

Law Bulletin

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SIGNIFICANT CHANGES TO THE TURKISH COMMERCIAL CODE AND THE LAW ON THE PROTECTION OF COMPETITION

Law No. 7511 on the Amendment to the Turkish Commercial Code and Certain Other Laws (the "**Amendment Law**") entered into force upon its publication in the Official Gazette dated 29 May 2024 and numbered 32560. The Amendment Law introduces significant amendments to the Turkish Commercial Code ("**TCC**") and Law No. 4054 on the Protection of Competition (the "**Competition Law**"). Comprehensive amendments regarding the TCC relate to the functioning and powers of companies' boards of directors and minimum capital requirements. In terms of the Competition Law, amendments relate to the investigations of the Turkish Competition Authority (the "**TCA**").

1. Amendments under the TCC

- **Term for electing the chair and vice chair of the board of directors in joint stock companies has changed.**

The phrase "*The board of directors shall, each year, from among its members.*" under the first paragraph of the TCC's Article 366 regarding the distribution of duties in joint-stock companies' board of directors, was amended to "*The board of directors shall, from among its members.*" as per the amendment in Article 13 of the Amendment Law.

In this regard, as also stated in the reasoning of the draft Amendment Law, the chair and vice chair of board of directors may be elected for a maximum term of three years, just as the other board of directors members.

- **Power to appoint branch managers in joint-stock companies became transferable.**

Article 375 of the TCC, which regulates the non-transferable powers of the board of directors, was amended from "*d) The appointment and dismissal of managers and persons with the same*

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function as well as those with signatory authority" to "d) The appointment and dismissal of managers and persons with the same function, excluding branch managers." as per Article 14 of the Amendment Law.

Therefore, branch managers can be appointed and dismissed without a board resolution. This provision aims to enable companies to act quicker and more efficiently in their commercial activities. Appointment and dismissal of managers or persons with the same function, excluding branch managers, will remain among the non-transferable powers of the board of directors.

- **Board members are granted the power to convene the board of directors.**

As per Article 15 of the Amendment Law, Article 392/7 of the TCC was amended as follows: *"Each board member may request the chair in writing to convene the board of directors. If this request is deemed appropriate, the chair shall make the call for meeting. However, if the majority of the board members submit a written request, the chair is obliged to convene the board of directors within no more than thirty days starting from the receipt of the request. If the board of directors is not convened within this period or if the chair or vice chair cannot be reached, the requesting parties can make the call directly. For meetings convened upon a call, quorum requirements for meetings and resolutions set out in the first paragraph of Article 390 shall apply. A different procedure for convening the board of directors may be established under the articles of association."*

Before the Amendment Law, even though each board member was entitled to request the chair to convene the board of directors, consequences of rejection were uncertain. According to this new provision under the Amendment Law, if the request for a meeting is deemed appropriate, the call will be made by the chair of the board of directors. However, if the request for a meeting is made by the majority of the board members:

- (i) The chair must convene the board of directors for a meeting within 30 days upon receipt of the request;
- (ii) If the chair does not make the call within this period or if the chair or vice chair of the board of directors cannot be reached, requesting board members are granted the right to convene the meeting.

- **Trade registry office cannot be awarded with judicial expenses and attorney fees.**

Temporary Article 7/15 of the TCC, which regulates liquidation of joint stock and limited liability companies as well as cooperatives, was revised and following provision was added to this article: *"Judicial expenses and attorney fees cannot be awarded against the relevant trade registry office in lawsuits regarding the revival of a company or cooperative that was de-registered in accordance with the procedure set out in this article."*

Currently, in lawsuits regarding the revival of de-registered companies or cooperatives, judicial expenses and attorney fees can be awarded to trade registry offices that joined the case as intervening parties. This new provision was introduced to eliminate hesitation arising from trade registry offices being rendered with such decisions.

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- **New obligations are introduced for the minimum capital requirement.**

Previously, the minimum capital amounts were increased to **(i)** TRY 250,000 for joint-stock companies, **(ii)** TRY 500,000 for non-public joint-stock companies that adopted the registered capital system (i.e., initial capital), and **(iii)** TRY 50,000 for limited liability companies. This amendment came into effect on 1 January 2024.¹

According to Temporary Article 15 added to the TCC with the Amendment Law, joint-stock and limited liability companies with capital amounts below minimum requirements specified above, must increase their capital amounts by 31 December 2026.² Companies that fail to comply and to increase their capitals until this date, will be considered dissolved and de-registered from the trade registry.

On the other hand, non-public joint-stock companies with a minimum issued capital of 250,000 TL that have adopted the registered capital system must increase their initial and issued capital to TRY 500,000 by 31 December 2026. Failure to do so will result in their removal from the registered capital system.

Amendment also regulates the quorum for adapting to new capital amounts. No meeting quorum will be sought for general assembly meetings to be convened with an agenda solely for capital adapting purpose. Resolutions can be adopted with the majority of shareholders present at the meeting (no dissenting privileges will be exercised in voting of such resolution).

2. Amendments under the Competition Law

Prior to the Amendment Law, the Competition Law envisaged extensive procedural steps for investigations initiated by the TCA. The case handlers assigned to the case had to prepare three different documents, i.e., the investigation notice, the investigation report, and the additional opinion. The investigated parties would submit their first, second and third written defenses in response to these documents. With the Amendment Law, the following changes are introduced to shorten the TCA's investigation process.

- **Obligation to submit a first written defense is removed.**

The amendment to Article 43 of the Competition Law introduced by the Amendment Law removes the obligation to submit a first written defense within 30 days upon receipt of the investigation notice. In this regard, it is expected that the removal of submission of the first written defense aims to accelerate the investigation process.

¹ According to the Presidential Decree published in the Official Gazette dated 25 November 2023 and numbered 32380, the minimum capital amounts for companies' establishment were increased.

² While ensuring companies to align their capital with the new regulations by 31 December 2026, the Amendment Law also grants the Ministry of Trade the authority to extend this period (i.e., the period until 31 December 2026) through one-year intervals for a maximum of two times.

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- **Case handlers' obligation to issue an additional opinion is removed.**

As per the amendment made to Article 45 of the Competition Law, the case handlers are not obliged to issue an additional opinion in response to the parties' written defense. Accordingly, the case handlers will issue an additional opinion if their assessment of the case stated in the investigation report changes as a result of the written defense. Without the obligation to issue an additional opinion after the second written defense, the parties may be submitting only one written defense throughout the investigation, unless the case handlers consider necessary.

- **Possibility to extend the deadline to (i) issue an additional opinion and (ii) submit a written defense in response to the additional opinion is removed.**

Prior to the Amendment Law, the Competition Board was entitled to extend these deadlines for one time upon parties' request. With the Amendment Law, it is not possible to request a time extension for (i) the case handlers to issue an additional opinion and (ii) the investigated parties to submit the written defense.

In this regard, the amendments to the Competition Law aim to shorten the investigation process and increase procedural economy. However, Article 44 of the Competition Law, which secures the investigated parties' right to provide the Competition Board with any information/evidence that may affect the decision at any time, is still in force. Accordingly, even though the requirement to submit a first written defense was removed, investigated parties still have the opportunity to submit information/evidence for defense purposes, prior to the receipt of the investigation report.

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