

RECENT AMENDMENTS TO THE TURKISH COMMERCIAL CODE

The Law No. 7262 on Preventing the Proliferation of Financing Weapons of Mass Destruction was published in the Official Gazette dated 31 December 2020 and numbered 31351 (the “**Amending Law**”) in order to prevent money laundering in non-public joint stock companies and to avoid the financing of terrorism and certain weapons of mass destruction. Accordingly, the Amending Law has also altered certain provisions of the Turkish Commercial Code numbered 6102 which was published in the Official Gazette dated 14 February 2011 and numbered 27846 (the “**TCC**”). The Amending Law has introduced novelties with regards to (i) notifications to be made to the Turkish Central Registry Agency (the “**CRA**”) regarding the issuance and transfer of bearer shares of non-public joint stock company; (ii) participation of the holders of the bearer share certificates (the “**Shareholders**”) to the general assemblies (the “**GA**”); and (iii) obligations of the companies to keep corporate books. It has been further stated that such amendments shall be effective as of 1 April 2021 (the “**Effective Date**”).

This Monthly Updates aims to provide a brief explanation on such novelties made on the TCC by virtue of the Amending Law.

Notifications to be made to the CRA

Pursuant to the Amending Law, two types of notifications shall be made to the CRA with regards to the bearer shares: (i) the notifications that will be made by the Shareholders; and (ii) the notifications that will be made by the board of directors of the non-public joint stock companies. The purpose of such obligations is to enable the CRA to monitor and keep records of the bearer shares in non-public joint stock companies.

(a) Notifications to be made by the Shareholders

According to the Amending Law, the existing Shareholders shall apply to the board of directors with their bearer share certificates until 31 December 2021 (following such, the company shall notify the CRA as explained in the sub-heading (b)).

If the existing Shareholders fail to fulfil this obligation, they shall not be able to exercise their shareholding rights arising from the TCC until such application is made.

Additionally, pursuant to the Amending Law, the new Shareholders who acquire bearer shares shall be obliged to notify the CRA with regards to such acquisition. Accordingly, as per the Amending Law, unless the new Shareholder notifies the CRA, such share transfer cannot be effectuated against third parties and the company. In other words, the transfer of bearer shares shall not be effective unless such notification is completed.

If the transfer of bearer shares is not notified to the CRA, an administrative fine amounting to TL 5,000 shall be imposed on the new Shareholder.

(b) Notifications to be made by the Board of Directors

As per the TCC, the board of directors shall decide the issuance of the bearer share certificates and delivery of such share certificates to the Shareholders within three months following the full payment of the share subscription amount. Moreover, the board of directors are obliged to register to the trade registry the issuance of the bearer shares and announce such in the Turkish Trade Registry Gazette.

Missed an issue? Want more copies to be sent to clients or friends? Send an email to enquiries@taboglu.av.tr





Contact Us

Taboglu Attorneys at Law

Levent Caddesi, No.9

1. Levent, 34330

Istanbul, Turkey

Telephone: (90) 212 339 8800

The aim of this Monthly Updates is to give an executive summary on certain legal matters. This has been prepared for information purposes only and does not constitute any legal advice. Thus, one should not rely on it for specific advice. For further information or advice please contact Taboglu Attorneys at Law, a full-service law firm based in Istanbul.

By virtue of the novelty introduced in the TCC with the Amending Law along with the aforementioned obligations, as of the Effective Date the board of directors shall also be obliged to notify the CRA with regards to the information of the bearer share certificates which is hold by the Shareholders prior to the delivery of such bearer share certificates. Furthermore, an administrative fine of TL 20,000 shall be imposed on the board of directors that fail to fulfil such notification obligation.

Additionally, pursuant to the Amending Law, following the notification to be made by the existing Shareholders to the board of directors regarding their shares as detailed in the sub-heading (a), the board of directors of such company shall be obliged to notify the CRA with regards to the existing Shareholders within 5 business days upon such application. Thus, the board of directors that fail to fulfil such notification obligation shall also be imposed an administrative fine of TL 20,000.

In line with the Amending Law, the procedures and principles regarding the notification and registration of bearer shares to the CRA shall be further determined via the secondary legislation to be prepared by the Ministry of Trade (the “**Ministry**”).

Participation of the Shareholders to the GA

Prior to the Amending Law, the Shareholders were required to obtain an entrance card from the board of directors within the scope of the TCC in order to attend the GA of non-public joint stock companies. In addition, the Shareholders were obliged to prove that the bearer share certificates held by a relevant Shareholder were transferred to such Shareholder after the issuance of the entrance card. In line with the Amending Law, such obligations of the Shareholders have been repealed.

Pursuant to the Amending Law, instead of such entrance card, a list of the Shareholders that will attend to the GA (the “**List**”) shall be prepared by the board of directors of the non-public joint stock company. The board of directors, in order to prepare the List, shall obtain a shareholders’ chart from the CRA. Such chart will regard the Shareholders of such company that has fulfilled the obligations of the aforementioned notifications. Moreover, starting from the Effective Date of the Amending Law, the Shareholders which are on the List shall be able to participate to the GA.

Furthermore, in line with the Amending Law, the transfer of the bearer shares may be banned, provided that such prohibition is limited to the day of the GA.

It has been further stated that a secondary legislation shall be prepared by the Ministry regarding the procedures and principles of providing the Shareholders chart from the CRA and the ban on the transfer of the bearer shares as explained above.

Obligation to Keep Corporate Books

In accordance with the TCC, the joint stock companies shall keep share ledger, board of director’s resolution book and GA’s resolution book, physically. In line with the Amending Law, such corporate books, if deemed necessary, may be required to be kept electronically by the Ministry, without prejudice to the provisions of the Capital Market Law, which was published in the Official Gazette dated 30 December 2012 and numbered 6362. Moreover, a secondary legislation shall be issued by the Ministry regarding such novelty.

Conclusion

The Amending Law has introduced above mentioned novelties with the aim of clearly identifying the Shareholders in the non-public joint stock companies in order to prevent the secret partners that associate with the business in such companies anonymously and to monitor the bearer shares in such companies. However, the Amending Law only sets the framework for this and the detailed implementation of such novelties is yet to be determined via secondary legislation.