



client alert

CORPORATE LAW | TURKEY |

APRIL 2018

RECENT AMENDMENTS TO THE TURKISH COMMERCIAL CODE

On 10 March 2018, Law no. 7099, an omnibus law regarding the amendment of various laws with a view to improving the investment climate, was published in Official Gazette no. 30356.

Law no. 7099 introduces several changes, including amendments to the Turkish Commercial Code, as explained below:

CERTIFICATION OF ARTICLES OF ASSOCIATION DURING INCORPORATION PROCESS

One of the most important changes introduced by Law no. 7099 relates to the certification modalities for limited liability company (in Turkish, *limited şirket*) articles of association during the incorporation process.

Before the amendment, articles of association of a limited liability company were (i) created through the centralised online trade registry system (in Turkish, abbreviated as "Mersis"), and (ii) certified by a notary public or the competent trade registry office.

However, the option to have articles of association certified by the competent trade registry office was not widely used, especially in cities such as Istanbul due to the heavy workload of the trade registry office.

Under the amendment brought by Law no. 7099, it is now an obligation to have the articles of association of a limited liability company certified directly by the competent trade registry office, which will then proceed with the registration formalities.

For the avoidance of doubt, please note that Law no. 7099 does not impact joint-stock companies (in Turkish, *anonim şirket*) in this respect, *i.e.* articles of association of a joint-stock company will still be certified by a notary public or by the competent trade registry office.

PAYMENT OF SHARE CAPITAL DURING INCORPORATION

Another important change introduced by Law no. 7099 relates to the payment modalities of a limited liability company's share capital during the incorporation process.

Before the amendment, it was mandatory that at least a quarter of the share capital of a limited liability company be deposited to a blocked bank account prior to its registration with the competent trade registry office.

Under the amendment brought by Law no. 7099, this obligation has been abrogated for limited liability companies. Accordingly, share capital payment obligations must be fulfilled within a maximum period of two years starting from incorporation.

For the avoidance of doubt, please note that Law no. 7099 does not impact joint-stock companies in this respect, *i.e.* at least a quarter of a joint-stock company's share capital shall still be deposited to a blocked bank account prior to its registration with the competent trade registry office.

CERTIFICATION OF MANDATORY COMMERCIAL BOOKS DURING INCORPORATION PROCESS

Following their incorporation, companies must proceed with the certification of their mandatory commercial books for the first accounting period. Such books must then be re-certified for each subsequent accounting period in accordance with the detailed legal provisions applicable.

Before the amendment brought by Law no. 7099, mandatory commercial books were certified by a notary public for the first accounting period, as well as for subsequent accounting periods. Although it was also possible to have the first mandatory commercial books certified by the competent trade registry (instead of a notary public) during the incorporation process, the implementation of such option was not widely used, especially in cities such as Istanbul due to the heavy workload of the trade registry office.

Now, Law no. 7099 introduces the obligation for limited liability companies and joint-stock companies to have their first mandatory commercial books certified by the competent trade registry office during the incorporation process, it being however specified that notaries remain authorised to certify the mandatory commercial books for subsequent accounting periods.

DECLARATION OF SIGNATURE

Currently, authorised company representatives (*i.e.* persons authorised to sign in the name and on behalf of companies) must declare their signatures to the trade registry office for registration and announcement of their appointment. Such representatives were obliged to visit a notary public in Turkey in order to issue a certified declaration of signature to be submitted to the competent trade registry office. For foreign representatives, a declaration of signature duly notarised and apostilled in the country of issuance was also accepted by the trade registry offices.

Under the amendment brought by Law no. 7099, the declarations of signature of authorised company representatives shall be certified directly by the trade registry offices. Accordingly, the authority of notaries to issue a declaration of signature has been abrogated.

Although such amendment seems to simplify the formalities, the situation of foreign representatives may become more complicated: the question is whether they will necessarily need to travel to Turkey to declare their signature before the trade registry office.

Pending clarification in this respect, trade registry offices continue to accept notarised and apostilled declarations of signature of foreign representatives.

In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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