Share Capital Increase under the Commercial Code

Share capital increase is an amendment of Articles of Association of a joint stock company. The Turkish Commercial Code No 6102 (the "**Commercial Code**") restructures the framework of share capital increase scheme of joint stock companies. In addition to already existing share capital increase methods (*i.e.*, share capital increase through subscription of new capital (*sermaye taahhüdü yoluyla artırım*) and capital increase through internal funds (*iç kaynaklardan sermaye artırımı*)), conditional capital increase (*şarta bağlı sermaye artırımı*) is also introduced by the Commercial Code.

Under the old commercial code, share capital increase was preconditioned to the payment of the existing share capital *in full*. The Commercial Code no longer requires such precondition to be fulfilled at all times. Accordingly, where share capital of a joint stock company will be *increased through internal funds*, the Commercial Code does not require from shareholders to pay the existing share capital in full. Also, where the unpaid portion of the existing share capital is negligible compared to the total share capital of the company (*i.e.*, maximum 5% of total unpaid capital contribution exists), shareholders may increase the share capital.

Key steps to follow during share capital increases in joint stock companies are as follows:

- Board of Directors must resolve on the convening of a general assembly of shareholders' meeting, with share capital increase being on the agenda.
- An application for appointment of a *commissar* must be made to the Ministry of Science, Industry and Technology (*total costs will be around EUR 200.*-).
- Board of Directors must submit a Board Declaration (*Yönetim Kurulu Beyanı*) setting forth the specifics of the share capital increase.
- Sworn-in Certified Public Accountant's report on the payment of the share capital must be obtained. If share capital will be increased through internal funds, such report must also determine the amount of available internal funds.
- Statutory preemptive rights of existing shareholders may be restricted during a share capital increase if there is a just cause (*haklı neden*) and that shareholder(s) representing 60% of the share capital approves such restriction at the general assembly of shareholders' meeting.
- Shareholder(s) who participate to capital increase must deposit ¼ of the subscribed share capital to the bank where joint stock company has its account. The deposit must be made any time before the application to the Trade Registry for registration of the general assembly of shareholders' meeting. In practice, banks tend to *block* that contribution amount until the general assembly of shareholders' meeting is registered with the Trade Registry. As a result, if capital contribution at stake is financially important to shareholders, by considering 3-4 day of registration process at best, shareholders and consequently the respective joint stock company are deprived from the contribution amount.
- ‱4 (four per ten thousand) of the increased portion of the share capital must be paid to Competition Authority before application to the Trade Registry for registration of the general assembly of shareholders' meeting.
- If no other issue was resolved at the general assembly of shareholders' meeting apart from the share capital increase, as of October 2012 the Trade Registry expenses will amount to ~500.-TL (approximately EUR 240.-).