



## Labour Law Consequences of Workplace Transfer under the Turkish Commercial Code

Entry into force of the Turkish Commercial Code No 6102 (the “**Commercial Code**”) and the Turkish Code of Obligations No 6098 (the “**Code of Obligations**”) on 1 July 2012 has impact on number of issues, including labour law.

As of today, there exists a *tripartite* framework regulating labour law consequences of workplace transfer. While Article 6 of the Labour Code No 4857 (the “**Labour Code**”) and Article 428 of the Code of Obligations provides a more general framework for workplace transfer, Article 178 of the Commercial Code sets forth specific rules applicable to merger (*birleşme*), demerger/scission (*bölünme*) and change in type (*tür değiştirme*) operations. In accordance to widely accepted legal principle *lex specialis derogat legi generali*, provisions of the Commercial Code will prevail over the Labour Code and the Code of Obligations. Below are the consequences attached by the Commercial Code to workplace transfers resulting from merger, demerger/scission and change in type operations:

- **Scope of application.** Provisions of the Commercial Code are applicable to workplace transfers resulting from merger, demerger/scission and change in type operations.
- **Consent of employees to workplace transfer.** As under the Labour Code and the Code of Obligations, the Commercial Code does not pre-condition workplace transfers to consent of employees. If employees do not *object* realization of the intended operation, employment contracts in force as of the operation date will be automatically transferred to the transferee employer with the same terms and condition. Consequently term of service of transferred employees will be calculated starting from the date on which they commenced working with transferor employer.
- **Objection of employees and termination of employment contracts.** Pursuant to the Labour Code and the Code of Obligations, workplace transfers do not constitute a just cause (*haklı neden*) for resignation, or dismissal. However, the Commercial Code provides possibility for transferred employees to *object* realization of the operation and to unilaterally terminate their employment contract upon expiry of his/her notice periods. We believe that in such a case, transferred employees will be entitled to severance pay as well. Therefore, it is highly recommended to obtain prior written consent of employees to intended operation not to encounter any additional labour law liability.
- **Provision of guaranty.** Transferred employees may request additional guaranty for their receivables due on transfer date.
- **Liability of the previous and transferee employees.** The Labour Code states that transferor and transferee employers will continue to be jointly and severally liable for a period of two (2) years with respect to the obligations arising from employment contracts existing on the transfer date. Yet, the Commercial Code adopts following rules on the liability of employers:
  - Transferor and transferee employees are severally liable for transferred employees’ receivables (i) due before the operation and (ii) to become due until their employment contracts are terminated (under ordinary circumstances, or due to employee’s objection).
  - Shareholders of transferor entity, who were liable for company debts before the operation, continue to be severally liable for debts that arise from employment contract and that (i) are due until the day of transfer; and (ii) would become due if employment contract were terminated under ordinary circumstances; or (iii) arise until employment contract is terminated due to employee’s objection.