



## **The new Turkish Commercial Code**

One of the remarkable changes in the new Turkish Commercial Law is the obligation to have a website with electronic transactions and information society services:

### **“ARTICLE 1524**

*(1) All capital stock companies are obliged to established a web site and to allocate a part of this web site, or a part of its existing web site as the case may be, for publishing the following. Such publications include the following:*

- a) Statutory announcements and public disclosures that are required to be made by the company.*
- b) Documents, information and disclosures which will be of use to the shareholders and partners in safeguarding their interests and exercising their rights consciously, if viewed and known by them.*
- c) Resolutions adopted by the board of directors with respect to pre-emptive rights, conversion rights, offering rights, purchase rights, conversion rate and withdrawal allowance; statements of account explaining how the respective values are calculated.*
- d) Assessment reports, statement of founding shareholders, commitments on public offering of shares, corresponding warranties and guarantees; wording of resolutions pertaining to adjournment of bankruptcy and similar matters; resolutions adopted by the general assembly and the board of directors on acquisition of the shares of the company by the company itself, disclosures, information and documents pertaining to such transactions.*
- e) Information, financial statements and documents that are submitted to the examination of the shareholders and beneficiaries in case of mergers, demergers and status changes of business corporations; documents and resolutions pertaining to the amendments made on the articles of association of the company, including capital increases and reductions; reports issued with respect to preferred stock holders, resolutions adopted by the general assembly and issuing securities.*
- f) Documents, reports and disclosures made by the board of directors regarding all kinds of calls including the calls for general Shareholders’ meetings.*
- g) Information that is required to be disclosed pursuant to the principle of transparency and information society services.*
- h) Questions asked under the right to information, the replies given to these questions, the requirement to inform shareholders or partners under other relevant laws.*



- i) Financial statements, interim statements that are required to be disclosed pursuant to the law, balance sheets and other financial statements issued for a specific purpose, financial reports that are required to be known by the shareholders and beneficiaries, and the footnotes and attachments thereto.*
- j) The annual reports issued by the board of directors, the disclosure made with respect to the annual assessment of compliance with the corporate governance principles; all kinds of remuneration, entertainment and travel allowances, severance pays, insurance premiums and other payments made to the chairman and members of the board of directors and to other executives.*
- k) Reports issued by the auditor, special auditor and process auditor.*
- l) Information of interest to the shareholders and the capital markets that are required to be disclosed by the competent authorities and the ministries.*

*(2) Failure to fulfill the obligations stipulated in paragraph one here above shall cause the respective resolutions to be abrogated, shall lead to all consequences of violation of the law, causing the executives and the members of the board of directors who are faulty to be held liable. Penalty provisions shall not be prejudiced.*

*(3) The section of the web site that is allocated for information society services shall be available to access by everyone. Exercising the right to access shall not be restricted by requiring the inquirer to be an interested person or a beneficiary nor shall it be made conditional upon anything. Anyone shall be entitled to file a suit for removal of the restriction of access in case of violation of this principle.*

*(4) The date and the phrase “forwarded message” in brackets shall be inscribed on the heading of the content published in the section of the web site allocated to the purposes of this article. Any message bearing this phrase may only be altered in accordance with the provisions of the Law and the regulation referred to in paragraph two. It shall be presumed that any message provided in the allocated section is a forwarded message. Registration of the web site under a number and other relevant issues shall be governed by the Ministry of Industry and Commerce by virtue of a regulation.*

*(5) Any message that is posted on the web site shall remain on the web site for a minimum period of six months unless a longer period is stipulated by virtue of this law and other relevant laws or administrative regulations; otherwise it shall be deemed not posted. This period is five years for financial statements.*

*(6) Printed forms of forwarded messages shall be kept in accordance with the provisions of article 82. The information to be posted on the web site shall be compiled by the company management as a text and inscribed or pasted on a notarized book with a sequence number, by noting the date and the*



*time. In case of any subsequent alteration on the information posted on the web site, the procedure described in the foregoing shall be carried out with respect to the alteration.”*

Also board meetings are held in electronic medium:

## **“1. Principles**

### **ARTICLE 1527**

*(1) Provided that it is allowed for in the articles of association or articles of incorporation of the company, meetings of the board of directors of capital stock companies may be held in electronic medium or some of the members of the board may attend meetings in electronic medium where other members are physically present. In such cases the provisions on meeting quorum and resolution quorum as stipulated in the Law or in the articles of association or the articles of incorporation of the company shall fully apply.*

*(2) Attending general shareholders’ meetings and board of directors’ meetings, submitting proposals and casting votes at such meetings in unlimited companies, limited partnerships, limited liability companies and joint stock companies, provided that it is allowed for in their articles of association or articles of incorporation, shall lead to all legal consequences of physical attendance, submitting proposals and casting votes.*

*(3) In cases described in paragraphs one and two here above, in order to cast votes in electronic medium, the company needs to maintain a web site allocated for this purpose, the respective shareholder must make a request to this end, the suitability of the devices in the electronic medium for active participation must be verified by virtue of a technical report which shall be registered and announced and the identities of those who have casted votes shall be kept confidential.*

*(4) The management of the companies that are referred to in paragraphs one and two here above shall fulfill all requirements of casting votes this way pursuant to their articles of association or articles of incorporation and shall provide the respective shareholders with all necessary tools.*

*(5) Attending general shareholders’ meetings of joint stock companies, submitting proposals, giving opinions and casting votes shall lead to all legal consequences of physical attendance and casting votes. Principles governing execution of this provision shall be regulated by virtue of an internal statute.*

*A copy of the respective provision of the articles of association of the company allowing for attending the general assembly and casting votes at the general shareholders’ meeting in electronic medium shall be provided in this internal statute. Joint stock companies are not allowed to make and alterations on this provision which shall be copied authentically from the articles of association. This*



*internal statute shall also include the rules allowing for the principal or his/her proxy to cast votes and the powers of the commissioners stipulated in paragraph three under article 407. Following enforcement of this internal statute implementation of the system allowing for attending the general assembly and casting votes at general shareholders' meetings shall be mandatory for companies whose stocks are listed on the stock market.*

*(6) Rules governing casting of votes by the principal and implementation under the framework of the provisions of paragraphs one to four and the principles and procedures allowing the principal to give instructions to his/her proxy through the web site shall be governed by a regulation to be issued by the Ministry of Industry and Trade.*

## **2. Rules of implementation**

### **ARTICLE 1528**

*(1) Shareholders, partners and members of the board of directors who intend to use the electronic medium shall notify their electronic mail addresses to the company.”*

### **The company in the progress of being formed**

Another new significant fact is “the company in the progress of being formed”, in Dutch: “in oprichting”.

This introduction prevents a lot of trouble in connection with the obligations entered before the official incorporation, which is a disadvantage consequence of the present Commercial Law.

### **Turkey posts record FDI highs through July**

Another positive point:

*“Foreign direct investment to Turkey between January and July was close to the total sum for all of 2010, according to Economy Minister Zafer Çağlayan.*

*The inflows in the first seven months of 2011 reached \$9.1 billion, only \$200 million below the figure for the entire twelve months of last year; the figures show that foreign investors consider Turkey to be a safe haven, Çağlayan said in a written statement released Tuesday.*

*“While [worry] about a global crisis is rising in the world, the confidence of foreign investors in Turkey is increasingly continuing. According to July 2011 current account balance data, foreign direct investments stood at nearly \$2.8 billion,” he said.*



*Some 91 percent of the January-July FDI was from European Union member countries, the minister said, adding that this proved that Turkey was continuing on the path to becoming a goods and services base for Europe and the Eurasia region.*

*FDI flows to Turkey in the first seven months of 2010 stood at \$4.5 billion.”*

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