



# New Turkish Commercial Code: Challenges and Opportunities

Nilgün Serdar Şimşek  
PricewaterhouseCoopers, Senior Legal Counsel

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## Why do we need a New CC ?

- OECD's Turkey report dated 2006 states:

“ ..Although the overall corporate governance outlook is positive, the assessment reveals some key areas for improvement by companies and the authorities. In view of the corporate structure and market characteristics of Turkey, it is important to improve further in the areas of control and disclosure of related party transactions and self- dealing, the protection of minority shareholders and the role of the board in overseeing not only management but also controlling shareholders..”

## What did we achieve with the New CC ?

- A legal regime in respect of group companies has been prescribed for the first time in Turkish law in the New CC
- Self- dealing is prevented by prohibition of using company cash.
- Minority rights are extended enormously by granting minority shareholders; the right of representation in the BoD (via cumulative voting system) ; right of requesting the dissolution of the company etc.



# 1. Common Challenges on Equity Companies

- New CC ensures transparency initially by means of the company's internet site.
- Considering the developments in EU law, New CC launches the companies with a sole shareholder.
- Structural changes such as Transformations, Mergers and Spin-offs are appraised.
- The arrangements enabling online general assembly and board of directors meetings are regularized.

## 2. Reforms on Joint Stock Companies(1)



- **Foundation;**
  - ❖ Renouncing the “ultra vires” principle.
  - ❖ Based on a new audit approach, the foundation of a joint stock company can only be fulfilled after a incorporation audit has been carried out.
  - ❖ The necessity to form a founder’s declaration has been introduced to ensure transparency.

## 2. Reforms on Joint Stock Companies(2)

- **Capital;**
  - ❖ New CC allows JSC to adopt registered capital.
  - ❖ New CC introduces IP rights as capital in-kind.
  - ❖ New CC enacts a new sort of capital increase namely conditional share capital increase which shall serve employees to purchase shares of the company.



## 2. Reforms on Joint Stock Companies(3)

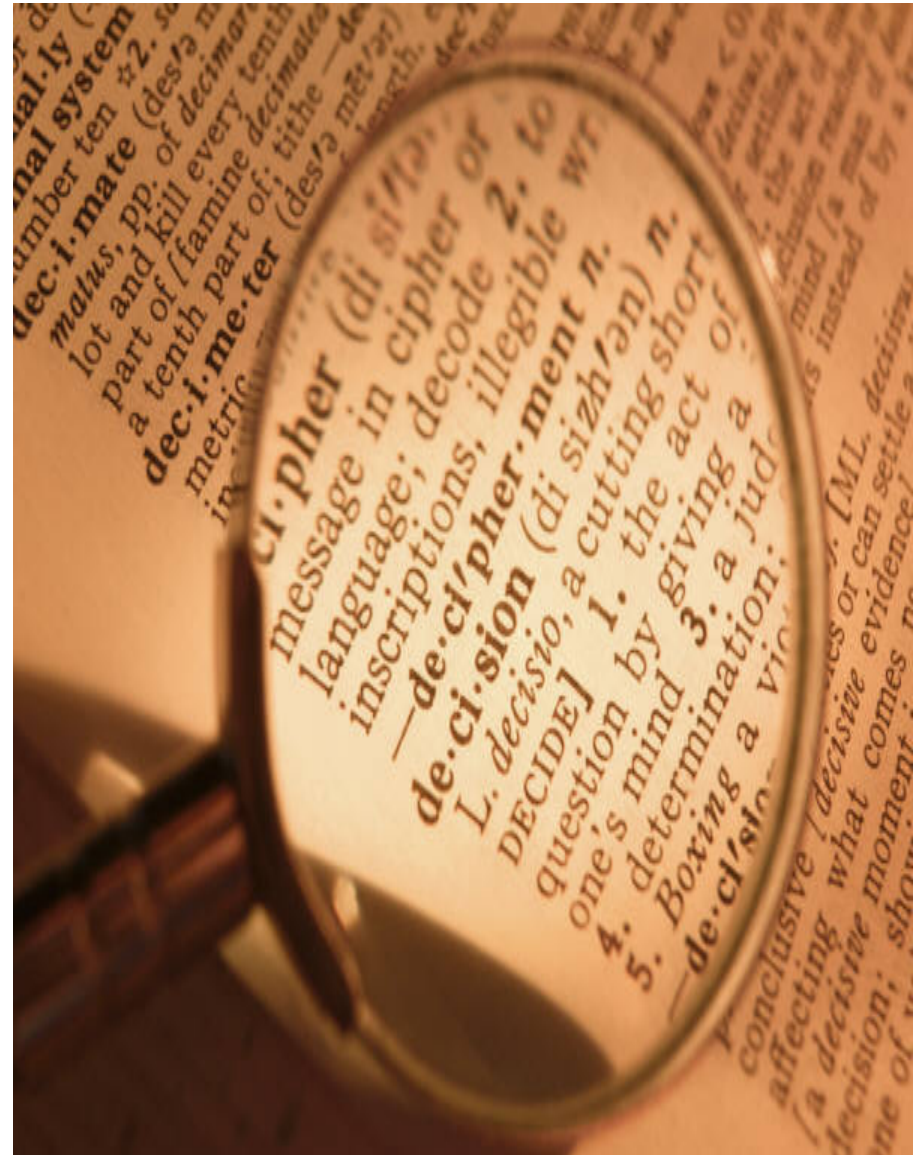
- **Organs;**

- ❖ Board of Members;

- BoD may consist of one person and the necessity that the BoD members have to be shareholders has been removed.
- New CC covers the lack of legal entity membership and allows the legal entity to become a member of BoD.
- In respect of the meeting quorum of BoD, it has been found sufficient that the majority of the directors is present at the meeting.
- $\frac{1}{4}$  of BoD members should hold an university degree.

## 2. Reforms on Joint Stock Companies(4)

- ❖ General Assembly;
  - New CC advances to enumerate absolute and inalienable powers of the GA and BoD in order to prevent the confusion of authorities.
  - New CC comprises multiple rules in order to reinforce shareholders' legal situation such as right of information.



### 3.Reforms on Limited Liability Companies (1)

- The equity character of LLC is reinforced by implementing multiple rules serving to diminish the distance and difference between JSC and LLC.
- **Capital;** In accordance with New CC, LLC requires a minimum capital of YTL 25,000. Partners may make capital in kind as a capital contribution of company. Cash capital should be bring in advance.
- Considering the practice, New CC enforces a detailed regime for accessory obligations and obligation of additional payment.

### 3.Reforms on Limited Liability Companies (2)

- **Organs;** The appointment of a Director is compulsory under New CC.
- General Assembly meetings are foreseen as an obligation. As regards proportion of votes in order to prevent deadlocks New CC introduces new rules for the decision adoption process in the GA.
- New CC intends to modernize LLC legal regime by introducing defenses for partners in case of expulsion or withdrawing. In such a case, New CC regulates the conditions of the payment of the share price to the shareholders.

## Conclusion

- A comprehensive reform of the previous mentioned areas has been involved by the New CC.
- New system reflects the intention of Turkish lawmaker to harmonize its own legal system with modern Law.



# Thank you.

