholders may access the related information. Each shareholder may request a copy of the financial statements.
- The shareholder may request information from the board of directors regarding the company’s business; from the auditors regarding the method of the audit. The obligation of providing information is applicable for group companies. The information should be provided based on transparency and accountability principles. If one of the shareholders obtains information outside of the general meeting, upon request of another shareholder at the general meeting, the information with the same scope and details must also be provided to that shareholder although this matter is not included in the meeting agenda.
- Information request may be rejected on the grounds that the requested information is the company’s confidential information or the company’s interests may be in danger in the event that such information is provided.
- Obtaining information as to the company’s commercial books and related correspondence and inspecting the parts that relate to the shareholder’s question require
the permission of the general assembly or the board of directors’ resolution on this matter. In the case of granting the permission, the inspection is conducted with a specialist.

- If the request to access information is unanswered, rejected with no valid reason or deferred, the shareholder may apply to the commercial court of the first instance at the location of the headquarters. The court may rule that the information can be provided outside the general meeting and how this information will be provided. The court order is final.
- Right to obtain information and inspect cannot be removed or limited with articles of association or with a decision of one of the company’s body.

e) Right to request special audit

(i) Decision of general assembly regarding request for special audit

Each shareholder may request a special audit at the general meeting to clarify certain issues if deemed necessary and rights to obtain information and inspect were exercised previously. The request can be executed even though this matter has not been included in the meeting agenda. If this request is accepted by the general assembly, the company or each shareholder may request within 30 days from the commercial court of the first instance at the location of the headquarters the appointment of a special auditor.

If the request is rejected at the general assembly, shareholders having at least 10% of the capital in unquoted companies and 5% in quoted companies or shareholders holding shares of an aggregate nominal value of at least TL 1 million, may request within 3 months from the commercial court of the first instance at the location of the headquarters, the appointment of a special auditor. If the shareholders requesting special audit can prove that the company has experienced losses as a result of mismanagement by breaching law and articles of association, the special auditor must be appointed.

(ii) Appointment of special auditor

The court makes an order after hearing the company and the shareholders requesting a special audit.

The decision of the court on any such application is final. If the court sees fit, one or more than one independent specialist may be appointed to determine the matters to be inspected within the framework of the request.

(iii) Duties

The special audit must be conducted in a timely manner without interrupting the company’s business unnecessarily.

The board of directors must allow the special auditor to access the company’s books and all related correspondence and all assets particularly cash vault, securities and inventories.

Founders, bodies, employees, administrator and liquidation officer are liable to
provide information to the special auditor on important issues. In case of dispute between the parties, the court makes an order. The decision of the court on any such application is final. The special auditor is liable not to disclose the company’s confidential information.

(iv) Special audit report

The special auditor presents a detailed report with respect to the outcome of the audit to the court whilst protecting the company’s secrets. If the company applies to the court for an order directing that the announcement of the report has disclosed the secrets of the company and may result in losses, the report should not be presented to the shareholders requesting the special audit. The court may allow the company and shareholders requesting special audit to announce their evaluations and ask additional questions of the report.

(v) Presentation of special audit report to the general assembly

The board of directors presents the report as well as related evaluations to the general assembly in the first meeting. Each shareholder may request a copy of the special audit report and the related opinion of the board of directors within one year following the general assembly meeting.

(vi) Costs of special audit fees

In the case where the general assembly adopts a resolution to appoint a special auditor, the company bears the costs. If the court orders to appoint a special auditor, costs are determined by the court. Costs may be borne by the shareholders requesting the special auditor in certain situations.

Cancellation of general assembly resolutions

a) Reasons of cancellation

General assembly resolutions may be cancelled in cases where such resolutions are not in compliance with the law or articles of association and in particular the fairness rule.

b) Shareholders who may apply to court to cancel resolution

The following shareholders may apply to court to cancel resolutions:

- Shareholders who have been present at the general meeting and have voted against the resolution and have this opposition noted in the meeting minutes,
- Regardless of being present or not at the general meeting and voting for or against the resolution, shareholders who state that:
  - The general assembly has not been called appropriately,
  - The agenda has not been announced as it should be,
  - Shareholders or their representatives who are not authorized to attend to the general assembly have attended and voted at the general meeting,
  - They have not been allowed to attend to the general meeting and to vote with no reasonable ground,
- The aforementioned matters had an impact on the resolutions adopted,
  • Board of directors,
  • Each board member in cases when implementing the decision may result in personal responsibility.

**Nullity of resolutions**
The general assembly resolutions may be null if:
  • Shareholders rights as to the attendance to the meeting, minimum votes and rights in nature of non-delegable duties have been restricted,
  • Shareholders rights as to obtaining information and special audit have been restricted,
  • Resolutions are not in line with the provisions related to the protection of capital and may damage the company’s fundamentals.

**FINANCIAL STATEMENTS AND RESERVES**

**Financial statements and annual reports of board of directors**

a) **Preparation obligation**
   The board of directors prepares financial statements, its supplements and annual report of the board of directors of the previous period as stipulated in the Turkish Accounting Standards within three months following the financial year-end and presents them to the general assembly.

b) **True and fair view**
   The financial statements of joint stock companies prepared in accordance with Turkish Accounting Standards should reflect the following:
   • Show the company assets, liabilities, shareholder’s equity and financial results,
   • Are complete, coherent, comparable and prepared in accordance with the needs and the company’s characteristic,
   • Are transparent and reliable,
   • Reflect the facts in true and fair view.

c) **Annual report of the board of directors**
   Annual report of the board of directors reflects the relevant year’s financial activities and financial position from all aspects in a complete, accurate, straightforward, true and fair manner. In this report the financial position is evaluated in accordance with the financial statements. In addition, the report clearly indicates risks that the company may be exposed. The report also includes the evaluations of board of directors with respect to these issues.

   The annual report of the board of directors also includes the followings:
   • Matters that have occurred subsequent to the financial year-end are of an important nature,
   • Research and development activities of the company,
• Financial benefits such as salary and bonus payments, allowances, travelling, accommodation and representation expenses, cash or non-cash advantages, insurances and similar benefits provided to board of directors and senior executives. The required minimum content of an annual report of board of directors for joint stock companies and group of companies is regulated in detail by the Ministry of Customs and Trade through bylaws.

Financial statements and annual report of group of companies

a) Accounting standards to be applied

Turkish Accounting Standards are applied in the determination of companies which are obliged to prepare consolidated financial statements and companies which fall into the scope of consolidation. Consolidated financial statements are prepared in accordance with a true and fair view.

b) Annual report of the board of directors

The annual report of the group is prepared by the board of directors of the parent company in accordance with the principles as set out above for the joint stock company.
Reserves

a) Statutory reserves
   (i) General statutory reserve
   It is compulsory to set out each year 5% of the annual net profits as general statutory reserves, until it reaches 20% of the paid-up capital.
   The following amounts are added to the general statutory reserves even after it has reached the aforementioned legal limit:
   • The portion which has not been expended for amortization, assistance or charity, out of revenues obtained in excess of the nominal value when issuing shares,
   • The balance remaining on payments made on account of the price of canceled shares, after having closed the deficit resulting from the shares which have replaced the same,
   • After the payment of the net profits a portion of 5% for shareholders, one tenth of the portion that has been decided to be distributed among persons having shares in the profits.
   As long as the general statutory reserves have not exceeded one half of the basic capital they may be expended exclusively for covering losses, for taking the proper measures for maintaining the undertaking in times where business is not good for preventing unemployment or for reducing the consequences thereof.

   (ii) Reserves and revaluation funds appropriated with respect to the company’s own shares acquired
   In the case where the company acquires its own shares, the company is obliged to appropriate reserves that correspond to the acquisition values. These reserves may be cleared if the related shares have been transferred or disposed of.
   In accordance with the regulation with regard to revaluation fund, reserves as included on the passive side of the balance sheet may be cleared if:
   • They have been converted to capital and the related revalued assets have been depreciated,
   • The related assets have been transferred.

b) Discretionary reserves
   (i) General
   The Company may decide to assign on a discretionary basis a portion of the net income to the limit established in the articles of association and by law. A provision may be specified in the articles of association indicating that:
   • An amount exceeding 5% of the annual net income may be appropriated to reserves,
   • General reserves may exceed 20% of the paid-up capital.
   Appropriation of other reserves may also be specified in the articles of association and their spending and conditions may be determined.
(ii) Reserves to be appropriated in favor of employees and workers
The articles of association may stipulate provisions that enable the appropriation of reserves for the company managers, employees and workers in order to establish or sustain a charity organization or to be granted to a public organization.
It is obligatory to establish a charitable foundation and a cooperative by diverging the reserves and other assets which have been allocated to the charity. The charity foundation deed may state that the assets of the charity foundation may solely be the debt against the company.

c) Relation between dividend and reserves
Dividend to be distributed to the shareholders cannot be determined unless general statutory reserves and discretionary reserves as specified in the articles of association are allocated.
The general assembly may decide to allocate special reserves other than those as specified in law and the articles of association in order to protect assets to the extent necessary and sustain the company and secure dividend distribution for the benefits of all shareholders.

Legal responsibilities and criminal liabilities

a) Legal liabilities
The new TCC defined the legal responsibilities in the following matters:
- Documents and declarations are illegal,
- False declaration regarding capital and knowledge regarding insolvency,
- Fraudulent valuation of assets related to the acquisition of a company,
- Raising money from the public,
- Legal liabilities of founders, board members, managers and liquidators,
- Legal responsibilities of independent auditor and special auditor.
In addition, the new TCC defines common provisions which are applied to these liability conditions. One of these common provisions is related to joint and several liability conditions.

b) Criminal liabilities
Some criminal liabilities as set out in the new TCC are as follows:

<p>| Failing to fulfill the liabilities related to the maintenance of accounting books that should enable third party experts to evaluate the financial position and performance of the company in case of any investigation within a reasonable time | Administrative fine of TL4,000 |
| Failing to submit copies of documents as set out in Article 64 | Administrative fine of TL4,000 |</p>
<table>
<thead>
<tr>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failing to obtain necessary approvals with respect to opening and closing</td>
<td>Administrative fine of TL4,000</td>
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<tr>
<td>of accounting books in accordance with the third paragraph of Article 64</td>
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<tr>
<td>Failing to carry out bookkeeping activities in accordance with Article 65</td>
<td>Administrative fine of TL4,000</td>
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<tr>
<td>Failing to take inventory in accordance with Article 66</td>
<td>Administrative fine of TL4,000</td>
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<tr>
<td>Failing to submit documents as stated in Article 86</td>
<td>Administrative fine of TL4,000</td>
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<tr>
<td>Failing in preparing financial statements in accordance with Turkish</td>
<td>Administrative fine of TL4,000</td>
</tr>
<tr>
<td>Accounting Standards as announced by Public Oversight Body</td>
<td></td>
</tr>
<tr>
<td>Failing to prepare a report related to the company’s relations with the</td>
<td>Judicial fine not be less than 200 days</td>
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<tr>
<td>parent company and dependent companies within the first quarter of the</td>
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<td>year as set out in the first and fourth paragraphs of Article 199</td>
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</tr>
<tr>
<td>Failing to provide accounting books, records and the related information</td>
<td>Judicial fine not be less than 300 days</td>
</tr>
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<td>to the auditors of Ministry of Customs and Trade or not permitting those</td>
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<td>auditor to fulfill their duties</td>
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<tr>
<td>Making declarations contrary to Article 349</td>
<td>Judicial fine not be less than 300 days</td>
</tr>
<tr>
<td>Loaning money to shareholders against the Article 358</td>
<td>Judicial fine not be less than 300 days</td>
</tr>
<tr>
<td>Violating the provision preventing board of directors’ members who are</td>
<td>Judicial fine not be less than 300 days</td>
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<td>not shareholders and the relatives of board of directors’ members who</td>
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<td>are not shareholders from borrowing cash from the company, preventing</td>
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<td>the company from issuing guarantees, pledging and providing assurance to</td>
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<td>these people, assuming their liability or taking over their debt (Article</td>
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<tr>
<td>395)</td>
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</tr>
<tr>
<td>Violating the provision of secrecy as stated in Article 527</td>
<td>Prison sentence from one to three years</td>
</tr>
<tr>
<td>Forging documents as stated in Article 549 or intentional misstatements in commercial books</td>
<td>Article 239 of the Turkish Criminal Code applies</td>
</tr>
<tr>
<td>Providing misstatements regarding capital</td>
<td>Judicial fine or prison sentence from three months to two years</td>
</tr>
<tr>
<td>If commercial books do not exist or do not include entries or they are not kept in accordance with the new TCC</td>
<td>Judicial fine not be less than 300 days</td>
</tr>
<tr>
<td>Fraudulently overstating capital in kind or misrepresentation of the nature and condition of the company to be acquired or capital in kind (Article 551)</td>
<td>Judicial fine not be less than 90 days</td>
</tr>
<tr>
<td>Collecting money from public without proper permission (Article 552)</td>
<td>Prison sentence from six months to two years</td>
</tr>
<tr>
<td>Failing to open a website as stated in Article 1524</td>
<td>Judicial fine from 100 to 300 days</td>
</tr>
<tr>
<td>Failing to post the required content to the website</td>
<td>Judicial fine up to 100 days</td>
</tr>
</tbody>
</table>
LIMITED LIABILITY COMPANY (LLC)

Limited liability companies and joint stock companies have been brought closer with the new TCC

DEFINITION AND INCORPORATION

General provision
A limited liability company (“LLC” or “partnership”) is incorporated by one or more real persons or legal entities under a trade name. LLCs may be incorporated for all kinds of economic purposes and scopes but may not be formed for an unlawful purpose. Its capital is definite and consists of the sum of capital shares.

Number of partners
The number of partners may not exceed fifty shareholders.
If the number of partners decreases to one, the situation must be reported to managers within seven days subsequent to the occurrence of the transaction that caused this result.
The managers must, within seven days as of being notified, register and announce that the partnership is a single member partnership with limited liability and name, surname, nationality and domicile of the single partner. If not registered, the managers may be responsible for possible damages. The managers have the same obligation where the partnership is incorporated with a single partner.

Partners are not responsible for the partnership’s debts. They are only liable for paying the capital shares they subscribed and for fulfilling their obligations to make additional payments as described in the articles of association.

**Articles of association**

**a) Form**

The articles of association must be in writing and the signatures of all founders must be notarized.

**b) Content**

The following points must be stated in the articles of association:

- Trade name and location of the headquarters,
- Scope of activity,
- Nominal value of capital, number of capital shares, their nominal values, privileged shares (if any) groups of capital shares,
- Names, surnames, titles and nationalities of the managers,
- Form of announcements to be made by the partnership.

The following points could be binding in cases where they are included in articles of association:

- Regulations departing from the statutory provisions with respect to the restriction of capital shares transfer,
- Providing the partners or the company the right of being the first to be offered (a) subscription, (b) first refusal, (c) redemption and (d) acquisition with respect to the capital shares,
- Imposing additional payment and secondary performance obligations and their forms and scopes,
- Provisions granting veto rights to partners or superior voting rights to certain partners in the case of a tie vote in voting on a general assembly resolution,
- Penalty provisions that may be applied when obligations as stated the in the articles of association or in law are not complied with,
- Provisions with respect to non-compete obligation departing from the statutory regulations,
- Provisions granting privileged rights to call and convene general assembly,
- Provisions departing from the statutory regulation with respect to making decisions at general assembly, voting right and calculation of voting right,
- Provisions regarding authorization for delegation of the company management to a third party,
- Provisions departing from the law with respect to using balance sheet profit,
Recognition of withdrawal of rights and the conditions of using these rights, the type and the amount of cash payment in the case of the withdrawal,
Provisions showing particular reasons regarding dismissal of a partner,
Provisions regarding termination reasons apart from those as set out in law.

The articles of association may depart from the provisions of the new TCC with respect to LLC provided that it is explicitly permitted by law.
Provisions regarding joint stock companies are applied to capital in kind, acquisition of enterprises and of non-monetary assets, and special benefits.

Capital
a) Minimum amount
The capital of a LLC must be at least ten thousand Turkish Liras. The minimum amount as stated in this article may be increased by up to ten times by the Council of Ministers.

b) Capital in kind
Assets with no restricted right, distress and measure and intellectual property rights and virtual environments may be contributed as capital in kind. Such assets should be appraisable and transferable. Service performances, personal efforts, commercial reputation and undue receivables cannot be contributed as capital.

c) Value of assets and benefits of founder
The article of association indicates the costs of assets that are purchased by founders for the incorporating partnership and the benefits given to those who served for incorporation of the partnership.

Capital shares
Nominal values of the capital shares may be determined as at least twenty five Turkish Liras in the articles of association. The nominal values may be set below the aforementioned value for the purpose of improving the partnership’s status. Nominal values of the capital shares may be different. However, the value of capital shares must be twenty five Turkish Liras or its multiples.
A partner may own more than one capital share. Capital shares may be issued at a nominal value or at a value exceeding the nominal value. The value of capital shares may be paid as defined in the articles of association through (a) in cash or in kind (b) by exchanging a receivable (c) by conversion of freely utilized equity into capital as in capital increase.

Redeemed shares
Issuance of redeemed shares may be set out in the articles of association. The provisions with respect to joint stock companies are applied to the LLCs.

With the new TCC the European investing climate is adopted in the delivery of capital to companies and the preservation of delivered capital.
Incorporation

a) Incorporation time
The partnership is incorporated upon the disclosure of the founders’ will about incorporating a LLC in the articles of association which is prepared in compliance with law where the signatures are notarized and founders commit to pay whole capital unconditionally. In other aspects of establishments (such as payment of capital shares, payment location etc.) the provisions of joint stock companies are applied to LLCs.

b) Registration of a limited liability company
(i) Application for registration
An application for the registration of the LLC is filed with the trade registry subsequent to the preparation of articles of association. The managers should sign the application prior to submission. The application documents should include the following documents and information:

- A certified copy of the articles of association,
- Founders declaration,
- The document disclosing the persons who are authorized to represent the LLC as well as the their domiciles and the elected auditor,
- Names, surnames, or titles, domiciles, nationalities of all partners,
- Main capital share subscribed by each partner and total amount they have paid,
- Names, surnames and titles of the managers whether he/she is a shareholder or a third party,
- Representation method of the LLC.

(ii) Registration and announcement
The articles of association is registered at the trade registry where the headquarters of the LLC is based and should be announced in the Turkish Trade Register Gazette within thirty days after the founders certification signatures are notarized by a notary public. Paragraph one of article 36 of the new TCC does not apply to the registered and announced articles of association with the exception of the following:

- Date of the articles of association,
- Trade name and headquarters of the LLC,
- Scope of activity of the LLC and the duration of the company (if stipulated in the articles of association),
- Nominal value of the main capital,
- Real person partners name, surname and domicile and legal entity partners trade name, headquarters and capital shares that each partner subscribed for,
- Capital in kind items and capital shares to be given in return for such capital; in the case of acquisition in kind, the subject and counter party of the relevant contract,
counter performance undertaken by the partnership; content and value of special benefits,

- Number of redeemed shares and content of rights given to them, if stipulated in the articles of association,

- Names, surnames or titles and domiciles of managers and other persons who have been authorized to represent the LLC,

- The method of exercising the authority to represent the LLC,

- The auditors domicile, headquarters, branch registered at the trade registry, if any,

- Secondary performance liabilities, additional liabilities or privileges, being offered for capital shares, right of first refusal, redemption and purchase as set out in the articles of association,

- Form and type of announcements to be made by the LLC and the form of notification to be made to the partners by the managers, if there is a provision in the articles of association.

c) Legal personality

The LLC becomes a legal personality when the registration at the trade registry has been finalized. The incorporation expenses will be recovered by the founders provided that such costs are not accepted by the company. They do not have the right to recourse to the partners.

Those who made transactions on behalf of the LLC before the registration may be responsible for such transactions personally and severally. In cases where certain criteria are met (such as timely disclosure of such transactions indicating that these transactions are made on behalf of the company and acceptance of them by the company), the company could be solely responsible for such transactions.
AMENDMENT TO THE ARTICLES OF ASSOCIATION

General
The articles of association may be changed by the partners representing two thirds of the capital unless otherwise stated in the articles of association. Any amendments made to the articles of association should be registered and announced.

Special amendments
a) Increase of basic capital
   (i) Principle
   Capital may be increased provided that such increase is made in accordance with the provisions with respect to the incorporation of the LLC and particularly with the rules related to the acquisition of an enterprise and contribution of capital in kind.

   (ii) Pre-emptive right
   Every partner has the right to participate in the increase of capital at the ratio of their capital shares unless otherwise stated in the resolution of capital increase or articles of association. The pre-emptive right of the partners with respect to the acquirement of new shares may be restricted or cancelled by the general assembly resolution. Pre-emptive rights should be exercised within fifteen days.

b) Decrease of capital
   The provisions with respect to the decrease of capital of joint stock companies are applied to the LLC. Capital may only be decreased in order to improve an insolvency situation in cases where the additional payment liabilities stipulated in articles of association are fulfilled.

RIGHTS AND DUTIES OF PARTNERS

Capital share as a subject of transactions
a) General
   The capital share may only be transferred or inherited in accordance with the provisions below excluding the provisions with regard to acquisition of capital share by the partnership.

b) Share register book
   The LLC must keep a share register book that includes capital shares. Partners may inspect the share register book.
   The book includes the following information:
   • Names and addresses of partners,
   • Number of capital shares of each partner,
   • Nominal value of capital shares,
   • Transfers and transitions of shares,
   • Groups of capital shares,
• Usufruct and pledge rights on capital shares and names and addresses of the holder of such rights.

c) Transfers of capital shares
   (i) Transfer
   • Transfer of capital share and the transactions resulting in transfer obligations must be made in a written form. Parties' signatures must be certified by a public notary.
   • General assembly approval is required for the transfer unless otherwise stated in the articles of association. The transfer will be effective upon this approval.
   • The general assembly may reject the transfer unless otherwise stated in the articles of association.
   • The articles of association may prohibit the transfer of capital shares.
   • The partners right to withdraw from the partnership with a just cause is reserved in the case where the articles of association have prohibited the transfer or the general assembly has rejected the approval of transfer.
   • If the general assembly has not rejected the transfer within three months from the date that transaction is made, the approval is considered to be given.

   (ii) Inheritance, marital property and execution
   If capital shares are transferred through (a) inheritance (b) provisions with regard to marital property or (c) execution proceedings, all rights and debts are transferred to the person who acquires the shares. For such transfer general assembly approval is not required.

   (iii) Determination of the actual value
   The value of capital shares are determined by the commercial court of the first instance where the headquarters are located unless:
   • The partners agree on the value,
   • The values are stated in law or the articles of association.
   The related expenses such as the trial and the value assessment are divided by the court and the court decision in this respect is final.

   (iv) Registration
   The manager of the LLC should apply to the trade registry for the registration of the transfer of capital shares. If this application is not submitted within thirty days, the partner who transfers his/her shares may apply to the trade registry to erase his/her name from the related shares. Subsequently, the trade registry will give a period to the LLC in order to notify the name of the acquiring persons.
Prohibition to refund
Capital share price cannot be refunded or partners cannot be released of the related debt except for the decrease of capital.

Responsibility of partnership
The limited liability company is responsible for its debts only with its assets.

Liability of shareholders
In LLCs, the liability of the shareholders is limited with their participation to their share capital except for public receivables such as tax or social security premium receivables. In accordance with the “Law on the Procedure for the Collection of Public Receivables”, the shareholders of LLCs are directly responsible for public receivables which may not be collected from the company in proportion to their capital share and be subject to follow up as per the provisions of this law.

Additional payment and secondary performance liabilities
Partners may be held liable for additional payment apart from the capital share price through articles of association. Partners may only be asked to fulfill this liability in the following instances:

- Sum of capital and statutory reserves do not cover the losses,
- It is not possible for the partnership to run its business without such additional instruments,
- A situation which is defined in the articles of association and which results in a need for equity.

The continuity of the aforementioned liability, the refund, secondary performance liability, liability through the amendment to articles of association and other provisions are explained in detail in the new TCC.

Dividend and other relevant provisions

a) Dividend and reserves
Dividend may only be distributed from the net profit for the period and reserves appropriated in this respect. Dividend distribution may only be made if statutory reserves and other reserves according to the law and the articles of association are appropriated.

Dividend is calculated in accordance with the ratio of capital share to nominal value unless otherwise stated in the articles of association.

In the following situations the general assembly may decide to appropriate reserves which are not in accordance with law or the articles of association:
- In the case of compensating losses,
- If there is a need of investment for the development of the partnership, if appropriation of such reserves are justified as the benefit of all partners and if these issues have been explicitly stated in the articles of association.
b) Interest prohibition and preparatory period interest
Interest cannot be accrued for the capital and additional payments. It may be possible to pay interest for a preparatory period as stipulated by the articles of association.

c) Financial statements and reserves
The provisions of joint stock companies regarding financial statements and reserves also apply to the LLC.

d) Refund of dividend unfairly received
Partner and manager are liable to refund dividend that was unfairly received. If the partner and manager have acted in good faith, the liability to refund the dividend that has been unfairly received may not exceed the amount that is necessary to settle the claims of creditors.
The partnership's right to refund the dividend which has been unfairly received becomes statute barred after five years as of the date on which the money was received. This period is two years if the partner and the manager have acted in good-faith.

Acquisition of its own capital shares
The LLC may acquire its own capital shares only in cases where (a) there are adequate reserves that can be utilized freely and (b) if the total nominal value of capital shares to be acquired does not exceed ten percent of the capital shares.
The aforementioned limitations with regard to acquisition of its own shares are applied when the capital shares of the LLC are acquired by a subsidiary which is controlled by the LLC.

Loyalty duty and non-compete obligation
• The partners are liable to protect the partnership's confidential information. This liability cannot be removed through articles of association and general assembly resolution.
• The partners cannot act in a way that may deteriorate the partnership's benefits. They cannot make any transactions that may serve to benefit the partner and damage the partnership's purpose. It is possible to include provisions in the articles of association that may prohibit partners from competing with the partnership.
• Non-compete obligations for managers are reserved.
• Partners may act in a way that could be in non-compliance with the competition obligation and loyalty duty if all other partners permit and approve such transactions in a written form.

Right to information and inspect
• Each partner may request information from the manager pertaining to all transactions and accounts of the partnership and may perform inspection related to these transactions and accounts.
• If there is a risk that the partner may use this information for damaging the part-
nership’s interest, the manager may prevent the related partner from accessing information and inspecting to the extent necessary. In such a situation the general assembly may decide upon the related partners’ request.

- If the general assembly prevents the partner from accessing information and inspecting with no reasonable cause, the court makes an order on the matter based on the request of the partner and the court decision is final.

PARTNERSHIP BODIES

General assembly

a) Non-delegable authorities

The non-delegable authorities of the general assembly of a partnership are as follows:

- Amending the articles of association,
- Appointing and dismissing managers,
- Appointing and dismissing the independent auditors as well as group of companies’ auditors,
- Approving year-end financial statements and annual report of group of companies,
- Approving year-end financial statements and annual report; making a decision on distribution of dividend; determining profit sharing for board members,
• Determining salaries of managers and releasing them,
• Approving the transfer of capital shares,
• Requesting from the court to dismiss a partner from the partnership,
• Authorizing a manager with respect to the acquisition of the partnership’s own shares, or approving such an acquisition,
• Terminating the partnership,
• Deciding on matters on which the general assembly or the articles of association is authorized by law and on matters which are brought to the general assembly by the managers.

**Non-delegable authorities in the case where such authorities are stated in the articles of association**

If stipulated in the articles of association, the following authorities are the general assembly’s non-delegable authorities:

- Approving the managers’ activities and circumstances in which general assembly approval is required in accordance with the articles of association,
- Adopting resolution on first refusal, redemption and purchase and exercising the rights of being the first to be offered for subscription,
- Approving placement of pledge right on capital shares,
- Issuing internal regulation regarding secondary performance liabilities,
- Permitting managers and partners to engage in activities incompatible with loyalty duty to the company or non-compete obligation in cases where the partners approval is not adequate,
- Dismissing a partner from the partnership on the grounds as stated in the articles of association.

**Non-delegable authorities in the case of a single-member partnership**

In the case of a single-member partnership, this member has all aforementioned authorities of the general assembly. All resolutions adopted by a single-member partnership must be in written form. Otherwise these resolutions may not be valid.

**b) Calling general assembly**

(i) **Calling**

The managers of an LLC may call a general assembly. The ordinary general assembly is held once a year and within the three months as of the closing of the accounting period. Extraordinary meetings can be held in accordance with articles of associations and whenever it is deemed necessary.

The general assembly must be called at least fifteen days prior to the meeting date. The articles of association may extend this period or shorten it up to ten days.

(ii) **Voting right and its calculation**

- The voting right of partners is calculated in accordance with the nominal value of their capital shares. Every twenty five Turkish Liras grants one voting right unless
a higher amount is stated in the articles of association.

- The voting rights of partners who have more than one share may be restricted by the articles of association. A partner has at least one voting right. Voting can be made in writing if stated in the articles of association.

- The articles of association may also specify the voting right as each basic capital share corresponding to one voting right, independent of its nominal value. In this case, the nominal value of the minimum basic capital share may not be less than one tenth of the total of nominal values of other basic capital shares.

- The provision in the articles of association with respect to the determination of the voting right in accordance with the number of capital shares does not apply in the following situations:
  - Election of auditors,
  - Election of special auditor for the audit of the management or specific parts,
  - Decision making for filing a lawsuit of responsibility.

(iii) Exclusion of voting right
Partners, who have participated in the LLC’s management, may not vote on resolutions with regard to the release of managers.
A partner cannot vote on the resolution with respect to the approval of his or her own activities which are not compliant with loyalty duty or non-competition obligation.

c) Adoption of resolution
(i) Adoption of ordinary resolution
The resolutions of the general assembly are taken by the majority of the represented votes unless otherwise stated in law or articles of association.

(ii) Important resolutions
The following resolutions of the general assembly may be adopted with at least two thirds of represented votes together with the absolute majority of the total of capital shares with voting right:

- Changing a partnerships scope of activity,
- Introducing capital shares with privileged voting rights,
- Restricting, prohibiting or facilitating the transfer of capital shares,
- Increasing capital,
- Restricting or cancelling pre-emptive rights,
- Changing the headquarters’ location,
- Approving the transactions of managers and partners which are not in compliance with loyalty duty to the company or non-compete obligation,
- Applying to a court for the dismissal of a partner from the partnership because of a valid reason and dismissal of partner from the partnership with a reason stipulated in the articles of association,
- Terminating the partnership.
d) Nullity and cancellation of general assembly resolutions
The provisions of joint stock companies with regard to the nullity and cancellation of joint stock companies’ general assembly resolutions are also applied to LLCs.

Management and representation

a) Managers

- A partnership’s management and representation are drawn up by the articles of association. The management and representation of the partnership may be delegated to (a) one or more partner(s) titled as “manager” or (b) all partners or (c) third parties. At least one partner must have the authority to manage and represent the partnership.
- In the case where one of the managers is a legal entity, a real person is elected to perform duties on behalf of the legal entity.
- The managers are entitled to adopt resolutions and execute them regarding the management of the partnership except for matters which are reserved to the authority of the general assembly according to law or the articles of association.
- In the case where the partnership has more than one manager, one of them is appointed as chairman of the board of manager regardless of the fact this manager is shareholder or not.
- The chairman or the manager (in case of one manager) has the authority to:
  - Request for a general assembly to be held,
  - Conduct of the general assembly meetings,
  - Make all announcement and declarations in cases otherwise adopted in the general assembly or otherwise stated in the articles of association.
- In the case of more than one manager, the decisions are taken with the majority of votes. If there is a tie, the chairman’s vote is predominant. The articles of association may include provisions regarding the adoption of resolution of managers.

b) Duties, authorities and liabilities

(i) Non-delegable and indispensable duties
The managers are authorized for all matters except for the matters which are reserved to the general assembly in accordance with laws or articles of association. The manager cannot delegate or refrain from the following authorities and duties:

- Directing and managing the partnership and giving instructions where necessary,
- Determining the management organization of the partnership within the framework of law and articles of association,
- Establishing the necessary system for accounting and internal audit as well as financial planning (the financial planning mechanism is established to the extent required for the management of the partnership),
- Supervising whether or not the persons in charge of management, act in accordance particularly with law, articles of association, internal regulations and instructions,
• Establishing risk identification and a management committee for partnerships with an exception for small sized partnerships,
• Preparing the financial statements, annual report and consolidated financial statements and the annual report of the group of companies where necessary,
• Organizing general assembly meetings and enforcement of general assembly resolutions,
• Notifying the court regarding the partnership's state of excess of liabilities over assets.

The articles of association may require manager(s) to bring certain resolutions and specific matters to the general assembly. The approval of the general assembly on these resolutions may not eliminate or limit the responsibility of managers.

(ii) Care and loyalty duty, non-compete obligation

In accordance with the new TCC the managers and third parties in charge of management are under liability to perform their duties with due care and to protect the company's interests in good faith.

Managers cannot conduct activities competitive with the activities of the partnership unless otherwise stated in the articles of association or permission is granted by the other partners for such activities in a written form. The articles of association may stipulate the approval of the general assembly instead of the approval of partners.

Managers are subject to loyalty duty as required for partners.
(iii) Equal treatment
Managers must treat all partners equally under similar conditions.

c) Scope of and restrictions on authority to represent
The provisions with regard to joint stock companies (such as the scope of management representation authority, restrictions of authority, determination of persons authorized for signature, the form of signature and registration and announcement of all these matters) are applied in the LLC.

d) Dismissal or restriction of authority for management and representation
The general assembly may dismiss the managers or restrict their management and representation authority. Each partner may request from the court the removal of the management and representation authority of managers in cases where there is a valid reason.
Activities such as (a) noncompliance of managers with loyalty duty (b) unfulfilled liabilities as required by laws and articles of associations or (c) lack of qualifications required for the good management of the partnership may be considered as valid reasons.
The manager who has been removed from the duty has indemnity rights.

e) Tortious liability
A partnership is liable for tortious acts which are committed by the person authorized for the management and representation of the partnership while conducting assigned duties regarding partnership business.

Capital loss and excess of liabilities over assets
The provisions of joint stock companies with regard to capital loss, excess of liabilities over assets and notification and postponement of bankruptcy are also applied to LLCs. The provisions of joint stock companies with regard to independent audit, auditor and special audit are also applied to LLCs.

DISSOLUTION AND WITHDRAWAL
Reasons and consequences of dissolution
LLC is dissolved when:
- Any condition for dissolution as set out in the articles of association is realized,
- The related general assembly resolution is adopted,
- Any other condition for dissolution as set out in law is realized,
- Adjudication of bankruptcy is declared.
If one of the organs of the partnership cannot not exist for a long time or if the general assembly is unable to meet, based on a partner’s or a creditor’s request for dissolution of the partnership, the commercial court of the first instance grants a period for the partnership to align its position with the law. If the position is still not aligned, the court may decide...
for dissolution of the partnership. Each partner may request dissolution of the partnership from the court with a valid reason. The court may rule that the plaintiff partner is paid the actual value of shares owned by this partner and is dismissed from the partnership or another solution may be offered that may be acceptable. When the legal action for dissolution is filed, the court may take necessary precautions based on the request of one of the parties. The provisions with regards to joint stock companies apply to the consequences of dissolution in the LLCs.

Registration and announcement
In the case where the dissolution has resulted from reasons other than bankruptcy or court judgment, the manager or at least two managers (if there is more than one manager) must register the dissolution at the trade registry and announce it.

Withdrawal and dismissal
a) General
The articles of association may stipulate that partners may be granted rights to withdraw from the partnership and exercise of these rights may be subject to certain circumstances.
Each partner may apply to the court for the withdrawal from the partnership. During the legal process the court may rule, based on request, to freeze some or all rights and obligations of the plaintiff partner arising from the partnership or may take measures to secure the position of the plaintiff partner.

b) Participation in the withdrawal
If one of the partners initiates a legal action to withdraw from the partnership with a valid reason or based upon the articles of association. The manager(s) inform other partners of this issue with immediate effect. Each of the other partners who have been informed by the managers may decide to join the withdrawal. If this is the case, the managers must be informed within one month. All withdrawing partners are treated equally pro rata their capital shares. This provision does not apply in a situation where a partner is dismissed due to a valid reason or according to the articles of association or a just cause.

c) Dismissal
The articles of association may stipulate the conditions of dismissing a partner from the partnership through a general assembly resolution. The partner may commence a lawsuit for the withdrawal resolution within three months after the notification date. The resolution must be notified by the public notary. Dismissal from partnership by the court decision with a valid reason is reserved based on the request of the partnership.
d) Cash payment for withdrawal

- If a partner withdraws from the partnership, the partner has the right to request cash payment for withdrawal that is in line with the actual value of the partner's capital share. The cash payment for withdrawal may be stipulated differently in the articles of association.

- Cash payment for withdrawal will be due subsequent to the withdrawal:
  - If the company is disposing of free equity,
  - If the withdrawing partners capital shares can be transferred,
  - If the capital has been decreased in accordance with the related provisions.

The unpaid amount of the cash payment regarding the withdrawal of the withdrawing partner becomes the liability of the partnership. This liability is ranked after all creditors. This matter becomes due when the free equity in the annual report is determined.

Liquidation

The provisions with regard to joint stock companies for liquidation methods and authorities of partnership organs during liquidation are also applied to the LLCs.
GROUP OF COMPANIES

Group of companies regulated for the first time in Turkish law by the new TCC

CONTROLLING COMPANY AND DEPENDENT COMPANY
The controlling company (parent company) and dependent company (subsidiary) are defined for the first time in the new TCC. A company (controlling company) is assumed to control another company (dependent company) if the following criteria are met:

- If a company directly or indirectly (a) holds the majority of the voting rights of another company, or (b) has the right to ensure the election of members forming the majority which is able to take resolution in the management of another company in accordance with articles of association, or (c) has the majority of the voting right of another company alone or with other shareholders or partners based on a contract in addition to its own votes.
- If a company is able to hold another company under its control in accordance with a contract or through other means.
If the headquarters of at least one of these companies is in Turkey, the provisions related to the group of companies in the new TCC will be applied. Companies (subsidiaries) that are directly or indirectly affiliated with the controlling company constitute a group of companies together with the controlling company (parent company).
The percentage of a company’s participation in another company is determined by ratio of the total nominal value of the share or shares it holds in that company to the ratio of the capital of the company participated in.

**Cross-shareholding**
Capital stock companies holding at least one quarter of each others shares are in the state of cross-shareholding. If one of the said companies controls the other, the latter is considered as a dependent company. If each one of the companies in the state of cross-shareholding controls the other, both of them are considered as dependent and controlling companies.

**Liabilities regarding notification, registration and announcement**
If a company (parent company) directly or indirectly owns an amount of shares representing five, ten, twenty, twenty five, thirty three, fifty, sixty seven or one hundred percent of the capital of a capital stock company (subsidiary) or if its shares fall under these percentages, the parent company must notify the subsidiary and the related authorized bodies within ten days subsequent to the completion of the aforementioned transactions. Such acquisitions or dispositions of the shares must be declared under a separate heading in the annual and audit reports and announced on the subsidiary’s website.
The managing directors and board members of the parent company and the subsidiary must make a notification in relation to the shares in that subsidiary owned by themselves, their spouses, their children under their custody and a company in which they hold at least twenty percent of its capital. Notifications must be in writing, registered at the trade registry and announced.
If such notification, registration, and announcement liabilities are not fulfilled properly, all rights including the voting right regarding to the relevant shares may be suspended. The controlling agreement must be registered and announced at the trade registry. Otherwise, the control agreement will not be valid. The invalidity of the agreement does not prevent the application of the new TCC and other laws regarding the liabilities and responsibilities for the group of companies.

**Reports of parent company and subsidiaries**
The board of directors of the subsidiary must prepare a report related to the company’s relations with the parent company and dependent companies within the first quarter of the year. This report includes all legal transactions which the company conducted in the previous year with the parent company and any companies that the parent company participates in. This report will also include any compensation of losses of subsidiaries by
the parent company. The transactions as stated in the aforementioned must be in compliance with “true and fair accounting principles”.

In addition, the board of directors of the subsidiary must explain whether or not the subsidiary incurred any damages resulting from taking or refraining from taking the measure pertaining to the transactions with the group of companies including the parent company. If the subsidiary incurred damage, the board of directors must also explain whether or not the damage was compensated. This explanation must only be included in the annual report.

Each board member of the parent company may request from the chairman of the board of directors to have a report prepared that includes:

- The subsidiaries financial position and financial performance,
- The relations of the parent company with subsidiaries,
- The relations of subsidiaries with each other,
- The relations of parent company subsidiaries with their shareholders and their relatives,
- All transactions among the related companies and their results and impact on the financial statements.

The financial information as included in this report must be prepared in accordance with true and fair accounting principle. The board member may request that this report be presented to the board of directors and its conclusion section is included in the annual report and audit report.

Obtaining information about subsidiaries

At the general assembly each shareholder of the parent company may request information related to (a) the subsidiaries financial position and financial performance, (b) the relations of the parent company with subsidiaries, (c) the relations of subsidiaries with each other, (d) the relations of the parent company and subsidiaries with their shareholders, managing directors and their relatives and (e) all transactions among the related companies and their results and impact on the financial statements.

RESPONSIBILITY

Responsibility in the case of unlawful exercise of control

a) Parent company causing the subsidiary to incur a loss

(i) A parent company cannot exercise its control in a way that would cause the subsidiary to incur a loss. The parent company cannot direct the subsidiary to:

- Carry out legal transactions such as the transfer of business, asset, fund, staff, receivable and debt,
• Decrease or transfer its profit,
• Restrict its assets with real or personal rights,
• Undertake liabilities such as providing security and guarantee,
• Make payments,
• Adopt decisions or take measures which negatively affect its efficiency and activity such as not renovating its facilities, limiting, stopping its investments without any reasonable grounds and to refrain from taking measures that will ensure its development.

If a loss is incurred as a result of any activities including the aforementioned actions, the loss must be compensated by the parent company in the related financial year. Alternatively, a right to claim of equivalent value may be granted to the subsidiary no later than the end of the related financial year by specifying how and when this loss will be compensated.

(ii) If compensation is not made within the financial year in which the loss has incurred, each shareholder of the subsidiary may claim that the loss incurred by the parent company and its board members who caused the loss be compensated. The compensation may not be claimed in cases where it is proven that the board members of the parent company acted as responsible managers and even in this situation a loss occurred due to the actions of these managers.

If the headquarters of the parent company is located abroad, the action for compensation must be taken in the commercial court of the first instance at the location of the headquarters of the subsidiary.

b) Transactions initiated by the parent company that has no reasonable ground for the subsidiary
Shareholders who counter voted the general assembly resolution and had them recorded in the minutes of this resolution in connection with transactions such as merger, division, conversion, termination, issuing securities and important amendment to articles of association which are initiated by the parent company and without any clear reasonable grounds for the subsidiary, or who have objected in writing to the board resolution on the same and similar subjects, may request from the court that their damages be compensated by the parent company or their shares be purchased at stock exchange value.

Responsibility in the case of full control
a) Instruction given by parent company to subsidiary
If a parent company directly or indirectly holds one hundred percent of the shares and voting rights in a capital stock company, the board of directors of the parent company may give instruction regarding the direction and management of the subsidiary even

The new TCC prohibits parent companies from abusing their power to control subsidiaries
if it has a nature which may cause a loss provided that it is a requirement of the group of companies' policies.
In such a situation the subsidiary’s board members, its managers and other responsible persons cannot be held liable to the company and to its shareholders because of compliance with the instructions given by the parent company.

b) Exception
The parent company cannot give an instruction which may endanger the existence of the dependent company or exceed the dependent company’s solvency.

c) Right of action of the company’s creditors
If the loss incurred by the subsidiary due to instructions given by the parent company (in the case of full control) is not compensated in accordance with the law, the creditors who have incurred damage may take an action for compensation against the parent company and its board members responsible for the loss.

OTHER PROVISIONS

Special audit that may be requested by the subsidiary’s shareholders
If the auditor, special auditor or early risk detection committee have provided an opinion stating the existence of fraud and conspiracy in the subsidiary’s relationship with the parent company or with another group company, each shareholder of the subsidiary may request the assignment of a special auditor from the commercial court of the first instance at the location of the company’s headquarters for the purpose of clarifying this matter.

Right to purchase the shares of minority
If the parent company, directly or indirectly, holds at least ninety percent of shares and voting rights in a subsidiary and if the minority prevents the company from running its business, does not act in good faith, creates obvious trouble or behaves in a reckless manner, the parent company may purchase the shares of the minority at stock exchange value, if any, or at the value determined in accordance with the appropriate method proposed by the new TCC.

Responsibility arising from trust
In cases where the parent company reaches a level where its group reputation inspires confidence to community or consumer, the parent company will be liable for the confidence created by the use of its reputation.
CONCEPTS

In the application of articles with respect to merger, division and conversion the following concepts apply:

- “Company” refers to commercial companies,
- “Partner” refers to the shareholders of joint stock companies, to the partners of personal companies, cooperatives and LLCs,
- “Partnership share” refers to the partnership share in personal companies, the share in joint stock companies, the capital share in partnerships with limited liability, the partnership shares in partnerships limited by shares,
- “General assembly” refers to the general assembly in joint stock companies, partnerships with limited liability and partnerships limited by shares and in cooperatives, the partners meeting in personal companies and all partners where required,
- “Management body” refers to the board of directors in joint stock companies and
cooperatives, the manager or managers in partnerships with limited liability, the
managing director in personal companies and partnerships limited by shares,
• “Company agreement” refers to the articles of association in all capital companies.
In the determination of the company size, the articles 1522 and 1523 of the new TCC are
applied.

MERGER

**General provision**

**a) Principle**

There are two methods of merger. Companies may merge through an acquisition of
one company by another one (merger by acquisition) or merger in a new company
(merger by formation of a new company).

In the application of the merger related provisions of this law the acquiring company
is referred to as “transferee” and the acquired company is referred to as “transferred”.
The merger is formed through the automatic acquisition of the company shares of the
transferee by the shareholders of the acquired company in exchange for the company
assets of the transferee in accordance with an exchange ratio.

In the merger transaction the transferee company takes over the assets of the trans-
ferred company as a whole. As a result of the merger the transferred company is dis-
solved and removed from the trade registry.

**b) Applicable mergers**

In accordance with the new TCC, applicable merger types are as follows:

- Capital stock companies may merge with cooperatives and general partnerships
  and limited partnerships (in the case they are the transferee company) and capital
  stock companies.
- Personal companies may merge with capital stock companies and cooperatives (in
  the case they are the transferred company) and personal companies.
- Cooperatives may merge with personal companies (in the case they are the trans-
  feree company) and cooperatives and capital stock companies.

**c) Participation of a liquidating company in a merger**

A liquidating company may participate in a merger in cases where the assets of the
company have not yet been distributed and it is the transferred company. The compli-
ance with these conditions should be proven with the relevant documentations to the
Trade Registry Directorate at the location of the head office of the transferee company.

**d) Participation to a merger in the case of capital loss or excess of liabilities
   over assets**

A company which lost the capital and the half of its total legal reserves with losses or
which is in a situation where the liabilities exceed its assets may enter into a merger
with a company which has adequate equity to cover the former’s capital loss or (if
necessary) excess liabilities over assets. The compliance with these conditions should be proven with the relevant documentation to the trade registry directorate at the location of the head office of the transferee company.

**Partnership shares and rights**

**a) Protection of partnership shares and rights**

- The transferred company’s partners have the right to claim with respect to the shares and rights of the transferee company at a value that corresponds to existing partnership shares and rights. Such claim is determined taking into account the value of the assets of companies participating in the merger, the assigned voting rights and other significant matters.
- In the determination of the exchange rates of partnership shares, an equalization payment may be specified provided that partnership shares assigned to the partners of the transferred company do not exceed one tenth of their actual values.
- Non-voting shares or shares with voting rights are provided to the partners of the transferred company having non-voting rights at the same value.
- Equal rights at the transferee company or a fair amount of provision are given in exchange for the privilege rights associated with the existing shares of the transferred company.
- The transferee company must grant the equivalent rights to the profit sharing certificates holders or purchase the profit sharing certificates at the actual value prevailing at date the merger agreement is signed.

**b) Cash payment for withdrawals**

Partners may be granted option in the merger agreement to choose to acquire shares and partnership rights in the transferee company or to receive a cash payment for withdrawals that corresponds to the actual value of the transferred company’s shares. In the merger agreement companies participating in the merger may stipulate only to grant cash payment for withdrawals.

**Capital increase, new company formation and interim balance sheet**

**a) Capital increase**

In the merger through acquisition, the transferee company must increase the capital to a level adequate to protect the rights of the partners of the transferred company.

**b) Formation of a new company**

In the merger through forming a new company, relevant provisions of the new TCC and Cooperatives Law are applied in order to form the new company with the exception of provisions pertaining to contribution of capital in kind and the minimum number of partners.
c) Interim balance sheet

Companies participating in the merger are obliged to prepare an interim balance sheet if:

- The period between the date the merger agreement is signed and the date of the balance sheet is longer than 6 months or,
- There are significant changes in the assets of the companies participating in the merger after the last balance sheet was prepared.

The interim balance sheet is prepared based on the principles and provisions applied to the annual balance sheet with the exception of the following matters:

- There is no requirement to conduct physical stock take.
- The valuations applied in the preparation of the last balance sheet are changed to the extent of the transactions in the commercial books. Depreciation, valuation adjustments, provisions are also taken into account in the preparation of the interim balance sheet.

Merger agreement and merger report

a) Merger agreement

(i) Drawing up a merger agreement

The merger agreement is drawn up in written form. The agreement is signed by the management bodies of the companies participating in the merger and submitted to the general assemblies for approval.

(ii) Content of the merger agreement

The following matters should be included in the merger agreement:

- Trade names, legal forms and head quarters of companies participating in the merger; the name of the new company, type and headquarters in the case of a merger by formation of a new company,
- Equalization amount, if stipulated, and exchange ratios of company shares; information with respect to shares and rights of shareholders of the transferred company in the transferee company,
- Rights provided by the transferee company to the holders of non-voting shares, privileged shares and profit sharing certificates,
- Type of exchange of shares,
- Date on which the shares acquired by the merger are entitled to the right for the profit as stated in the financial statements of the transferee company or of the newly formed company and all details related to such entitlement,
- Cash payment for withdrawals, if necessary in accordance with the relevant provision,
- Date on which all transactions and operations of the transferred company are assumed to be conducted for the account of the transferee company,
- Benefits granted to management organs and managing partners,
- If necessary, names of partners with unlimited liability.
b) Merger report

The management bodies of companies participating in the merger prepare individually or jointly a report regarding the merger. In this report the following points are explained taking into account the legal and economic aspects as well as the reasons:

- Purpose and results of the merger,
- Merger agreement,
- Equalization amount, if stipulated, and exchange ratios of company shares; partnership rights in the transferee company granted to the partners of the transferred company,
- The amount of cash payment for withdrawal if required, and the reasons of giving cash payments for withdrawal in lieu of company shares and partnership rights,
- Elements of shares’ valuation with respect to the determination of the exchange ratio,
- If necessary, the amount of increase which will be made by transferee company,
- If stipulated, due to merger, information regarding additional payment and other personal responsibilities and personal performance obligations that will be imposed to the partners of transferred company,
- Liabilities of partners due to the new form in the case of a merger of different forms of companies,
• Impacts of the merger on the employees of companies participating in the merger and if possible details of a social plan,
• Impacts of the merger on the creditors of companies participating in the merger,
• If necessary, approvals obtained from related authorities.

It is necessary to attach the company’s articles of association to the merger report in a merger by the new company formation.
Small and medium sized companies may not draw up a merger report in the case of approvals of all partners.

**Inspection right and changes in assets**

**a) Inspection right**

Each of the companies participating in the merger is obliged to present the following documents, within thirty days before the general assembly resolution, to partners, to bearers of securities issued by the company, to profit sharing certificate holders, to stakeholders and to other relevant parties for inspection purposes at their head office as well as in branches and in the case of public companies at locations determined by the Capital Markets Board. Such documents are also published in the web sites of each capital company:

- Merger agreement,
- Merger report,
- Year-end financial statements, annual reports and if necessary interim balance sheets of the last three years.

Partners and the aforementioned parties may request copies of these documents and hard copies if available. These documents are provided free of charge.

Each of the companies participating in a merger:

- Refers to the inspection right in the announcement that is published in the Turkish Trade Registry Gazette and the web sites,
- Announces the parties to whom the aforementioned documents have been presented and locations where these documents are made available for inspection in the Turkish Trade Registry Gazette as well as in the newspapers as specified in the articles of association and the web sites at least three business days before such documents are presented.

Small and medium sized companies may not exercise the inspection right in case of approvals of all partners.

**b) Information regarding changes in assets**

If any significant changes in the assets and liabilities of one of the companies participating in the merger take place between the dates of merger agreement signing and presentation of this agreement to the general assembly for approval, the management reports in writing to its general assembly and the management bodies of companies participating in the merger with regards to this matter.
In this situation the management bodies of companies participating in the merger determine if it is necessary to amend the merger agreement or terminate the merger. In which case, the proposal to present for approval is withdrawn. Otherwise, the management body explains at the general assembly the reason as to why it is not necessary to amend the merger agreement.

c) Merger resolution
The management body presents the merger agreement to the general assembly accordingly:
- In the joint stock companies, the merger agreement must be approved by the general assembly with three quarters of votes present at the general assembly provided that such votes represents the majority of main or issued capital.
- In the LLCs, the merger agreement must be approved with the votes of three quarters of all partners provided that such votes represents at least three quarters of capital.
- Unanimous approval of all partners is required in cases where additional liability and personal performance liabilities are given through the acquisition, or if such liabilities are available they are broadened in a joint stock company acquired by a LLC.
- If a cash payment for withdrawals is stipulated in a merger agreement, this matter must be approved by the votes of ninety percent of all partners holding voting rights in the case where the transferred company is a personal company, or the existing voting rights if it is a joint stock company.
- If a change related to the scope of activity of the transferred company is stipulated in the merger agreement, the merger agreement must be approved with the quorum required to amend the articles of association.

Provisions regarding implementation
a) Registration at the trade registry
As soon as the merger resolution has been adopted by the companies participating in the merger, management bodies apply to the trade registry for the registration of the merger. If the transferee company has increased the capital in accordance with the requirement of the merger, the amendments of articles of association are additionally submitted to the trade registry. The transferred company is dissolved when the merger is registered in the trade registry.

b) Legal effects
The merger becomes effective when it is registered at the trade registry. At the time of the registration, the assets and liabilities of the transferred company automatically pass to the transferee company. The partners of the transferred company become the partners of the transferee company.
c) Announcement
The merger resolution is announced in the Turkish Trade Registry Gazette.

Simplified merger of capital companies
a) Application scope
Capital companies may enter into a merger in accordance with the simplified merger method as follows:
• If the transferee capital company owns all shares having voting right of the transferred capital company or,
• If a real person or a company or groups of persons due to law or agreement owns all shares having voting right in capital companies participating in the merger.
The merger may occur in accordance with simplified conditions if the transferee capital company owns at least ninety percent of shares having voting right but not all shares of the transferred capital company, in the case that certain criteria are met for minority shareholders related to the value of shares and personal liabilities.

b) Simplifications
Capital companies participating in the merger may not have the obligation to (a) draw up the merger report (b) provide the right to inspect and (c) to submit the merger agreement for the approval of the general assembly if they comply with the certain conditions as specified in this law.

Protection of creditors and employees
a) Securing receivables of creditors
If the creditors of companies participating in the merger make a claim within three months after the merger has legally taken place, the transferee company must secure the receivables of these creditors. Creditors are notified of their rights by companies participating in the merger through an announcement in the Turkish Trade Registry Gazette three times at seven day intervals as well as an announcement in the web site of the companies.
If it appears that the creditors will not bear a loss, the liable company may settle the debt in lieu of securing.

b) Transfer of personal responsibilities of partners and business affairs
The partners responsibilities regarding the debts of the transferred company prior to the merger continue after the merger provided that such debts were incurred prior to the announcement of the merger resolution or the reasons that cause the debts occurred prior to this date.
Any claims resulted from the debts of the transferred company with respect to the personal responsibility of partners become barred after three years from the announcement date of the merger resolution. If the claim is due after the announcement date, the prescription period begins at the due date. This limitation does not apply to the
responsibilities of partners who are personally liable because of the debts of the trans-
feree company.

DIVISION

General provisions

a) Principle
Division can be total or partial.
In total division, all the assets of the company are divided into portions and are transferred to other companies. The partners of the divided company acquire the shares and the rights of the transferee company. The totally divided and transferred company ceases to exist and its trade name is removed from the trade registry.
In partial division some part of the assets of a company are transferred into other companies. The partners of the divided company acquire the shares and the rights of the transferee company, or the divided company acquires the shares and the rights of the transferee company in return for the transferred assets and forms its subsidiary.

b) Allowed divisions
Capital companies and cooperatives can be divided into capital companies and cooperatives.

c) Protection of company shares and rights
In total and partial divisions, the company shares and rights are protected in accordance with the Article 140 of the new TCC.
In all companies participating in division company shares in ratio in accordance with their existing shares, or in certain or all companies participating in division company shares in different ratios according to the ratio of their existing shares, may be assigned to the partners of the transferor company.

Provisions regarding application of division

a) Capital decrease
In the case of a capital decrease in the transferor company, due to the division of certain provisions of the new TCC, are not applied.

b) Capital increase
The transferee company increases the capital to the level adequate to protect the rights of the partners of the transferor company. The provisions regarding capital in kind are not applied in divisions. The capital may be increased without changing the ceiling due to division although it is not in accordance with the authorized capital system.

c) Formation of a new company
In the formation of a new company due to division, relevant provisions of the Cooperatives Law are applied. In the formation of capital companies the provisions pertain-
ing to contribution of capital in kind and the minimum number of founders are not applied.

d) Interim balance sheet

An interim balance sheet is prepared if:
- The period between the date the division agreement is signed or the date the division plan is drawn up and the date of the balance sheet is longer than 6 months, or,
- There are significant changes in the assets of the companies participating in the division after the last balance sheet is prepared.

The interim balance sheet is prepared based on the principles and provisions applied to the annual balance sheet except for the following matters:
- There is no requirement to conduct physical stock take,
- The valuations applied in the preparation of the last balance sheet are changed to the extent of the transactions in the commercial books. Depreciation, valuation adjustments, provisions are also taken into account in the preparation of the interim balance sheet.
Right to inspect regarding division documents  

a) Division agreement and division plan  

(i) General  
The management bodies participating in the division draw up a division agreement if a company transfers parts of its assets to existing companies through division. If a company transfers parts of its assets through division to the newly incorporated companies, the company’s management draws up a division plan. The division agreement and division plan must be drawn up in written form and must be approved by the general assembly.

(ii) Content of division agreement and division plan  
The division agreement and division plan should include the following:

- Trade names, head quarters and forms of companies participating in the division,
- Division of assets and liabilities and allocation of them; the details of inventories, negotiable instruments tangible and intangible assets,
- Equalization amount, if stipulated, and exchange ratios of company shares; the declarations of the partners of the transferor company regarding their partnership rights in the transferee company,
- Rights that are assigned to the profit sharing certificates holders, non-voting shares and special rights by the transferee company,
- The method of share exchange,
- Date of which company shares will have the right to the profit and the features of this right for making a claim,
- Date of which the transferor company’s transactions are assumed to be performed for the account of the transferee company,
- Benefits granted to members of the management organs, managers, persons who have the management rights and auditors,
- The list of business affairs which have passed to the transferee company as a result of the division.

b) Assets excluded from division  
Assets which have not been transferred in the division agreement or in the division plan will be:

- Owned by all transferee companies in co-ownership in the case of a total division in accordance with the rate of net assets transferred to all transferee companies in conformity with the division contract or plan,
- Left to the transferor company in the case of a partial division.

The aforementioned provision is applied to receivables and intangible asset rights in a similar way.

Companies participating in the total division are severally liable regarding debts which have not been transferred to any company according to the division contract or division plan.
c) Division report

The management bodies of companies participating in the division prepare a separate report with respect to the division. A report that is prepared jointly is also valid. In this report the following points are explained taking into account the legal and economic aspects as well as the reasons:

• Purpose and results of the division,
• Division agreement or division plan,
• Equalization amount to be paid, if stipulated, and exchange ratios of company shares; declarations of the transferor company's partners with regard to their rights in the transferee company,
• Elements of shares valuation with respect to the determination of exchange ratio,
• If necessary, additional payment liabilities, other personal performance liabilities and unlimited liability that may result from the division for partners,
• In cases where the types of companies participating in division are different, liabilities of partners due to the new type,
• Impacts of the division on the employees of companies participating in the division and details of a social plan, if any,
• Impact of the division on the creditors of the companies participating in the division.

If a new company is formed, the articles of association of the new company should also be attached to the division plan.

Small and medium sized companies may not draw up a division report in case of approvals of all partners.

d) Right to inspect

Each of the companies participating in the division presents the following documents two months before the general assembly resolution to partners participating in the division for inspection purposes at the head office, and in the case of public companies at locations determined by the Capital Markets Board:

• Division agreement or division plan,
• Division report,
• Year-end financial statements, annual reports for the last three years and interim balance sheets, if any.

Partners may request copies of these documents and hard copies from the companies participating in the division if available. These documents are provided free of charge. Each of the companies participating in a division refers to the inspection right in the announcement that is published in the Turkish Trade Registry Gazette and the web sites.

Small and medium sized companies may not exercise the inspection right in case of approvals of all partners.
e) Information regarding changes in assets
Provisions related to the significant changes in the assets and liabilities of companies participating in the merger are applied to the companies participating in the division in a similar way.

Division resolution
The management body of companies participating in the division presents the division agreement or division plan to the general assembly after the guarantees have been provided as stipulated in the article 175 of the new TCC. The resolution for the approval of the division is adopted in accordance with the quorums as stipulated in the article 151 of the new TCC. The resolution for the approval is adopted by at least ninety percent of the partners who are entitled to vote in the transferor company when the quorums are not present.

Provision regarding protection
a) Protection of creditors
(i) Notice
The creditors of the companies participating in division are requested to declare their receivables and to make a claim for security through an announcement in the Turkish Trade Registry Gazette three times at seven days intervals as well as make an announcement in the web site of the companies.

(ii) Securing receivables of creditors
If the creditors of companies participating in the division make a claim within three months from the date the aforementioned announcements are published, the companies must secure the receivables of these creditors.
If it is proven that the receivables of creditors are not under risk, the obligation to secure receivables is removed.
If it appears that the other creditors will not bear a loss, the company may settle the debt in lieu of securing.

b) Responsibility
In the case where the company to which claims were assigned due to division plan or division agreement and are therefore primarily liable as a result, the other companies participating in the division which are secondarily liable becomes severally liable.
The secondarily liable companies may be subject to executive proceedings if certain conditions are met as stipulated in the related articles of the new TCC.
The provision with respect to the personal responsibilities of partners in divisions is also applicable to the personal responsibilities of partners in mergers.

Transfer of business affairs
The service contracts made with employees are transferred to the transferee company
with all rights and debts up to the transfer day in total and partial division if no objection is made by the employee.
If the objection is made by the employee, the service contract must terminate at the end of the dismissal period. The transferee company and the employee are obliged to fulfill the contract until that date.
The former employer and transferee company are severally liable for the receivables of employees which are due before the division has taken place and for the receivables of employees which are due within the period until the date the service contract is to expire under ordinary circumstances or the date it is terminated due to the objection of the employee.
The employer may not transfer the rights resulting from the service contract to a third party unless otherwise determined or it is apparent from the situation.

Registration at trade registry and validity
The management body requests the division’s registration as the division is approved. The amendment to the articles of association should also be registered, if it is required that the transferor company’s capital is decreased due to partial division.
In the case of full division, the transferor company is dissolved when registration is made at the trade registry.
The division takes effect when the registration is made at the trade registry. All assets and liabilities as included in the inventory at the time of the registration are transferred to the transferee company upon registration.

CONVERSION
General provisions
a) Principle
A company may change its legal form. The company that has been converted into a new legal form is the continuation of the former company.

b) Allowed conversion
A capital stock company may be converted into a different legal form of capital stock company and cooperative. A cooperative company may be converted into a capital stock company.

Protection of company shares and rights
The shares and rights of partners are protected in conversions. The non-voting shares holders are provided equal value of shares or shares with voting right.
Shares of equal value are provided in exchange for privileged shares or an appropriate indemnity is paid. In exchange for profit sharing certificates, rights of equal values are granted or the actual value effective on the date that the conversion plan is prepared is paid.
Incorporation and interim balance sheet
In the case of conversion, the provisions regarding incorporation of new legal form apply. However, the provisions regarding the minimum number of partners and capital contribution in kind do not apply to capital stock companies.

An interim balance sheet is prepared if:
- The period between the date the conversion plan is prepared and the balance sheet date is longer than 6 months or,
- There are significant changes in the assets of the company after the last balance sheet is prepared.

The interim balance sheet is prepared based on the principles and provisions applied to the annual balance sheet except for the following matters:
- There is no requirement to conduct physical stock take,
- The valuations applied in the preparation of the last balance sheet are changed to the extent of the transactions in the commercial books. Depreciation, valuation adjustments, provisions are also taken into account in the preparation of the interim balance sheet.

Conversion plan
The management body draws up a conversion plan. The conversion plan must be drawn up in written form and must be approved by the general assembly. The conversion plan includes the followings:
- Company trade name and headquarters before and after conversion and the indi-
cation with respect to the new legal form,
• Articles of association of the new legal form,
• Number, kind and amount of shares that the partners will have after the conversion or declarations regarding the partners shares after the conversion.

Conversion report
The management body prepares a written report regarding the conversion. In this report the following points are explained taking into account the legal and economic aspects as well as the reasons:
• Purpose and results of the conversion,
• Fulfillment of the incorporation provisions regarding the new legal form,
• Articles of association of the new company,
• Exchange ratio of shares that partners will hold after the conversion,
• Additional payments and other personal performance liabilities and personal responsibilities in relation to the partners resulting from the conversion,
• Liabilities arising from the new legal form for the partners.
Small and medium sized companies may not draw up a conversion report in case of all partners approvals.

Right to inspect
The company presents the following documents for the partners’ inspection at their head offices and for publicly held joint stock companies at locations determined by the Capital Market Board thirty days before the general assembly resolution:
• Conversion plan,
• Conversion report,
• Year-end financial statements for the last three years and interim balance sheets, if any.
Partners may request copies of these documents from the company. These documents are provided to the partners free of charge. The Company must notify the partners that they have inspection rights.

Conversion resolution and registration
The management body presents the conversion plan to the general assembly. The conversion resolution must be adopted according to the following quorums as specified in the related articles of the new TCC.
The conversion and the articles of association of the new company are registered by the management body. The conversion becomes effective upon registration. The conversion resolution is announced in Turkish Trade Registry Gazette.

Protection of creditors and employees
Article 158 applies to the personal responsibilities of the partners and article 178 applies to obligations arising from service contracts.
COMMON PROVISIONS

Inspection of company shares and rights
In a merger, division or conversion, in cases where the partnership rights and shares are not protected adequately or in cases where the cash payment for withdrawal is not properly determined, each partner may claim from the court a compensation payment within two months as of the announcement of the related resolution.
In cases where they are in the same legal position with the plaintiff, the court may order regarding all partners of the companies participating in the merger, division or conversion. The legal expenses of the lawsuit are born by the transferee company. The court expenses may be partially or fully reflected to the plaintiff if certain conditions are met.

Cancellation of merger, division and conversion and the results of incompleteness
In the case of violation of certain provisions, the partners of companies participating in the merger, division or conversion who have not voted in favor of the merger, division and conversion resolution, and who have recorded this in the minutes, may file an action for cancellation within two months from the date of announcement of this resolution in Turkish Trade Registry Gazette. The period commences from the date of registration when announcement is not required. This action may also be filed provided that the resolution is adopted by a management body.
If any transactions regarding the merger, division and conversion are incomplete, the court may grant a period to the parties in order to complete these transactions. If these transactions cannot be completed within the granted time, the court may cancel the resolution and take the necessary measures.

Responsibility
All persons who have participated in the merger, division or conversion transactions are responsible for any damages they have caused because of their actions to the partners, companies and creditors. The responsibilities of founders are reserved.

MERGER AND CONVERSION OF COMMERCIAL ENTERPRISE
A commercial enterprise may merge with a capital company through acquisition by the capital company. In accordance with the legal form of the transferee capital company, the provisions of certain articles apply in a similar way.
If a commercial enterprise converts to a commercial company, certain articles apply in a similar way.
In cases where a capital company converts to a commercial enterprise, all shares of the capital company must be acquired by the person or persons who will be managing the commercial enterprise and the commercial enterprise must be registered in the name of this person or these persons.
Turkish Accounting Standards: The new TCC introduces new accounting standards which are in line with the generally accepted accounting standards

COMMERCIAL BOOKS AND BOOKKEEPING OBLIGATION

General

- Journal ledger, general ledger, inventory ledger, share book, resolution book of the board and book of general assembly meeting and discussion are defined as commercial books.
- Every merchant must keep the commercial books and must show the commercial transactions, financial position and financial performance in the commercial records. The books must be kept in such a manner that will provide all necessary views regarding the company’s financial position and financial performance in case of any inspection conducted by third party experts. The nature of transactions as recorded in the commercial books must be transparent and traceable.
• A merchant is obliged to keep copies of all of the company’s business related documents as photocopy, carbon copy, microfiche and electronic copy in written hard copy form, in electronic form or visual form.
• A joint communiqué published by the Ministry of Customs and Trade and the Ministry of Finance shall set out the principles regarding how commercial books in hard copy form or electronic form will be kept, recording time of the books, renewal of certification as well as opening and closing certification of books.

Opening and closing certification
• The books that are kept in hard copy form such as journal ledger, general ledger, inventory ledger, share book, resolution book of the board and book of general assembly meeting and discussion must be certified by a notary for opening during the incorporation of the company or before such books are used. In the subsequent periods, the opening certification of these books should be notarized until the end of the month prior to the first month of the financial period in which these books will be used. The share book and the general assembly register may be used in the subsequent period without being certified by the notary for opening provided that such books have adequate pages.
• The closing certification of the journal ledger and resolution book of the board must be made by the notary until the end of the third month of the subsequent financial period.
• The opening of books may be certified by the Trade Registry Directorate when the companies are registered with the trade registry.
• In cases where the opening certification is made by the notary, the notary must request the trade registry certificate.
• In cases where the commercial books are kept in electronic form, notary certification is not required in the opening of such books and in the closing of the journal ledger and resolution book of the board.

Bookkeeping obligation
The accounting books shall be kept in accordance with the provisions of Tax Procedural Law. This means that from a bookkeeping point of view there is no change compared to the old TCC.

FINANCIAL STATEMENTS AND ANNUAL REPORT PREPARATION OBLIGATION
• The Board of Directors of a joint stock company and managers of LLC should prepare the previous period stand-alone and consolidated financial statements and related disclosures as well as the board of directors’ annual report within the first three months subsequent to the year-end balance sheet date and present to the General Assembly. These financial statements to be presented at the General Assembly of the joint stock company and LLC should be prepared in accordance with
the Turkish Accounting Standards (TAS), accounting principles and accompanying interpretations.

- The financial statements must be prepared in Turkish and the currency used in the preparation must be in Turkish Lira.
- There is no obligation in the new TCC to register and declare the financial statements, annual report, general assembly decision regarding dividend distribution and the independent auditor opinion in the trade registry gazette and to publish them on the website of the Company.

TURKISH ACCOUNTING STANDARDS
The Turkish Accounting Standards (TAS) is in line with the international standards. The aim of the new TCC is that:

- Uniform implementation in accounting and reporting practices in Turkey is ensured,
- The financial statements prepared according to the TAS will be comparable to the financial statements prepared according to International Financial Reporting Standards and as a result the TAS will be accepted in the international market.

Concepts such as substance over form, true and fair view, comparability and materiality that did not have a significant role in the previous Turkish accounting system have been included in the conceptual framework of the TAS.

THE PUBLIC OVERSIGHT, ACCOUNTING AND AUDITING STANDARDS BOARD
The new TCC accepts the Public Oversight, Accounting and Auditing Standards Board (POB) as the sole and exclusive authority to set Turkish Accounting Standards (TAS) and provides the POB with exclusive powers.

The main objectives of the POB are to:

- Obtain validity for the financial statements of Turkish companies in international markets,
- Publish Turkish Accounting Standards in line with international standards that will ensure transparency, accountability, comparability and consistency of financial statements,
- Publish Turkish Auditing Standards that are in line with international standards in order to ensure (a) the true and fair presentation (b) credibility (c) transparency (d) comparability and (e) understandability of financial position, financial performance and cash flows of companies according to TAS through protecting public interest,
- Oversee the audits of companies in order to protect the public interest in the preparation of informative, accurate and independent audit reports,
- Register auditing firms or persons with the POB in order to prepare, issue, or participate in audit reports of companies,
• Investigate and discipline registered auditing firms and persons associated with those firms for noncompliance with the relevant regulations governing the audits of companies. When violations are found, the POB can impose appropriate sanctions. Sanctions imposed by the POB may include suspension or revocation of a firm’s registration. The POB may also require improvements in a firm's quality control, training, independent monitoring of the audit work of a firm or individual, or other remedial measures,
• Make regulations for increasing the quality of independent audit as well as public trust on auditing.

The POB is authorized to publish different and exceptional accounting standards for different sized companies, different industries and non-profit organizations.

INFORMATION INCLUDED IN DOCUMENTS PREPARED BY MERCHANTS
The new TCC regulates the contents to be included in all types of documents. In accordance with the new TCC the registered trade name must be written in a legible format at a place where it is visible in the company. Commercial letters issued by the merchant regarding the company and documents on which the company’s books and records are based must indicate the merchant’s registry number, trade name, headquarters of the company and the registered website address, if the merchant is obliged to open a website. This information must also be available on the company website. This website must also include the full names of the chairman, the board members and subscribed and paid-up capital in joint stock companies; full names of the managers and subscribed and paid-up capital in the LLC.

WEBSITE
The new TCC solely requires capital stock companies subject to an independent audit to open a website. The information that must be made available on a website is solely announcements that are legally required. In addition, the following information will be made available on the website:
• Trade name and location of the headquarters,
• Trade registry number,
• In the case of a joint stocks company: names and surnames of the chairman and members of the board, and the nominal and paid-up capital,
• In the case of LLC: names and surnames of the managers, and the nominal and paid-up capital.

In accordance with the latest amendments, only the companies which are subject to independent audit shall open a website and it is no longer necessary for companies to publish

Transparency: Companies are required to maintain a corporate website where they will publish official corporate announcements
financial statements, annual reports, resolutions of general assembly regarding dividend
distribution, the auditor’s opinion and the related general assembly resolutions on the
website.

PROFIT SHARE ADVANCE
In accordance with the new TCC, the profit share advance payment system is introduced
for shareholders of joint stocks companies and partners of LLCs. The profit share advance
system shall be regulated with a communiqué from the Ministry of Customs and Trade.

ELECTRONIC GENERAL ASSEMBLY AND BOARD MEETING
- The general assembly and board meetings (in joint stock companies) or managers
  meetings (in LLCs) may be held via an electronic platform where all or some of
  the participants may attend the meeting via this electronic platform provided that
  this is stipulated in the articles of association. Provisions regarding the quorum for
  meeting and resolution as set out in law and articles of association will be applied
  in the electronic general assembly and board meetings.
- Electronic participation and voting have the same legal consequences as physical
  participation and voting for all capital companies.
- Electronic participation and voting will be regulated with a communiqué from the
  Ministry of Customs and Trade.
- The website provides the means for electronic general assembly and board meet-
  ings and for electronic voting.
About Cerebra

Cerebra is a full service accounting, assurance, tax and consulting firm in a wide range of industries in Turkey. We offer solutions to a client base that ranges from small and medium sized entities, owner managed businesses, high net worth individuals to large corporations by using a highly-personalized service approach.

Cerebra is a dynamic client-driven professional services firm in Turkey. With a ‘hands-on’ approach, a highly qualified team and a keen responsiveness to client needs, we combine imaginative and constructive advice to create robust financial solutions to all types of businesses and individuals. Cerebra’s brand message, “Beyond the Numbers”, represents our performance commitment to continually earn your trust. The mission of Cerebra, with local and international knowledge and experience that enables us to move beyond your numbers, is to exceed our clients’ expectations through using such knowledge and experience in an innovative and proactive manner.

Cerebra offers the following services:

- Audit and Assurance
- Accounting & Finance Outsource
- Corporate Finance
- Turkish Commercial Code Compliance
- Management Consulting
- Fraud Investigation
- Tax
Cerebra provides comprehensive Turkish Commercial Code Compliance Services in a holistic approach that helps you respond to the requirements arising from the aforementioned radical changes introduced by the New Turkish Commercial Code.

- TTK Compass (TTK Pusula)
- Turkish Commercial Code Readiness & Conversion Services
- Turkish Commercial Code Briefings for Board of Directors
- Turkish Commercial Code Trainings
- Turkish Accounting Standards Readiness and Conversion

Cerebra manages two Linked-in platforms “New Turkish Commercial Code Platform” (in English) and “Yeni Türk Ticaret Kanunu Platformu” (in Turkish) where you may exchange knowledge with thousands of people who are interested in the related subjects.

In addition, Cerebra is the sole service provider of the website “www.yenittk.com” (Yeni TTK.com – Kurumsal Yönetim Bilgi Platformu) that provides valuable information, tools and publications regarding corporate governance, institutionalisation and the new Turkish Commercial Code.

For more information please visit our website

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