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## نماینده‌ی وزارت امور خارجه در شمال و شرق کشور - مشهد

بسمه تعالی

معاونت محترم هماهنگی امور اقتصادی استانداری خراسان رضوی  
مدیرکل محترم اطلاعات استان خراسان رضوی  
مدیرکل محترم سازمان امور اقتصادی و دارایی خراسان رضوی  
مدیرکل محترم میراث فرهنگی ، صنایع دستی و گردشگری استان خراسان رضوی  
ریاست محترم سازمان صنعت ، معدن و تجارت خراسان رضوی  
فرمانده محترم انتظامی استان خراسان رضوی  
ریاست محترم اداره مهاجرت و گذرنامه فرماندهی انتظامی استان خراسان رضوی  
ریاست محترم دفتر جذب و حمایت از سرمایه گذاری استانداری خراسان رضوی  
ریاست محترم اتاق بازرگانی ، صنایع، معادن و کشاورزی خراسان رضوی  
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موضوع: ارسال مجموعه ای از قوانین جمهوری ترکیه

با سلام؛

احتراماً به پیوست تصویر قوانین مربوط به تجارت ، سرمایه گذاری خارجی ، اتاق های بازرگانی و صنایع ، بورس کالا و خدمات مربوط به اتباع خارجی و مهاجرت و همچنین ثبت شرکت در ترکیه ، واصله از سرکنسولگری جمهوری ترکیه در مشهد ، جهت ملاحظه و بهره برداری مقتضی ارسال می گردد .

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- جناب آقای محمدی مدیر کل محترم کنسولی

# *New Turkish Commercial Code*

A blueprint for  
the future



# ***New Turkish Commercial Code***

*A blueprint for the future*

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# Effective Date of New Turkish Commercial Code

The New Law was promulgated in the Official Gazette on 14 February 2011. As stated in the New Turkish Commercial Code No. 6102 and Law No. 6103 on Validity and Application of the Turkish Commercial Code, the New Law will become effective on 1 July 2012, excluding two groups of provisions.

- a) The first group comprises provisions relating to Internet sites to be opened by capital stock partnerships for information services. Information on capital stock companies of interest to shareholders, partners, employees, suppliers, creditors and investors will be available on these Web sites. Provisions relating to this mechanism will be applicable as of 1 July 2013.
- b) The second group comprises provisions that require the audit of capital stock companies to be made in accordance with Turkish Auditing Standards, which are in line with International Standards on Auditing and financial reporting standards. Regulations on financial reporting require tradesmen and enterprises to be subject to Turkish Accounting Standards (TAS) in line with International Financial Reporting Standards (IFRS).

***I. Common Concepts Related  
to Corporate Law***



## *A. Corporate Governance*

Corporate governance is the dominant concept in the New Turkish Commercial Code (“New Law”). No longer does corporate governance mean a system of rules applicable only to publicly traded companies; it is a principle that should be applied to all enterprises. It aims to inspire investor confidence and ensure sustainable development. The New Law introduces material provisions regarding good management and internal and independent audit that are to be applied to all capital stock companies. Thus the New Law will embed in Turkish law, simply and understandably, the concept of corporate governance – which has become common in recent years around the world and has grown in complexity, reflecting differences in the economic, financial, political and cultural structures of the countries applying it. The regulation of corporate governance under the New Law can be summarised as follows:

1. The corporate governance approach of the New Law is based on four pillars that have universal characteristics within the context of corporate governance. (1) full transparency, (2) fairness, (3) accountability, (4) responsibility.
2. Full transparency has been sought in (1) financial statements, (2) boards of directors’ (BoD) annual reports, (3) independent audits, (4) transactional auditors, (5) all audit reports of individual companies and group of companies.
3. Fairness has been ensured by establishing a balance of interests and by objective justice.
4. Accountability has been embodied in the BoD reports, flow of information, right to information and oversight.
5. Responsibility has been regulated in parallel with accountability.
6. The rights of shareholders to sue, obtain information and perform oversight have been created along with smooth-running legal mechanisms.
7. The minority rights list has been expanded.
8. Privileged shares have been restricted.
9. Representation opportunities for group of shareholders and the minority in the BoD, have been increased.
10. The Capital Markets Board (CMB) has been provided with exclusive authority to regulate corporate governance. This authorisation will ensure it remains dynamic and up-to-date.
11. The BoDs of publicly held companies are now obliged to publish corporate governance reports.
12. Professionalism and specialisation in bodies has been emphasised.

## *B. Web Site, Information Society Services and Access Rights of Capital Stock Companies*

Under the New Law, all capital stock companies are obliged to create a Web site; if the company already has a Web site, it must allocate part for “information society” services

The New Law defines “information society” as a society with access to information. The following conditions apply to company Web sites:

1. a. all data that is relevant to the company and in which shareholders, minorities, creditors and stakeholders have an interest
- b. documents and calls regarding General Assembly (GA) meetings
- c. year-end and interim financial statements and merger and division balance sheets
- d. audit reports (reports of auditor, operational auditor, special auditor, etc.)
- e. valuation reports
- f. offers for exercising pre-emptive right
- g. announcements related to liquidation
- h. announcements related to action for cancellation
2. Access to the Web site shall be available to everyone and shall be unrestricted, to ensure the right to and possibility of access.
3. The Web site shall provide the means for electronic GA and BoD meetings and for electronic voting.
4. The Web site is a complete, visual and electronic trade log.
5. The Web site has introduced the concept of stakeholder into Turkish law.
6. The content uploaded on the Web site is kept there for at least six months from the upload date, or it is deemed not to have been uploaded. For financial statements, this period is five years. Although the New Law will be effective as of 1 July 2012, Article 1524 regulating Web sites shall be effective as of 1 July 2013.

## *C. Single-Shareholder Joint Stock Company (A.Ş.) and Single-Member Limited Liability Company (L.Ş.)*

### *In General*

The New Law introduces one other significant innovation that satisfies a major need: single-shareholder A.Ş. and single-member L.Ş. This “one-man company” has been regulated by means of adapting the Twelfth Council Company Law Directive (89/667/EEC) from EU law to Turkish law.



- Single-shareholder A.Ş. and single-member L.Ş. can be incorporated; in addition, if the shareholders/partners of an A.Ş. or a L.Ş. incorporated by and among multiple shareholders/partners drops to a single partner or shareholder, the firm can legally continue its activities.
- If a company is incorporated with a single person, the legal form of the company, the name of the single person, trade name and address will be registered with the Trade Registry and announced.
- If a company is incorporated by and among multiple shareholders or partners and the number of shareholders/partners drops to one, for reasons such as share transfer, withdrawal or dismissal of shareholders/partners, the company can continue to carry out its business in the same manner and maintain its legal personality. This is a direct change from the current Turkish Commercial Code (Code), under which an action for dissolution must be initiated. This situation will be immediately registered with the Trade Registry and announced, and the information regarding the identity of the person who has become the single shareholder/partner will be registered.
- If a company fails to make this introductory and explanatory announcement (a requirement of the principles of transparency and public disclosure), the BoD and the single shareholder/partner – even the other party to the transaction that put the company in such situation – can be held responsible.
- The single shareholder or partner can solely use all powers of the GA and can adopt all resolutions. However, all resolutions adopted in the name of the GA must be specified as GA resolutions and must be made in writing.
- The single shareholder/partner can conduct a transaction with itself in writing. The same rule is also applicable to transactions between the representatives of a single-partner or a single-shareholder company, and the single shareholder/partner himself or the company. The said rule will not apply to operations considered day-to-day transactions.

Doesn't a one-man company contradict the concept of 'company'?

A one-man company does not contradict the concept of "company". A company is not necessarily a union of people with more than one partner, but an operational organisation that manufactures and supplies goods and services. A company is the name given to an enterprise that functions for the purpose of realisation of its scope of activity. Accordingly, the company can consist of a single shareholder or a single partner; however, it can also have a BoD consisting of 10 to 15 members, various audit committees and several commissions, in line with the principles of corporate governance. The important thing is the appropriateness of the structure for the scope of the activity; best management and audit practices are essential.

The elements that define a company are the managerial organisation needed to achieve its scope of activity, effective audit, ability to compete, and presence in national and international markets. The number of partners is a marginal and insignificant element;

it can be useful when describing a publicly held company or a publicly traded company; however, it does not describe the modern understanding of a company. The number of shareholders is significant only when the shares of a company are being listed on a stock exchange. This characteristic makes the company a publicly traded company. A single-shareholder A.Ş. can easily be converted into a publicly traded company. It would be an excessively formalist approach not to consider an organisation with such flexibility as a company, simply because it has a single shareholder or partner.

Legal systems that do not permit single-shareholder A.Ş. or single-member L.Ş. eliminated the possibility for associations, foundations, unions and universities to incorporate companies related to their operations.

**A single-shareholder or partner company responds to the following needs:**

1. It provides the opportunity for the owner of an enterprise who wishes to convert its single proprietorship to a new legal type of limited liability company, i.e., for an A.Ş. or a L.Ş. to incorporate a one-man company. Thus, the owner will no longer be forced to add token individuals into the company for its incorporation.
2. When a foundation, association or university wants to incorporate a company, it might naturally be the single partner or shareholder of such a company. Taking on token shareholders or partners into the company along with the actual partner is rarely well-suited to these organisations' purposes.
3. If an A.Ş. or a L.Ş. wants to establish a vendor related to its own scope of operation, it can establish such vendor on its own through a new company. For example, if a company that manufactures refrigerators wants to incorporate a company that produces plastic refrigerator shelves, it would no longer have to take on a partner unnecessarily.
4. As single-shareholder or partner companies are very common in European countries, companies that want to invest in Turkey can make their investments directly as a single shareholder or partner by themselves.

## *D. Group of Companies*

### *In General*

A group of companies ("Group") which is created for the specific purpose of managing more than one capital stock company, according to predetermined and concrete policies within the context of controlling relationships, has been regulated for the first time in Turkish law by the New Law. A group of companies is known as a "corporate group" in Anglo-American communities and in German law as a "Konzern".

A significant loophole in the law has been closed and a significant need has been satisfied through this new regulation. By means of these provisions:

- The concepts of a controlling (parent) company, which sustains control, and a dependent company (subsidiary), which is under control, have been clearly defined, and the legal status of these companies and their relationships have been specified.
- The necessity for the transparency principle which forms the foundation of modern corporate law has been fulfilled by setting forth the requirement for controlling and dependent companies to disclose their legal position to the public.
- The BoDs of both controlling and dependent companies are required to report their inter-company relations annually. This ensures that the management of such companies will have detailed information on inter-company relations. In the light of this information, the BoD will be better placed to understand the position of the dependent company. The BoD will be able to clearly determine the losses and profits of each company and make more informed decisions by means of the said report.
- The New Law sets forth that these reports will not be disclosed to the public, but that their results section shall be included in the annual report, maintaining confidentiality as far as is possible.
- The New Law introduces the phenomenon of cross-shareholding and stipulated that it is in conformity with European Union regulations. The abuse of cross-shareholding and situations in which it can be used by the BoD as a weapon to strengthen its management are prevented.

### Abuse of Control

The New Law protects the shareholders of dependent companies not included in the Group by means of various rights of action and through other mechanisms. Among these are provisions giving shareholders not included in the Group the opportunity to sell their shares to the controlling partner and to withdraw from the dependent company (a sell-out). Rights of action are introduced for shareholders and creditors to compensate losses of the dependent company within a certain period.

The New Law regulates the legal effects of abuse of control by the controlling company under two major categories

The first category includes the use of control by the parent company:

- For the purpose of the transfer of a business part, funds, personnel, production instruments or profit of the dependent company to another dependent or controlling company included in the Group,
- For the purpose of closing the dependent company down; preventing renovation of its production units, an increase of its capacity or its participation in tenders in favour of another dependent company in the Group,
- For the purpose of inducing the dependent company to be co-signee, to provide a guarantee, to undertake debt or to obtain a credit in favour of another company or parent company in the Group.

The second category includes:

- Having the dependent company merged with another or several other companies within the Group,
- The division of a Group company in favour of the Group,
- The conversion of a Group company for the interest of the Group without just cause,
- Issuance of securities by a Group company in the interest of the Group's benefit,
- Amendment of the articles of association in the interest of the Group.

### **Means for controlling one trade company by another:**

- Holding the majority of voting rights,
- Having the right to ensure election of a certain number of board members that will constitute the decision-making majority,
- Acquisition of the majority of voting rights either independently or with other shareholders or partners through a contract (pool agreements), besides its own voting rights,
- Managing and directing the company as required by a contract subject to the Code of Obligations (control contracts).

In companies traded on the stock exchange, a shareholder who does not have majority shares can be the controlling shareholder in the Company. This can be determined through research by authorities.

### **Top management can be:**

- a local/foreign commercial company,
- a person,
- a legal entity other than the company, such as foundation, association or union,
- a community that is not a legal entity (a community of heirs, an ordinary partnership/consortium),
- The controlling company can be local or foreign. The headquarters can be in or outside Turkey.

In all cases the relevant provisions of the New Law are to be applied.

### **Full (100 percent) Control Status**

If a commercial company owns 100 percent of a capital stock company (full control), this company can give instructions to the dependent company in line with the specified and concrete policies of the Group, with three exceptions:

1. Those exceeding the solvency of the dependent company,

2. Those that jeopardise the existence of the dependent company,
3. Those that may result in a loss of significant assets of the dependent company, In short, in these three cases, even if full control exists, instruction cannot be given.

### **Responsibility Arising from Trust**

If the Group has achieved a significant reputation within the community and has thereby created trust, and that trust is then used by one of the Group companies, then the Group becomes responsible for any consequences of this.

## *E. Structural Changes in Companies*

### Common Principles Governing Structural Changes

We can classify the New Law's provisions related to mergers, divisions and conversions under the heading of "structural changes" in commercial partnerships. The common principles applied to all three types of structural changes are as follows:

- **Nationality:** In the New Law, structural changes are carried through in connection with the principle of nationality. Cross-border mergers and divisions are not covered by the New Law.
- **Corporate Mobility:** The New Law allows corporate headquarters to be relocated abroad under certain conditions, just as the previous Code did. However, relocation abroad has been regulated in detail for the first time in Turkish law through the New Law and the law dealing with its application and execution. Relocation of an enterprise's headquarters to Turkey is regulated under the Trade Registry Statute.
- **Protection:** In every merger, division (spin-off/split-up) and conversion, the protection and continuity of partnership shares and rights, rights arisen from redeemed shares, usufruct (the legal right to use and derive profit or benefit from property that belongs to another), rights in debenture and similar bonds related to the transferred, divided or converted company is a core principle in the new company. In this scope the protection of all rights aside from those arising from the partnership shares are new.
- Structural changes are carried out via a merger balance sheet. During this process, if changes in assets and liabilities are sufficiently material to affect the financial results, the valuations will be amended accordingly.
- The right to request inspection is provided for all stakeholders.
- Structural change transactions are to be audited by a transaction auditor.
- Employees have been protected against the side effects of structural changes.
- Legal action for rescission and respective responsibility relevant to structural changes has been stipulated.

The New Law has regulated the structural changes in terms of spin-off, merger and conversion through 60 articles. Most of these provisions relate to protecting the partners, the partnership creditors and the employees and securing their rights and credits. Some protective concepts, the mechanisms and action rights have been subject to common provisions for all structural changes; others are of a similar nature in which the differences have been subjected to specific rules. Spin-off/Split-up is explained in detail in the following section; further detailed information will not be provided in the merger and conversion section.

## *Division (Spin-Off/Split-Up)*

### *In General*

In the current Code, no provision is made regarding the spin-off of capital stock companies, which plays a significant role in the restructuring of companies. The first and only respective legal regulation is the amendment made to Articles 38 and 39 of Corporate Tax Law (CTL) No. 5422 and dated 2001. Articles 19 and 20 of CTL No. 5520, which came into force as of 21 June 2006, superseded these initial rules. Aside from defining full spin-off and partial spin-off (split-up) in CTL, spin-off was not explained. Additionally, no provisions were made to protect the parties of the spin-off and the partners. As significant legal loopholes were found in the first regulation, the spin-off procedure has almost never been initiated in practice. Therefore, the Turkish Ministry of Finance and the Turkish Ministry of Industry and Trade issued a joint communiqué in the Official Gazette on 16 September 2003: the Communiqué regarding the Procedures and Principles related to the Spin-off of Joint Stock Companies and Limited Liability Companies. As this communiqué introduced practical solutions, spin-off of capital stock companies was made possible. However, the Communiqué provided only the procedures and principles for spin-off. There is no legal regulation regarding the method for the split-up of a company.

The New Law, taking Sixth Council Directive 82/891/EEC and Swiss merger law as a model, has introduced into Turkish law the concepts of split-up and spin-off of capital stock companies and cooperatives. The implementation of spin-off and split-up of capital stock companies and cooperatives is now also dealt with in Turkish law.

### *Types of Division:*

In the New Law divisions can be carried out through:

- split-up
- spin-off

These can be:

- Symmetrical (the percentage of shares in the company are preserved)
- Asymmetrical (the percentage of shares in the company are not preserved)

The form of division can be one in which:

- the partners become the partners of the company subject to spin-off
- a subsidiary is created

## Definitions

A split-up is a spin-off in which all the assets of a commercial company are divided into units and transferred to an existing or a new company or companies, where the partners of the company subject to spin-off acquire shares and rights in the transferee companies, and where the divided company ceases to exist. A spin-off is a division in which the assets of a commercial company are divided into units and a part of the sections remain with the company subject to spin-off, and another part or parts are transferred to an existing or new company or companies, where the partners of the divided company acquire shares and rights in the transferee companies, and where the divided company continues to exist with the remaining part.

Although the company subject to spin-off is dissolved without liquidation in a split-up (also losing its legal personality after dissolution), in a spin-off the divided company maintains its legal status and legal personality. The division will be valid upon the registration at the Trade Registry.

In a symmetric spin-off, the partners of the company subject to spin-off acquire shares in the transferee company to the extent of keeping the same shareholding ratios as before the spin-off and thus the shareholding ratios are preserved. An asymmetric division is one in which the shareholding rates are not preserved.

A subsidiary is created when the company subject to spin-off becomes a partner in the transferee company.

## Protective Provisions and Mechanisms

The regulation of spin-off has fundamentally changed in the New Law through provisions protecting the partners, creditors and employees of companies participating in the spin-off, in accordance with the provisions of the EU's Sixth Council Directive.

The protective provisions are as follows:

**Continuity of Rights:** The partnership rights of the partners of the transferor company will remain in the transferee company in terms of scope, characteristic and content in the same manner (the principle of continuity of rights). In the context of this principle:

- It is ensured that the partners of the transferor company acquire shares in the transferee company in proportion to the shares in the transferor company.
- If privileged shares are available, they are provided.
- The right to continue having a non-voting share in the transferee company is granted; if not available, the right to acquire a share with voting rights is granted.
- An equivalent right is granted to the owner of the redeemed share, or the purchase of such share is stipulated.

**Payment for Withdrawal:** Payment for withdrawal to a partner who does not want to participate in a spin-off is provided (with their agreement).

**Spin-off Contract/Plan:** A detailed and transparent division contract/plan must be

prepared by management bodies. The minimum required information that must be entered is clearly specified in the New Law. The spin-off contract and the spin-off plan must be approved by the GAs of the partnerships participating in the spin-off.

**Spin-off Report:** The management of the partnerships participating in the division are required to prepare a transparent, informative and legally reliable spin-off report that provides legal certainty of the arrangements. If a new partnership is being incorporated, its articles of association must be attached to the spin-off plan.

**Audit:** The partnerships participating in the spin-off must have the spin-off contract or spin-off report and the balance sheet that underlies the spin-off audited by an independent and experienced auditor. If all partners approve, small-size companies can be dispense with the need for audit.

**Right to Inspection:** Partners participating in the spin-off have the right to inspect:

the spin-off contract or plan,

the spin-off report,

the audit report,

the financial statements of last three years, annual reports and interim financial statements, if any.

**Securing Credits or Payment of Credits:** Creditors of the partnerships involved in the spin-off transaction will be invited to participate in the spin-off to declare their receivables and to demand security for such receivables. This invitation will be made through an announcement published in the Turkish Trade Registry Gazette and three times in a national newspaper, as specified in the articles of association, and on the company Web site. The claims of creditors making such a demand must be secured or paid within three months of the announcement. The payment of some credits must not create a loss for other creditors.

If the partnership with primary liability that has undertaken a debt through a spin-off contract or spin-off plan does not secure or pay the credits, provided certain conditions are met, the other partnerships involved in the division (partnership with secondary liability) will be mutually liable.

**Debt Liability:** The debt liabilities of the shareholders of the company subject to spin-off shall continue after the spin-off, provided those debts or the reasons for those debts arose before the declaration of the resolution regarding the spin-off.

**Statute of Limitations:** The personal responsibility of the partners will be limited, by the statute of limitations, to three years from the announcement of the spin-off.

Service contracts with employees, as well as any right and liability arising from such agreements up to the day of the division, shall be transferred to the transferee company, if the employees do not object. These service contracts will run continue until the end of the legal termination period. The transferor and the transferee shall be mutually liable to the employee for payments which will become due before



the termination date of the service contract. In the New Law, protection is more comprehensive and more secure than what is set forth in Article 6 of the Labour Law.

12. Legal Action for Rescission: In the event there is a violation regarding the aforementioned topics, partners of the partnerships who did not cast an affirmative vote on the division resolution and had this duly recorded in the minutes can file an action for rescission within two months of the publication of the spin-off resolution in the Trade Registry Gazette. In the event an announcement is unnecessary, the period will begin as of the date of registration.

13. Legal Action for Compensation: Individuals who have participated in the spin-off in any way, as well as those who have conducted an audit of the Company, are responsible to partnerships, partners and creditors for any damage caused by their faults.

### Valid and Invalid Spin-Off

Capital stock companies and cooperatives can be divided into capital stock companies and cooperatives.

### Transparency in Spin-Off

1. Statutory content for contracts, plans, and reports has been legally specified.
2. Audits will be conducted by expert, independent auditors.
3. All spin-off-related documents will be posted on the company's Web site.

### Mergers

The New Law defines both types of mergers:

- merger by acquisition
- merger by formation of a new company

No other type of merger is recognised.

### Valid and Invalid Mergers

A New Law provision lists which company or cooperative can merge with which company or cooperative.

### Merger of Commercial Enterprise

A commercial enterprise can merge with a company through takeover.

### Provisions and Mechanisms that Protect Shareholders, Creditors and Employees

The protective provisions and mechanisms are primarily the same as those for spin-off transactions, with these differences:

1. The merger contract or merger report, annual activity report, audit report and financial statements for the last three years, including financial interim reports if necessary, shall be presented to the owners of the redeemed share, bearers of securities and any

other stakeholders for their inspection, in addition to the partners of the partnerships taking part in the merger.

2. Small-sized partnerships can dispense aforementioned inspection provided all the partners approve.
3. Creditors of the partnerships participating in the merger must declare their claims within three months as of the date on which the merger became legally valid (publication in the Trade Registry Gazette).

### Conversion of Legal Form of Companies

1. Conversion is regulated in a single article in the existing Code. In the 1970s, the Turkish Corporate Law made valuable contributions by clarifying every aspect of the concept and explained the classifications and specified protective principles and regulations. The Supreme Court of Appeals followed the doctrine explicitly and made the principal decisions regarding conversions. By 1980, this concept had become well known throughout Turkey.
2. The New Law codifies this concept. However while the doctrine, in the context of the existing Code, has accepted the freedom to select the legal form without any restriction, the New Law has a provision listing valid (legitimate) conversions.
3. The provisions in the New Law regarding protection of shareholders, creditors and employees have closed a significant loophole that existed in the former Code. These provisions and transparency mechanisms are the same as for division.
4. The stakeholders' rights to inspect and their rights of legal action, as well as to audit the conversion, which do not exist in the current Code, are regulated by the New Law through comprehensive and effective provisions.

## *F. Reforms for Commercial Books in Conformity with Turkish Accounting Standards (identical to IFRS)*

### In General

1. The section related to commercial books, with provisions concerning financial statements of equity capital companies and group of companies, and provisions concerning the annual report of the BoD, introduced remarkable changes.
  - The rules related to bookkeeping, opening balance sheet, financial statements, balance sheet principles, prohibition on capitalisation, provisions, prepaid expenses and deferred income, valuation, custody and disclosure are completely new.
  - Additionally, the New Law no longer contains the use of commercial books as proof, which is a practice no longer applied in modern laws.
2. The New Law empowered the Turkish Accounting Standards Board (TASB) as sole and exclusive authority to set and publish Turkish Accounting Standards (TAS). Its

objectives are:

- To enable Turkish companies to use financial reporting generally accepted in international markets and to enable them to be competitive players in these markets,
- To publish TAS which are identical to the IFRS,
- To increase the sustainable competitive advantage of Turkish enterprises by using an international language,
- To facilitate Turkey's strategic depth in economic politics.

## Enforcement

The New Law contains detailed provisions concerning the application of TAS.

- The rules related to enforcement of related provisions about TAS are as follows: TAS/ Turkish Financial Reporting Standards are effective from 1 January 2013 for:
  - a) Large sized equity capital companies and their subsidiaries in consolidation, affiliates and groups of companies,
  - b) Companies issuing marketable instruments trading in exchanges or other markets, intermediary institutions, portfolio management companies, and other companies in the scope of consolidation,
  - c) Banks and their subsidiaries identified under Banking Law Article 3,
  - d) Insurance and reinsurance companies identified under the Insurance Law,
  - e) Pension fund companies identified under the Individual Pension Savings and Investment System Law.
- TAS that are already published and will be published specific to small and medium sized companies (TAS for SMEs) and for every legal and real entity excluding the above is effective from 1 January 2013.
- Articles 397 and 406 of the New Law, related to audit of A.Ş., are effective as of 1 January 2013.
- The related companies are obliged to apply TAS published by the TASB in relation to commercial books, separate and consolidated financial statements on 1 January 2013 or at a later date for the beginning of the special accounting period.

The companies mentioned above are obliged to adjust their balance sheets after the period ending 31 December 2012, and the later period for those with a special accounting period, in compliance with TAS; they are obliged to prepare their opening balance sheet at 1 January 2013 or at a later date regarding the beginning of the special accounting period in compliance with TAS.

- Any traders remaining, outside the SMEs and large sized companies mentioned above, are obliged to apply the TAS published by the TASB related to commercial books, separate and consolidated financial statements on 1 January 2013 or at

a later date in line with the beginning of their special accounting period. These traders are obliged to adjust their balance sheet after the period ending 31 December 2012 and the later period for those with a special accounting period in accordance with TAS, and they are obliged to prepare their opening balance sheet at 1 January 2013 or at a later date for the beginning of the special accounting period, in compliance with TAS.

- The independent auditor should be appointed before 1 March 2013 by the authorised body of the company. The mission of the current auditor expires after this appointment under Law No. 6762.

The balance sheet for the period ending 31 December 2012, or at a later date for the beginning of special accounting periods, is audited by the appointed auditor under the provisions of Law No. 6762. The opening balance sheet at 1 January 2013 or a later date for the beginning of special accounting periods is audited by the appointed auditor under the New Law and in accordance with its provisions.

The auditor appointed in accordance with the New Law conducts the audit within the scope of the New Law. However, the auditor presents the prior year financial statements prepared in accordance with Law No. 6762 and other regulations for the purpose of comparison.

- The GA is gathered when the mission of the auditor or auditors has expired in accordance with Law No. 6762 and the procedure is conducted in conformity with Article 367 of Law No. 6762.

### Turkish Accounting Standards (TAS)/Turkish Financial Reporting Standards (TFRS)

The New Law requires that the financial statements of all enterprises, regardless of whether they are public or not, be prepared in conformity with TAS/TFRS published by the TASB. TAS is the Turkish translation of IFRS.

The New Law aims to enable the comparison of financial statements prepared in accordance with TAS/TFRS with financial statements prepared in accordance with IFRS. And the New Law intends to make financial information prepared in accordance with TAS/TFRS accepted in the international markets by introducing a uniform application and principles to accounting and reporting practices. Concepts like materiality, comparability, substance over form and true and fair view, which previously did not have a significant role, will be included in the conceptual framework of TAS in line with IFRS.

### Turkish Accounting Standards Board

Has published:

- Standards of TAS/TFRS related to large-sized companies, the Capital Markets Board, banks, insurance companies and pension companies and
- Special reporting standards for SMEs

## Why IFRS?

The global need for a unique financial reporting standard with universal characteristics emerged in recent decades as a natural result of increasing cross-border investments and transparent capital markets. The most comprehensive solution was introduced by the International Accounting Standards Board (IASB). The implementation of IFRS, as published by the IASB, has become widespread. Today, including the member states of the European Union, Australia, Canada, Russia and South Africa have adapted their own laws and regulations to IFRS. Large economies are also in the process of adapting to IFRS. There are also efforts to achieve uniformity of US GAAP (the US financial reporting standards) and IFRS. In light of all these developments, the way for Turkey to be a part of world economy and multinational investment and trade community is to reform its own local accounting legislation and regulations in conformity with IFRS. The New Law achieves this.

## *G. Audit in Equity Capital Companies*

### Basics and Fundamentals

The New Law introduces a fundamental system change with a reformist understanding and a contemporary evolution in the auditing of equity capital companies, namely joint stock companies, companies with limited liability and companies limited by shares and group of companies. This change makes a substantial contribution to establishing trust in national and international markets and creating a new perspective for Turkey. The provisions with an advanced understanding of audit will change the structure and organisational chart of joint stock companies and limited liability companies, which will be subject to audit for the first time in Turkey, both at a theoretical and pragmatic level.

The fundamentals of this concept conforms entirely to the contemporary approaches and to the new regulations adopted in the US and EU as a result of the widely publicised international accounting scandals. The new audit will be conducted as follows:

1. by an auditor who is expert, professionally competent, technically equipped, attentive in a legal sense and aware of its responsibility,
2. by an independent auditor in compliance with International Auditing Standards,
3. in accordance with professional ethics,
4. with all due professional scepticism,
5. transparently.

### Audit of Separate and Consolidated Financial Statements

Independent audit in the New Law, contrary to the previous Code, is not restricted only to one equity capital company, but also includes the audit of group of companies; the independent audit is subject to the same principles and provisions. Further, there will be no different application from the standpoint of auditing and standards, whether the equity

capital company is open to the public or not, or regardless of size. Additionally, whether the companies are subject to consolidation, or are local or foreign, makes no difference in the characteristics, subject or scope of the audit or standards applied.

### Unqualified Opinion

Financial statements, on which an unqualified opinion is issued, can be made the subject of all kinds of decisions taken by the GA.

### Unaudited Financial Statements or Qualified, Disclaimer and Adverse Opinions

Unaudited financial statements are considered not to have been prepared; as a result they cannot be subject to any decision or legal issues. An entity cannot adopt a resolution related to an audited financial statement with an adverse opinion or an opinion with a disclaimer; any such decision shall be deemed void.

The disagreements between the company and the auditor are not enough for a disclaimer of opinion. A disclaimer of opinion is another form of qualified opinion and the legal result of both opinions are identical. The criteria mentioned in the New Law are required for a disclaimer to be issued. These criteria include but are not limited to the following:

- Unavailability of books for auditing and reaching conclusions,
- Restrictions by the company of subjects to be audited,
- Refusal of the company to be audited.

In the case that an adverse opinion or a disclaimer of opinion has been issued, the BoD cannot resume its mission; the directors must submit their resignations. The GA is obliged to appoint a new BoD, and the new BoD is responsible for taking the steps necessary to receive an unqualified opinion.

The financial statements over which a qualified opinion has been issued are valid and can be subject to decisions of the GA. However, criticised matters should be adjusted in the GA.

### Characteristics of Independent Audit

- **Expertise:** expertise is defined as the possession of professional training and developed and updated qualified information of an auditor, whether the auditor is a person or an audit company. The auditor is an independent auditing company. In small and medium-size capital stock companies, the audit can be conducted by one or more Sworn Financial Advisor and/or Certified Public Accountant (Yeminli Mali Müşavir, YMM, and/or Serbest Muhasebeci Mali Müşavir, SMMM). The New Law introduces another change: auditing of transactions such as incorporation, capital increase and reduction, merger, spin-off, conversion of type of the company must be performed by transaction auditors. In addition, the New Law allows the application of special audits under certain conditions. Special audit is conducted to inspect particular issues (probability of fraud, inconsistency in financial statements, information given to some shareholders not shared to GA, etc.).

- Independence: independence with objectiveness is defined as the absence of a material direct or indirect relationship with the company, of involvement in company; of relation with shareholders, relatives or employees of the company.
- Objectivity: objectivity means the independent audit must be conducted in accordance with the code of ethics of the profession, without bias or undue influence.
- Objective: the audit must be performed in accordance with Turkish Auditing Standards, which are identical to International Standards on Auditing (ISA), in order to integrate with international markets and to speak the language of these markets.
- Code of ethics: prescribes how professionals conduct their business within the framework of applicable professional standards, laws and regulations. Professional discipline and professional ethics are the most significant assurance of audit.
- Transparent audit: the results of the audit of a company or the Group are posted on the Web site; the statements can be accessed via the Web site for a period of five years, and the audit report is written in a clear, simple and understandable language necessary for the type, scope and results of the audit. The report must be prepared in such a manner that it can be compared with the prior year. The transparency of the report points to the fact that it will contain assessments of the BoD's review, together with the opinions of the auditor in this regard. The auditor's report must also be transparent.
- Auditor cannot terminate the audit engagement: Unless the audit contract is annulled, the auditor cannot terminate the audit engagement without any justifiable reason. Disagreement with the company management is not considered as a justification of terminating the audit engagement. .

## Professional Ethics

An audit conducted in compliance with the professional ethics and in accordance with the standards must be careful about:

- Independence,
- fairness and integrity,
- objectivity.

Additionally, competence, professional knowledge and diligence are requisites.

During the audit, adherence to confidentiality, professional behaviour and rules, and technical standards is essential.

Professional ethics are both the main support of the moral legitimacy of an audit and the source of its legal responsibility. If the basic principles above are approached with a lack of interest, superficial discourse, indifference and an abstract and impractical perception of the gravity of the matter, the ethical basis for the audit will collapse, and the auditor will be held responsible for the consequences. As the audit standards must be considered as a whole, the auditor must adhere to these standards at all stages of the audit.

## Professional Scepticism

Scepticism is among the main prerequisites for the audit. The auditor conducts the planning for the audit and must display a certain amount of scepticism while putting it into practice, and the auditor must always consider the possibility that something can exist to obstruct the honest disclosure of financial statements and the real financial status of the enterprise and operational results. ISA defines scepticism as follows:

“An attitude of professional scepticism means the auditor makes a critical assessment, with a questioning mind, of the validity of audit evidence obtained and is alert to audit evidence that contradicts or brings into question the reliability of documents and responses to inquiries and other information obtained from management and those charged with governance.”

## Assurance that the Audit is Free from Material Misstatement

The audit to be conducted in accordance with ISA should be designed in a fashion to ensure that it is free of material misstatement in the methodology, the specified scope or the results. This requires:

- The use of tests.
- The performance of reviews regarding whether there are risks resulting from the design and structure of the accounting and internal control systems.
- The audit evidence.

## Auditor

The auditor is a person whose profession is auditing and who has received auditing training or is an institution consisting of auditors. Law No. 3568 specifies the conditions to become an auditor.

## Turkish Auditing Standards Board

The Justice Commission, through Temporary Article 2 of the New Law, has resolved to establish an Auditing Standards Board. The provision related to this authorised organisation, referred to as the “Board”, is as follows: “Until a Turkish Auditing Standards Board with a judicial personality is established, the Turkish Auditing Standards, mentioned in Article 397, are determined by a board affiliated to the Union of Certified Public Accountants of Turkey (TÜRMOB) in harmony with ISA. A regulation, regarding which institutions and organisations’ representatives will constitute the board and its work principles and procedures, will be prepared by TÜRMOB and published upon the approval of the Ministry of Finance.”

## Characteristics of the audit concept

1. All equity capital companies are subject to audit.
2. The audit is conducted by an independent auditing firm. An audit by a YMM and/or a SMMM is also considered an independent audit. An audit by a YMM and/or a SMMM is temporary according to the New Law. The purpose of the New Law is to ensure incorporation/institutionalisation.



3. Partners/shareholders of an independent audit firm can only be YMM and/or SMMM; individuals outside the profession cannot be partners in these institutions.
4. Independent audit firms will be regulated by a new statute in accordance with the New Law.
5. The auditor must be entirely independent. The New Law stipulates this clearly and allows for no exceptions.

### Right to Access Information

An audit of the separate or consolidated financial statements is based on the accounting of the company, namely its books, records and documents. The auditor must receive information from the relevant individuals regarding this data. Therefore, the New Law grants the auditor the right/access to comprehensive information in order to be able to understand completely and correctly the data to be audited. This right includes the authority to request the relevant documents. The addressee for such a request is the BoD. The party to be held responsible for the non-disclosure of information or documents is also the BoD. In the event information is not provided by a relevant individual in spite of the direct and express request of the board, the board must provide that information and documentation, unless only the relevant individual possesses the requested information. This liability and responsibility of the board is limited to the company, relevant company employees and the company's business and operations.

In principle, the Board has no responsibility for the behaviour or attitude of third parties. However, the term "relevant" has a wide meaning; it includes third parties who act as assistants and anybody under the control and influence of the BoD. The liable person is not just a member of the BoD but the entire BoD. However, the executive director and/or an authorised member are solely liable and responsible for the records, documents and information relevant to their area of authority. The BoD can assign a board member, a non-board member executive or a representative to fulfil these responsibilities on its behalf.

However, it is advisable that the BoD takes a decision for the auditor to be able to request information from any related person at any level of the company and to avoid any difficulties. The right to request the disclosure of the relevant material and right to information are closely related to the term "disclaimer of opinion" indicated in paragraph 4 of Article 403. The refusal of the BoD can lead to the "disclaimer of opinion", depending on the features of the actual event.

### Subject and Scope of Audit

The scope of audit includes:

- financial statements of a company or a Group (New Law Article 398.1),
- determination of whether the financial data held by accounting department is consistent with the audited financial statements and whether it reflects a true and fair view,
- the BoD's annual report, disclosures, discussions and analysis related to financial statements,

- determination of whether a proper early risk-detection system (mechanism) exists to identify any threat to the company or possible risks in a timely fashion and to identify whether this mechanism functions.

The BoD's annual report must be prepared separately but must be presented along with the audit report. The second and third bullet points above are included for the first time in the scope of an audit in Turkish law.

### Supreme Auditing Board

The supreme auditing board shall inspect the auditor and audit process in the name of the law. The audit by the supreme board is performed to determine whether the auditor's audit is in conformity with the provisions of the New Law, the standards and the purpose of the audit. The supreme board conducts this audit on site and online, by accessing the auditors' audit documents. This is the first time in Turkish law that the said board has been involved in the review of the auditor's documents. In order to avoid a gap until the establishment of the supreme board, this audit will be conducted by the Turkish Ministry of Industry and Trade.

## *H. The New Regulation to Enable Payments for Supply of Goods and Services on Time and the Consequences of Late Payments*

One radical solution imposed by the New Law is that it includes provisions related to timely payment of invoices or similar demands of suppliers of the companies. In this respect the New Law has solved an ongoing problem. Although, the New Law targets directly companies like supermarkets, hypermarkets, and shopping centres, this provision is not specific only to these companies.

The regulation is introduced in clauses 2 and 7 of Article 1530 of the New Law and is inconsistent with the related EU directive. The EU directive related to late payment covers the public sector and public tenders. However, the New Law covers only parts related to the private sector. Article 1530 does not cover any rule about the invoices of expenses of shelf arrangements, shelf change, heating-cooling systems and sharing of costs related to initial opening of the markets.

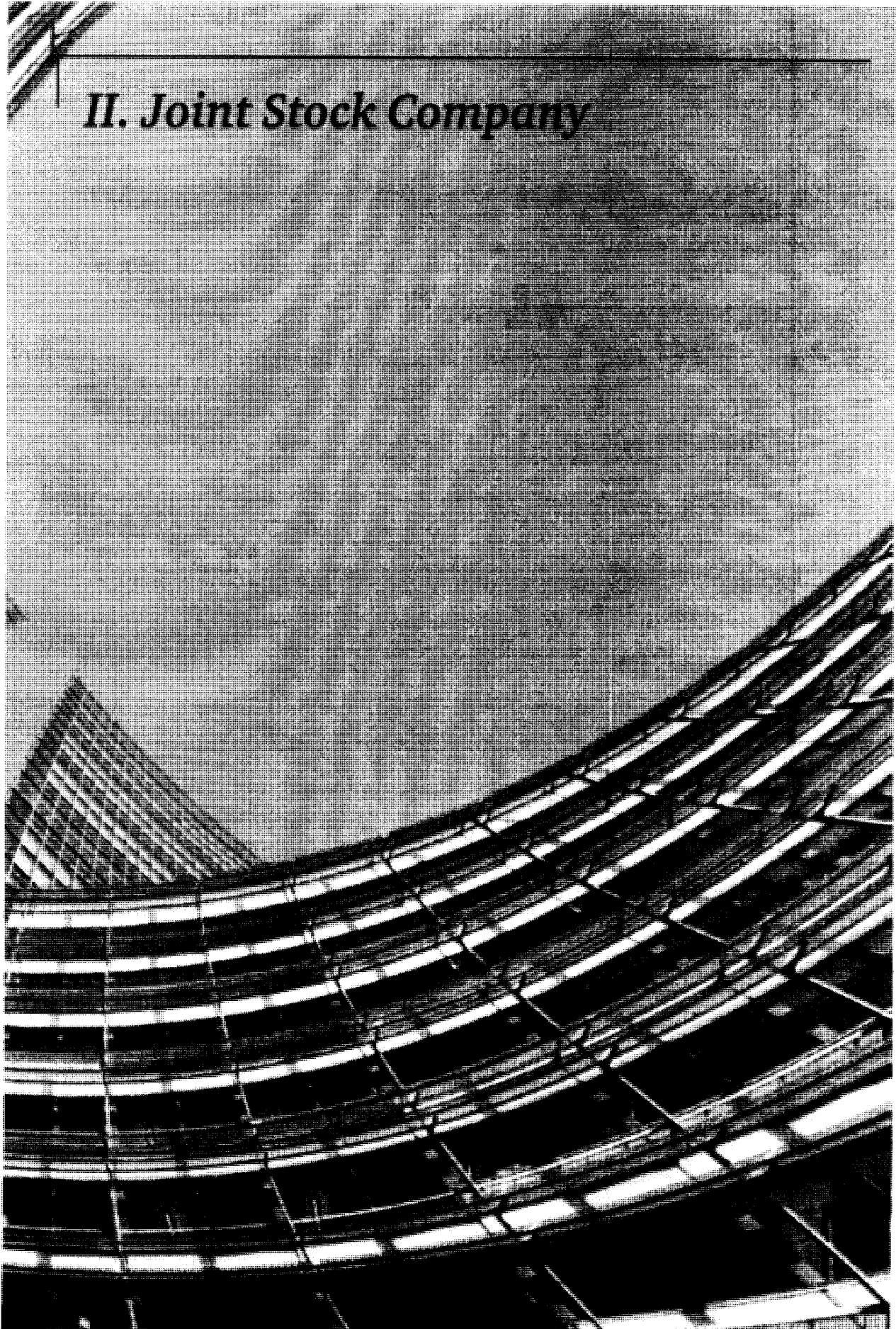
### Significant Points in the Regulation

1. Payment related to invoices or similar payment demands of suppliers of goods (any sized manufacturer) and service providers must be made within 30 calendar days of the date of the document. Otherwise, creditor will be:
  - in default,
  - required to pay interest for late payment,
  - pay compensation,
  - subject to penal clauses if they exists.

2. If the date of the receipt of the invoice or the equivalent request for payment is uncertain, the creditor is to pay within 30 calendar days after the date of receipt of the goods or services. In all other circumstances clause 1 is valid.
3. If the date of the receipt of the invoice or the equivalent request for payment is before the date of receipt of the goods or services, the creditor is required to pay within 30 calendar days after the date of receipt of the goods or services. In all other circumstances clause 1 mentioned above is valid.
4. In the case of a procedure of acceptance or verification by which the conformity of the goods or services with the contract or law is ascertained, two possibilities are available. The creditor should:
  - Pay within 30 calendar days from the date of acceptance or verification, if the debtor receives the invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place.
  - The maximum duration of a procedure of acceptance or verification, by which the conformity of the goods or services with the contract or the law is to be ascertained, must not exceed 30 calendar days from the date of receipt of the goods or services unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor. In all other circumstances clause 1 mentioned above is valid.
5. The payment period cannot exceed 60 days even if the contract states otherwise. It is obligatory for SMEs, producers of agricultural and animal goods, and large companies. For other companies, exceptions can be made in cases where this period would be grossly unfair to the creditor.
6. Payments cannot be by instalments to SMEs and producers of agricultural or animal goods.
7. The default interest rate is determined by the Central Bank of Republic of Turkey. This rate must be 8 percent higher than the rate, as determined by Law No. 3095.



## *II. Joint Stock Company*



## *A. Establishment of an A.Ş.*

### Innovations

The New Law provides the following related to the establishment of an A.Ş.:

- It has abolished the mechanism of gradual formation that exists in the current legislation, as was done by the Germans and Austrians in 1965 and the Swiss in 1991.
- It introduces a system that is simple, straightforward, easily applicable and original.
- The current normative system, with few exceptions, has been reinforced. The intervention authorisation of autonomous organisations has been abolished in both the establishment of A.Ş. and in increases in capital.
- The declaration of founder and the core audit are introduced. The responsibility arising from establishment has also been regulated by effective provisions.

### Audit of Incorporation

Incorporation is audited by the special transaction auditor appointed for this purpose. The New Law has separated the auditor who will audit the financial statements and the annual report of the A.Ş. as well as the consolidated financial statements and the annual report of the Group, from the transaction auditor, the transaction auditor appointed for the audit of the incorporation.

Transaction auditors examine various transactions conducted by the company, such as incorporation, capital increase and reduction, merger, spin-off, conversion of type of the company or the issuance of marketable securities. The transaction auditor is a general concept. For example, whoever audits the incorporation is a transaction auditor (this transaction auditor can also be termed the incorporation auditor). This auditor audits only the incorporation, not the annual financial statements. The transaction auditors can also be from the professions authorised by Law No. 3568. However, an incorporation auditor or a transaction auditor auditing capital contribution may not be necessarily be an authorised YMM/SMMM; this auditor depending on the characteristics of the work and requirements can be chosen from among lawyers or engineers. This is true of cases in which the transaction does not require audit within the scope of Law No. 3568.

### Philosophy of the Incorporation Audit

The goals of the incorporation audits are simplicity, plainness, self-control, transaction security and responsibility.

### **Establishment of a Publicly Traded Company**

1. The person or the legal entity that provides a commitment to offer its shares to the public only has to provide the commitment and will not be obligated to invest three-quarters of the value of shares.
2. The person or the legal entity that provides a commitment to offer its shares to the public has to offer these shares within one month of incorporation and to guarantee the payment of three-quarters of the unsold shares.
3. The shares can be offered to the public at the value of the said commitment or at a premium, and the portion of the cash derived from the public corresponding to the nominal value of the shares is paid to the company, with the outstanding difference belonging to the party who has made the commitment.
4. The public offering procedure is applied in conformity with the regulations of the CMB.
5. Unsold shares shall belong to the party who made the commitment. The one who made the commitment must pay the three quarters of the value of shares immediately.

### *B. Closed A.Ş., Publicly held A.Ş. and Publicly Traded A.Ş.*

The New Law has not been designed for a specific class of A.Ş. In other words, while the existing Law includes provisions more suitable for closed A.Ş., the New Law has also introduced provisions for single-shareholder A.Ş., publicly held A.Ş. and publicly traded A.Ş. whose shares are listed on the stock exchange. Thus, previously problematic differences in application have been removed and effort has been made to eliminate differences in arrangements and systems between the Capital Markets Law and the New Law.

The main philosophy of the New Law is as follows: The New Law is the main code that contains all of the material rules for all joint stock companies.

The second approach of the New Law is that a publicly held A.Ş., as emphasised by Cadbury's first corporate governance report, is a category not fully covered by law. Publicly traded A.Ş. are those whose shares are listed on the stock exchange.

The New Law mainly addresses the notification of publicly traded A.Ş. with a central registry agency, restrictions on share transfer and principles of corporate governance.

The following issues have been structured to cover all of the forms – a publicly held A.Ş., publicly traded A.Ş. and closed A.Ş.:

1. shareholders democracy,
2. information society services,
3. corporate governance principles.

## *C. Capital and Shares in an A.Ş.*

### Capital Systems

The New Law has accepted two capital systems for all A.Ş. regardless of whether publicly held or not: Basic capital and registered capital. This has eliminated an important difference between closed and publicly held A.Ş..

The adoption of the registered capital system, the acceptance in and dismissal from the system for closed A.Ş. are left to the regulations of the Turkish Ministry of Industry and Trade. The Ministry will issue regulations in response to developments.

### Minimum Capital

In closed A.Ş.:

- Minimum share capital is TRY50,000,
- Registered capital is TRY100,000.

In publicly held A.Ş.:

- Minimum capital is TRY50,000.

This capital is determined in accordance with the communiqués of the CMB.

### Capital in Cash and Capital In-Kind

Assets which belong to each group are determined in the New Law. The reforms related to contribution of capital in-kind are as follows:

- The New Law allows the contribution to capital of domain rights, including intellectual property rights and demand receivables.
- In order for an asset to contribute to the capital, there should be no measures, pledges or similar encumbrances imposed on it.
- The registration of the capital in kind on behalf of the company is made directly to the title deed registry directorates.
- The concerned asset is not accepted as capital in kind unless it is entrusted to a reliable person.

### Shares

- Shares can be in cash or in-kind.
- The prohibition that shares corresponding to capital in-kind cannot be transferred within two years is not included in the New Law.
- A share without a nominal value is not recognised.
- The minimum nominal value is Kr1.



The benefits that registered capital will provide in closed A.Ş. are the same as in publicly held A.Ş., such as:

- The capital can be increased easily.
- The cash-call system for the unpaid portion of capital will be abolished.
- The BoD will be able to work in cooperation with the market and intermediary agencies, and it will not be necessary to hold a GA meeting for each capital increase.

### Privileged Shares

The regulation in the New Law regarding privileged shares can be summarised as follows:

- The New Law recognises privileged shares. However, in contrast to the current Law, the privilege concept has been defined.
- Privileged voting right has been restricted.
- The possibility of blocking a capital increase via a share with privileged voting right has been eliminated.
- The convocation, working and decision-making of the GA of privileged shareholders have been made subject to explicit rules and its authorities have been restricted.

### Conclusion

Thus, privileged shares can no longer have the effect of blocking the system and have become subject to a justifiable process.

The limits of the privileged voting right are as follows:

- A single share can have a maximum of 15 voting rights.
  - The privileged voting right cannot be exercised in some decisions:
1. Amendments to the articles of association,
  2. Election of transaction auditors,
  3. Filing actions for release and liability.

The maximum limit of 15 voting rights can be expanded by a court decision. However, in order to do this:

1. The expansion of the limit should be necessary for the institutionalisation of the company and hence the Group.
2. There should be a just cause concerning a concrete event for the expansion of the limit. Reasons such as eliminating a concern that some other group can control the company or averting the danger of deposing the current management are not considered just cause.
3. A project that supports and explains the reasons related to these two expansion requests has to be submitted to the court.

## *D. A.Ş. Acquisition of its Own Shares or Acceptance thereof as a Pledge*

### System under New Law

The New Law has to a great extent loosened the prohibition on an A.Ş.'s acquisition of its own shares or acceptance thereof as a pledge, in accordance with the Second Council Directive – Capital (77/91/EEC) in EU company law.

The system of the New Law is very different from Article 329 of the current Code. In Article 329 the prohibition is rigid and exceptions are rare. The regime in the New Law is based on broad and functioning opportunities that will assist the business world. The New Law specifically protects listed companies against manipulation. Meanwhile, it has avoided putting pressure on closed companies with unnecessary and ineffective concerns. The system should not be evaluated as a preservation of prohibition and simply an introduction with some exceptions; rather, it should be defined on the basis of softening the prohibition with useful acquisition possibilities while maintaining such prohibitions to avoid potential risks and abuses. The prohibitions and the possibilities are also valid in cases where the subsidiaries acquire shares in the parent company. The possibilities are limited to those listed in the law. They cannot be broadened by interpretation.

### Acquisition Possibilities

1. The company can acquire its own shares or accept thereof as pledge up to a maximum of 10 percent of company capital, provided that authorisation from the GA is obtained by the BoD and such authorisation is exercised within a maximum of five years. The unused authority can be renewed.

The GA determines the ratio to be acquired, the price and the purpose of the acquisition, provided that the determination will be limited to 10 percent. The BoD cannot use its authority purely for business purposes; it cannot carry out speculative transactions. The authority is limited to the purposes related to the protection of assets and benefits of the company, the prevention of their abuse and the appropriateness thereof.

As the authority can be renewed, the prohibition applies to 90 percent of the capital. It is a great opportunity for an A.Ş. to be allowed to acquire its own share certificates (shares) for up to 10 percent of its capital. By using this opportunity:

- Publicly traded companies can play the role of a market-maker,
- Publicly traded companies can fight manipulation,
- Closed companies can set up the infrastructure for a sound initial public offering,
- The change of control of companies on the stock exchange can be prevented or fait accompli can be avoided,
- Hostile takeovers can be eliminated.

However, only fully paid shares can be acquired in this fashion.

2. In the case of the existence of an imminent and serious danger for the company, the company can acquire its own shares regardless of the 10 percent limit and the necessity of authorisation. Manipulation is the best example of an imminent and serious danger for a publicly traded company. Under these circumstances, the company undertakes the role of a market-maker.
  - An imminent and serious danger can be defined as manipulation, hostile takeovers or sanctions against the company,
  - Imminent and serious danger also includes economic crisis and collapse of the stock exchange,
  - Imminent and serious danger can also be related to the reality of a concrete event.
3. The share certificates of a company can be purchased by its employees or by the employees of its subsidiaries through advances, loans or guarantees provided by the company. This possibility is meaningful for the purpose of participation of the employees in the company and purchase of company shares by its employees.
4. Acquisition without a consideration is permissible.
5. The company can acquire its own share certificates:
  - a) during a capital decrease,
  - b) in cases where a universal or partial succession occurs (such as merger or division), and if a statutory liability to purchase them exists,
  - c) if the share certificates are acquired through an execution process, provided that the total values of the shares are paid,
  - d) in case its share certificates (shares) are acquired with the purpose of collecting its receivables.
6. The prohibition is not applied if the company is a securities and investment banking company.

### Use of Free Funds for the Acquisition of Shares

Share prices can be paid through free funds. Moreover, the remaining net company assets, after the payment of the share values, should be equal to at least the sum of the total capital amount and reserves, which are not allowed to be distributed according to law and the articles of association.

### Violations of Prohibition

1. In the case of failure to comply with the prohibition, the transfer agreement related to the Code of Obligations is null and void. The company has to dispose of the shares obtained through the voided transaction within one year; shares not disposed of should be eliminated through a capital decrease.

2. If the company grants loans, advances or guarantees to a third party for the purpose of acquiring its own shares, such transaction shall be null and void.

### Suspension of Rights

The company's own shares it acquired and the parent company's shares acquired by the subsidiary are not taken into account in the calculation of the GA's meeting quorum. Except for the acquisition of gratis shares, the company's own shares it has acquired do not grant any shareholding right. The voting rights pertaining to the parent company's shares acquired by the subsidiary and the rights thereto will be suspended.

## *E. Board of Directors (BoD)*

### Main Changes

The main changes in the New Law related to the BoD are as follows:

- The possibility of forming a BoD with the presence of just one person is introduced to Turkish legislation. However, at least one member of the BoD who is authorised for representation should have his/her domicile in Turkey and should be a Turkish citizen.
- The necessity that the BoD member has to be a shareholder of the company has been abolished.
- Legal entities are granted the authorisation to become BoD members.
- The professional BoD concept has been introduced.
- The legal infrastructure that enables shareholder groups to be represented in the BoD has been established.
- The system that identifies the difference between the BoD and the management has been legally defined.

### **Single-member BoD**

A single-member BoD is both a reform and a development. Its benefits can be summarised as follows:

1. Compliance with the system has been ensured through forming a single-member BoD in a single-shareholder A.Ş. and L.Ş. For example, if a refrigerator company has founded an A.Ş. in which it is the only shareholder, it can form a BoD where it is the only member as a legal entity. In this way, it can ensure centralised management.
2. In family businesses, a single-member BoD is a proper body for the management of the company.
3. In companies established by foundations, associations, universities, academies and similar legal entities, it is now possible that these legal entities can act as BoD members and avoid the involvement of third parties in the management.

### **A BoD member need not necessarily be a shareholder**

One assumption of the current Code that is causing difficulties is that only shareholders can be BoD member. This results in creation of fake shareholders, with a goal of sidestepping the law. This requirement was based on the idea that the BoD member should be aware of his/her responsibilities as a shareholder. However, this idea has become completely impractical in A.Ş., especially for public companies. In practice, the shareholding of most of the BoD members does not exist in real life.

The benefits of the development in the New Law can be summarised as follows:

1. Management will be specialised.
2. The law will be applied properly.
3. Disputes, threats and abuses arising from fake shareholdings upon dismissal/ withdrawal of a BoD member will cease.

### **Legal entity as a BoD member**

- The current Code does not allow a legal entity to become a BoD member. It requires a representative to be appointed on its behalf. The legal position of this representative is complicated. This representative does not actually represent the legal entity. It is assumed that he acts under his own responsibility on the BoD and takes decisions independently; hence, that his decisions cannot necessarily be tied to the legal entity. None of these assumptions complies with the law.
- Since the representative of the legal entity is himself a BoD member, the legal entity cannot be held responsible for his actions and decisions. However, on the basis of the principle of substance over form, the representative is regarded as acting upon the instructions of the legal entity.
- In a way, the representative is in the position of a subcontractor charged with responsibility. This results in the occurrence of significant injustice; thus, major scandals cannot be dealt with adequately.
- This provision of the New Law will base the responsibility mechanism on rules and practices that are in line with law.

### **Internal Audit**

The New Law introduces corporate governance for the management of A.Ş. It also introduces flow of information to the BoD, the control of the quality of information received, assessment of such information and making all management decisions on the basis of the results of this assessment. This approach requires the establishment of an internal audit mechanism. Indeed, this is the appropriate approach for the management of an A.Ş. The New Law aims to modernise the functioning of the BoD, with finance management principles and techniques that focus on three areas.

- financial supervision
- financial planning
- risk management.

## Financial Audit

The New Law also mentions financial audit as one of the non-delegable duties of the BoD. The BoD has to establish the necessary mechanism for financial audit. The size of the A.Ş. is not a factor to consider with respect to implementation of the mechanism. The “Company’s needs” is the applicable criterion for the establishment of an internal structure related to financial audit. Financial audit is not required only for public companies. There is no doubt that the financial audit is beneficial for private medium and large-sized companies. As finance management is a reality for contemporary businesses, it should not be subject to the criterion of size. Internal audit is a broad concept and financial audit lies at its centre.

The term “financial audit” is named clearly as an internal audit mechanism in the Swiss Code of Obligations. In fact, financial audit covers the “audit of roles and authorisation related to finance management” and “internal audit from a finance perspective”. Both meanings are directly related to internal audit.

The audit of financial management of a company covers how, from which resource and at what cost funds are provided; control of liquidity, cash flow and consistency of cash flow-maturity dates; and assessment of the consequences of actions to decrease financial liabilities.

Internal audit systems provide cross-control within the company. Monitoring the implementation of decisions leads to assessment of results and physical control of assets and investments.

The New Law establishes a mandatory clause when assigning this non-delegable duty to the BoD, which will be held responsible if an internal audit mechanism for the financial audit is not established despite the company’s need for one.

## Financial Planning

Financial planning by financial audit and cash flow statement is related to the budget and the business plan, which is another dimension of the budget. Financial planning by financial audit is set forth as a non-delegable duty of the BoD in the New Law. The budget and the business plan are vital for all companies. Considering its linkage with financial audit, it is apparent that the financial audit should not only be a consideration for large companies. The New Law states that “establishing the necessary environment for financial planning” should be made in response to requirements.

## Risk Detection and Management

Both concepts are included in the articles related to the BoD in the New Law. Risk management is the duty of the BoD. Risk management is not a detective function. It covers the determination and implementation of policies to be adopted to cope with risks the company has encountered or can encounter due to the economy, industry and trends in which it operates. It also covers management of company-specific risks.

## Professional BoD

The New Law includes various articles related to the professionalism of the BoD (i.e. BoD members do not need to be shareholders, some members should be university graduates, exceeding the limit regarding the privileges in voting rights only for the sake of institutionalisation). Furthermore, financial audit, financial planning and risk management, as explained above, also refer to professionalism.

The following should be noted:

- The New Law requires one-quarter of BoD members to be university graduates.
- A competent management style capable of running an internal audit mechanism is essential for Turkey. That is why the corporate governance principles have introduced independent BoD members, and the New Law emphasises this feature.
- A professional BoD does not mean a BoD in which various stakeholders are represented. A professional BoD acts independently from the shareholders according to the market and business requirements, takes decisions, runs the internal audit mechanisms and prepares for risk management.

### **Shares and Shareholder Groups**

The New Law has covered shareholder groups in addition to the A, B and C share groups. For example, considering a car manufacturing A.Ş., the shareholders of the OEMs – namely, those manufacturing electronic equipment and some major parts of the car – can constitute a shareholder group and the articles of association can set forth that these groups be represented in the BoD. The shareholder groups play an important role for A.Ş. that expands their activity from a commercial to an industrial scope. The New Law introduces this innovation.

### **BoD and Management**

The existing code does not strictly differentiate the BoD from the management, which is a technical managing organisation. Furthermore, there is no corresponding word for the term “management” in Turkish. The word “yönetim” in Turkish does not reflect the corresponding meanings of the words “management” and “administration” in English and French.

- As there is no such distinction in the Turkish system, all the responsibility and burden lies with the BoD.
- The New Law introduces this distinction and aims to establish the “management” in the system through the concept of “organisational internal regulation”.

## *F. General Assembly (GA)*

In the New Law:

- The exclusive and non-delegable authorisations of the GA are detailed collectively. While indicating these authorities, exceptions that are specifically related to publicly held A.Ş., such as capital increase and issuance of securities, are mentioned.
- The parties authorised to call for a GA are redefined. The auditor has no authority to call the GA to a meeting. Furthermore, the minority's authorisation to call a meeting is determined according to specific conditions. Additionally, jurisdictions have been provided for the minority's authorisation to call a meeting should it not receive a response within a specific time period.
- An obligation is introduced for the BoD to arrange a private statute in order to determine a meeting council in relation to the management of GA meetings. The meeting chairmanship or the chairman has to manage the meeting according to this private statute. In addition, in this statute a number of protocols exist regarding negative votes and applicable jurisdictions for signing this protocol. The existing Code does not govern the management of a GA meeting.
- The right for obtaining shareholder information at a GA meeting is revised, and the limits of this right are both expanded and strictly defined. Furthermore, if this right is violated, legal remedies are provided. The right to obtain information has been arranged in order to operate as an effective mechanism and informative content has been provided for the voting process.
- A special audit is subject to new principles, and a new shareholding and minority right has been created in accordance with shareholder democracy.
- Representation in the GA has been released from the rigid forms of representation context in the Code of Obligations. Mass organisation regarding representation power is defined under the institutional representative concept. The "proxy" system of US law has been partially reflected in Turkish law. In this context, steps have been taken to address the lack of power at a GA arising from non-attendance of shareholders.

What is Institutional Representation? And how will it function?

Institutional representation is not a profession; it is an initiative by the shareholders. This form of representation is not appropriate for a business enterprise or professional understanding.

- An institutional representative shareholder is the person(s) who requests representation authority from the other shareholders.
- The institutional representative makes this request with a memorandum.
- This memorandum is a programme related to the management and audit of the A.Ş. in accordance with management, internal audit, independent audit and corporate



governance principles. This programme can also include the principles of policies such as investment locations, investments to be relinquished, financing, profit distribution, investment and marketing policies.

- No special instruction can be given to the corporate representative. The memorandum of the institutional representative includes the list of instructions that must be complied with. The representative, as a rule, cannot act in contravention of the principles in the memorandum, especially while voting at the GA.
- Although it is applicable for all A.Ş., the institutional representative is an instrument of shareholder democracy, as the representative can take the initiative to organise the opposition and prevent subjectivity and arbitrariness by the management, particularly in publicly held companies and publicly traded companies.
- The institutional representative is, at the same time, a radical transparency tool ensuring that an A.Ş. operates in accordance with the corporate governance principles and information society services.
- The New Law does not contain special responsibility jurisdictions regarding institutional representation. However, on the basis of experience, the necessity for such jurisdictions can arise.
- The positive comments of the New Law are the clear detailing of the shareholder initiative and explanation of the relevant jurisdictions.

- Special audit starts with the request of a shareholder. If the GA accepts this request, the special auditor is appointed by the court. If it is rejected and the minority repeats the request, the court will appoint a special auditor regardless of the decision of the GA.
- Therefore, the practice in the current Code – in which the appointment of the special auditor is determined by the majority that controls the A.Ş. – has been removed.
- The New Law has also set forth jurisdictions in the special auditor report that balances the benefits of the Company and the shareholders and authorise the court to prevent and determine the disclosure of information and documents that can harm the Company.

## *G. Capital Increase*

### General Information

The New Law has improved the known methods of capital increase through innovations in A.Ş. and has also enriched certain types of capital increase. In addition, the known capital increase types – share capital increase, increase in registered capital and capital increase through internal funds – are detailed in the New Law. Conditional capital increase, meanwhile, is a new concept.

An additional improvement is the clarification of the prohibition or restriction of pre-emptive rights of shareholders in some capital increases that are subject to fair principles

## Types

The New Law has set forth three types of capital increase.

### Capital Increase through Subscription of New Capital

Also termed effective increase, new capital in cash or in-kind is contributed and thus equity increases through new contributions by shareholders and/or third parties.

### Capital Increase through Internal Funds

Statutory reserves not allocated for a certain purpose, part of the statutory reserves that can be freely utilised, and legally permissible funds are transferred to the capital. No new capital is contributed; items that largely already exist in the equity are added to the capital.

### Conditional Capital Increase

Capital is not increased by BoD decision or by GA resolution, nor is the capital increase subscribed to by particular people. The basis of the capital increase is an agreement. This judgement not only forms a basis, but also shows the way, amount and periods in which the capital increase will be made. The agreement gradually expires and is derecognised by the BoD when it expires completely.

Incremental capital increases are made via utilisation of preferential right and conversion option of debt instrument bearers instead of a decision of the Company management. Those involved in the capital increase are bearers of the conversion option and preferential right.

Conversion option bearers have the right to take new interests in the Company with returns of the debt instruments; in addition, preferential right bearers are permitted to pay shares of the Company by utilising preferential rights.

### Pre-emptive Right

Each shareholder has the right to acquire newly issued shares based on the ratio of their existing shares to the capital.

This right can be restricted:

- if there is fair cause and
- upon the affirmative votes of shareholders who possess a minimum 60 percent of the capital.

### Fair Cause

The law defines fair causes as follows:

- acquisition of a business or part of an associate
- participation of the employees in the Company

By prohibition or restriction of the pre-emptive right,

- no one can be provided with benefit in an unjustifiable way
- no one can be subjected to losses.

## Capital Decrease

The New Law has made three important changes regarding decrease in capital:

1. The report of the BoD disclosing the reason for the capital decrease, the method applied and the conditions of assets are registered and issued when it approved by the GA.
2. If the decrease is made before the collection of receivables or guarantee of receivables with collaterals, action for rescission can be made within a two-year period, subsequent to the registration and declaration of the decrease.
3. This matter can be brought to court if the collateral is not sufficient.

## *H. Liability*

The New Law regulates liabilities that arise from several situations. There are two types of liability:

- legal (Article 549)
- criminal (Article 562)

Each liability forms a separate and integrated part which is placed at the end of the provisions related to A.Ş..

### Legal Liability

The New Law separates legal liability into six categories. Common provisions (Articles 555 - 561) can be partially applied to those six categories. Among these provisions, Article 557 of the New Law – which regulates “joint liability” – stands apart from the other articles; it is not applied to all of the liabilities and is relevant only when another article imposes “joint liability,” or other relevant conditions are met.

#### 1. Liability Arising from Non-Compliance of Documents and Declarations on New Law

##### Emergence of Liability

This liability arises when documents are legally required to be issued because of procedures, transactions and structural changes, such as incorporation, capital increase and decrease, merger, division or conversion of the A.Ş. and issuance of securities, and these declarations either do not comply with the Law or are fraudulent or false.

For instance, this liability arises if any of the following are false, fraudulent or include incorrect declarations:

- the public offering prospectus or a founders' declaration,
- the guarantee of an intermediary,
- the report of the transaction auditor.

Should such a situation arise – if more than one person jointly commits an action that causes damage and contravenes the law or generates a liability, and if the action is taken by a board such as the BoD or an executive committee, “joint liability” can emerge.

### Provisions

The Liable Person is held to be the person who issues the declaration, submits the report and commits and participates in these actions.

Fault is a mandatory condition for liability, and the consequence of the liability is the indemnification of the loss. Article 560 is applied to the limitation period.

## 2. False Declarations Regarding Capital and Knowledge as to Insolvency

### Emergence of Liability

This liability originates from (1) fraud or conducting similar fraudulent transactions with respect to the protective provisions regarding the capital, or (2) knowledge of the insolvency of the parties making capital commitment and the approval of this.

For instance:

- presenting the capital as committed or paid-up, although it is not.
- providing a note payable instead of payment in cash and endorsing a bad cheque.
- commitment by a party who is insolvent or bankrupt.

### Provisions

Liable Persons: The following are mutually liable (1) Parties performing misleading transactions and others involved in such transactions and (2) parties who are aware of the insolvency yet approve the transactions. This type of liability is covered by the New Law. Article 557 is applied to joint and several liabilities. Fault must be demonstrated to impose liability. The limitation period is specified in Article 560.

## 3. Liability Originating from Valuation

### Emergence of Liability

Liability arises when (1) the non-monetary assets to be contributed as capital or to be acquired are valued at a higher price than similar non-monetary assets, (2) their attributes are stated inappropriately (for instance indicating land as having a proper zoning status when it does not) or (3) another type of misconduct (such as the valuation of non-existent bonds).

Fault is not a mandatory condition here, and if the parties are found to have acted illegally or participated in violation of the law, they must provide compensation for the damage. These parties can be the founder, expert, the BoD member, attorney at law, etc. If the necessary conditions exist and the transaction causing the damage arises from the BoD resolution, for instance, Article 557 is applied.

#### 4. Liability Originating from Collection of Money from the Public

##### Emergence of Liability

This liability arises when money is collected from the public in Turkey or abroad without CMB permission, for the purpose, or with the promise of establishing an A.Ş., to increase the capital of the existing company or with any other similar reason. The reasons for collecting money are not restricted to those listed in the law.

##### Provisions

The following are successively liable for these actions: (1) the parties collecting money (2) the institutions informed about this action (authorised institutions) and (3) the management and shareholders of the related company. They have to deposit the collected money in a bank determined by the CMB. Article 557 applies to the liability. Fault is not a mandatory condition. The money is held as a precautionary measure, and a trustee is appointed when necessary. The commercial courts of first instance are included in the authorised judiciaries.

#### 5. Liability of Founders, BoD Members, Managers and Liquidators

##### Emergence of Liability

This liability arises when founders, BoD members, managers and liquidators fail to fulfil their obligations originating from the

- law
- articles of association.

##### Characteristics of Liability

The liability is (1) a fault liability where the burden of proof is inverted: the above-mentioned parties are held to be liable unless they prove that they are not at fault. (2) The liability arises from the commitment of the management function. If the management function is partially or completely delegated (for example, if an executive director is assigned), the BoD is released from the liability to the extent of delegated function; the principle states that if there is no management function, there is no liability (Code, Article 319/New Law, Article 553.2). However, liability can arise when the assigned person is appointed without due care. (3) The liability arises from the functions included in the control of the responsible party.

##### Liability to Whom?

The liability is to:

- the company

- the shareholders and the creditors (depending on the circumstances).

## 6. Liability of Auditor

The legal liability of the auditor, transaction auditor and special auditor is regulated under Article 554 of the New Law, and liability arising from confidentiality is regulated under Article 404 of the New Law.

The legal liability arises from the fulfilment of legal duties of all three types of auditors. This liability is a compensation liability based on fault. The auditor and the auditor of the group of companies are liable to the company, the shareholders, and the creditors of the company, based on this liability. The burden of proof is on the plaintiff, be it the company, the shareholders or the creditors of the company in a legal case. The origin of the liability is the law, because the liability derives not from a breach of the agreement, but rather the failure to fulfill the statutory duties as mentioned above. The liability arising from the breach of the audit contract is not regulated under Article 554 and is subject to the general provisions as the basis of the liability is contractual.

Liability arising from breach of confidentiality is regulated under Article 404. All three types of auditors, their assistants and representatives of the independent audit companies are required to conduct an audit in an honest and objective manner; they are forbidden to use trade and company secrets without permission that they have learned while performing their audit activities. Breach of this obligation intentionally or through negligence creates a liability.

### Damage

The damage caused by the parties detailed above in section H, points 1-6, is pecuniary in nature.

### Lawsuit

Original Plaintiff: A.Ş.

Shareholder as Plaintiff:

The shareholder can request that compensation be paid to the company. Therefore the concept of damage does not arise.

Creditor as Plaintiff:

The right to legal action by creditors emerges in the case of bankruptcy of the company; this process is secondary if is not initiated by the bankruptcy office.

### Solidarity and Recourse

#### Rule

If more than one party is obliged to indemnify the same damage, they are jointly and severally liable.

If the damage is caused through a joint action, joint liability for the same damage will emerge.

## Differentiated Solidarity

Differentiated solidarity means that if more than one party is obliged to indemnify the same damage, each is held liable to the extent that the damage can be charged to each party based on its wilful misconduct and on a case-by-case basis.

## Internal Relation

The recourse is determined by the judge in accordance with the circumstances of each case.

## Criminal Liability

The crimes and punishments are indicated in Article 562 of the New Law. The crimes mentioned in Article 562 are litigated *sua sponte*.

# I. Termination and Liquidation

Three radical changes have been made.

## A. Cancellation for Just Cause

The minority may file a lawsuit for dissolution of the A.Ş. in cases where irresponsible behaviour by the majority is deemed a “just cause” (such as no or inadequate dividend distribution, a decrease of capital shares of some shareholders by capital increases of relatively high amounts, the use of A.Ş. and its assets for the majority’s own benefits, transfer of funds to their own accounts). In this case, the court can decide for:

1. cancellation or
2. purchase of the shares of the plaintiff at their fair value at the date of lawsuit or any other acceptable solution appropriate under the circumstances (for instance, dividend distribution from reserves, mandatory distribution of annual profit by articles of association, representation of the minority in the BoD).

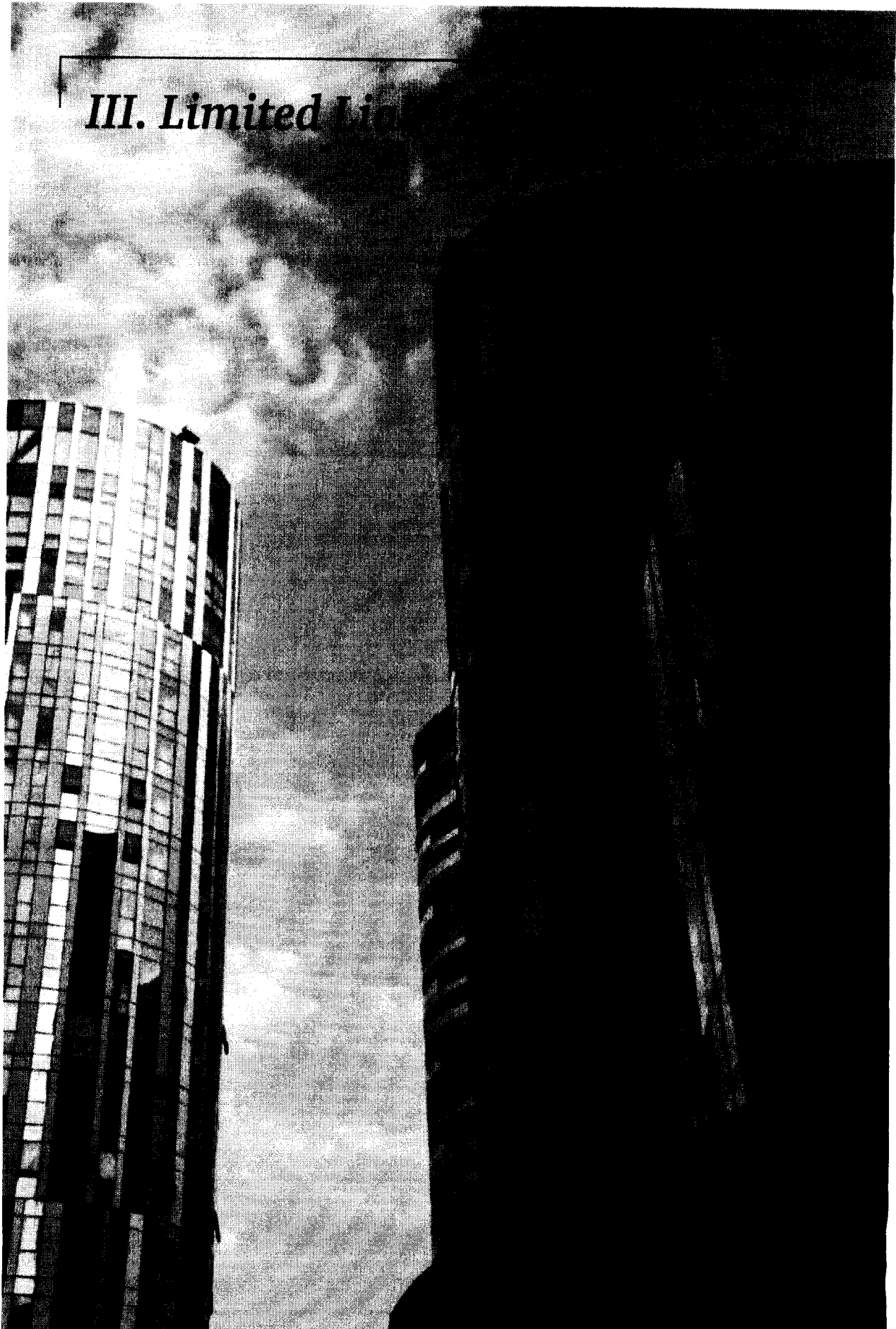
## B. Additional Liquidation

In cases where the liquidation is conducted in a precipitous manner and closed without considering some of the receivables, leaving some liquidation transactions still to be performed, the liquidation process is re-opened.

## C. Suspension of Liquidation

When the defined duration of the company expires or the A.Ş. is abolished by decision of the GA, liquidation can be suspended until liquidation shares are distributed.

### *III. Limited Liability*





## *A. Main Features of New Limited Liability Company Structure*

The new "Limited Liability Company" ("L.Ş.") defined in the New Law presents many differences from the existing L.Ş. in the current legislation.

### Increased Similarities to Joint Stock Companies (A.Ş.)

In contrast to how it is defined in existing Code, the L.Ş. is no longer an unlimited liability company or partnership and converged with the A.Ş. In many aspects, the L.Ş. can be considered a small A.Ş. The most striking similarities are:

- In response to national and international markets' demands, the structure, management and decision mechanisms of the new L.Ş. are similar to those of the A.Ş.
- Regardless of the number of shareholders, the GA is structured in a form similar to that of the A.Ş. The same principle applies to the management of the L.Ş.

### Differences from Joint Stock Companies (A.Ş.)

The sole obligation of the A.Ş. shareholder is the actual payment of the subscribed capital. In a L.Ş., other obligations can be considered, including:

- The recovery of balance sheet deficits.
- Secondary performance obligations.
- Loyalty commitment and non-competition clauses.
- The approval of the remaining partners is required to transfer shares (in an A.Ş. shares can be easily transferred).

### Capital

- The minimum capital requirement is TRY10,000.
- Capital contribution in-kind is permitted.
- The capital contribution in cash is paid at once. The immovable properties are registered administratively at the Land Registry on behalf of the L.Ş. The power and duty of the registration belongs to the Trade Registry officer.

### Possibility of a Partner's Possessing More Than One Share of Company's Capital

The requirement that a partner can only be entitled to only one capital share (one partner = one share of the capital) has been superseded; under the New Law a partner can have more than one capital share.

- The numerous transactions necessary in the context of a partial transfer of shares or for stock split procedures have been simplified.
- Transfer of capital shares within a family, particularly from more senior members to their children, has been simplified.

- Transfer of capital shares within a Group of Companies has been simplified.
- Hence, the entry of a new partner into L.Ş. capital is now easier.

### Increased Flexibility in Transfer of Capital Shares and Evidence for the Controlled Capital Share

The new L.Ş. has multipurpose flexibility in the transfer of the capital shares.

- The partners (founders) can structure the transfer of the capital share in accordance with their needs. The transfer of shares can be made easier with specific clauses in the articles of association. On the other hand, if the partners aim to have a closed company, the transfer of shares can be made difficult or prohibited.
- The evidence for shareholding has been made easier through the issuance of registered nominative share certificates for the L.Ş. capital, and transparency has been guaranteed by disclosing the obligations of the parties on the certificates. Therefore, entries in the stock register will also be partially reflected to these certificates.
- The possibility of avoiding, the closed L.Ş. or which does not allow share transfer, has been introduced, and the possibility of withdrawal of a partner has been stressed.

The bankruptcy of a partner no longer results in the bankruptcy of the L.Ş., as in the previous Code. This mechanism was related to the idea that an L.Ş. was thought to bear the characteristics of a personal company. The new principle regarding bankruptcy is that the L.Ş. is an incorporated business, protected from the risk of dissolution by the creditors of its partners.

The contradiction in the previous Code – which accepted the L.Ş. as an incorporated company but recognized the right of a partner's personal creditor to dissolve the company – has been removed. The principle adopted in the New Law is simple: The personal creditor of a partner has recourse to seizure of this partner's capital share and can convert it into money, without explicitly dissolving the L.Ş.

### Usufruct Shares

The previous Code did not allow a L.Ş. to issue usufruct shares. The New Law has brought the L.Ş. closer to the A.Ş. by granting the right to issue usufruct shares.

### Election of the L.Ş. Management

According to the Code, if the partners and/or third parties who will manage the L.Ş. are not determined by the articles of association or a partners' resolution, all the partners will be authorised and will be obliged to manage the L.Ş. with the specific title of manager of the L.Ş. This joint management or self- management proves problematic in terms of decision-making.

The New Law requires that managers be elected, thus applying an A.Ş. principle to the L.Ş.

## *B. Incorporation and Legal Status of L.Ş.*

- The New Law allows the establishment of a single-shareholder L.Ş. (See: I. Common concepts regarding Corporate Law)
- Incorporation has been simplified.
- Provided it is set forth in the articles of association, the following are permitted: purchase or repurchase of shares, put and call options over the capital shares; limitation of share transfers; penalties to be incurred if the articles of association are violated; right of exit from the partnership; delegation of management to third parties; usage of L.Ş. profits in accordance with a regime different than the one defined in the regulations.
- Additional and secondary payment obligations have been set forth in the New Law.
- The road has been paved for the recognition of veto and privileged voting rights for partners of the L.Ş.
- Non-competition clauses can be imposed on partners.
- The calculation of voting rights and the distribution of profits can be bound to specific rules diverging from legal provisions.
- Partners have been granted the right to withdraw from the L.Ş.

## *C. Strengthening of Economic Structure of Company, Strengthening its Financial Position*

The financial structure of the new L.Ş. has been strengthened with the following measures:

- The share capital is to be paid at once; payment with installments is no longer available.
- Loans from partners that substitute for the share capital are allowed.
- The partners are permitted to cover deficits with additional payment obligations.

### *Default and its Consequences*

Since the capital shares are to be paid at once, the possibility of payment default no longer exists, and the consequences thereof are no longer applicable.

### *Responsibility of the Predecessor*

In the previous Code, the default of payment for capital commitments triggered the concept of recourse to the predecessors for any unpaid capital. This default mechanism has been abolished.

## Simplification of Share Transfer

Share transfers have been simplified in the New Law.

## Improvements Regarding the Right to Obtain Information and to Inspect the Company

The previous Code did not grant the partners the right to obtain information and to inspect the compliance of the L.Ş. with a specific article of the Code, except for Article 548, which stipulated that companies with more than 20 partners are subject to the same provisions as an A.Ş. regarding the audit of the Company. For L.Ş. with less than 20 partners, Article 631 of the Code of Obligations was to be applied. This provision was found to be insufficient, ineffective and unsuitable for an L.Ş.

The New Law empowers the partners with the right to comprehensive information and the right for an inspection of the Company based on modern methods.

## Accounting and Auditing Based on International Standards

The most important assurance that the new L.Ş. provides its partners is the preparation of financial statements of small-scale L.Ş. in accordance with special standards, and of large-scale L.Ş. in accordance with IFRS.

These financial statements are to be audited according to ISA.

## Strong Preferential Right

Although the previous Code includes a provision (Article 516) that recognises preferential rights, it does not contain the mechanisms to protect them. The New Law has strengthened the concept of preferential rights through provisions in parallel with those applicable for A.Ş.

## Improved Status of Partner in Case of Withdrawal or Dismissal

One criticism of the previous Code is the absence of protection for the partner in the case of withdrawal or a dismissal. The New Law provides that withdrawal or dismissal of a partner ensures the balance of interests and conforms modern L.Ş. legal principles.

- In litigation for rightful withdrawal, the payment of the actual value of the capital share to the partner has been secured, through various measures.
- In order to protect the L.Ş., a provision for the suspension of some of the rights of the partner, if deemed necessary, has been adopted.
- Some rights of partners who want to withdraw or who have filed a lawsuit for this purpose are to be frozen temporarily.
- The articles of association should spell out the possible reasons for dismissal of partners.
- A partner may be dismissed from the L.Ş. by court decision, if reasonable cause is demonstrated.

## *IV. Secondary Regulations*



## *The New Law's secondary source of regulation regarding Corporate Law*

### Regulatory statutes

1. Auditing statute
2. Trade registry statute
3. Electronic GA statute

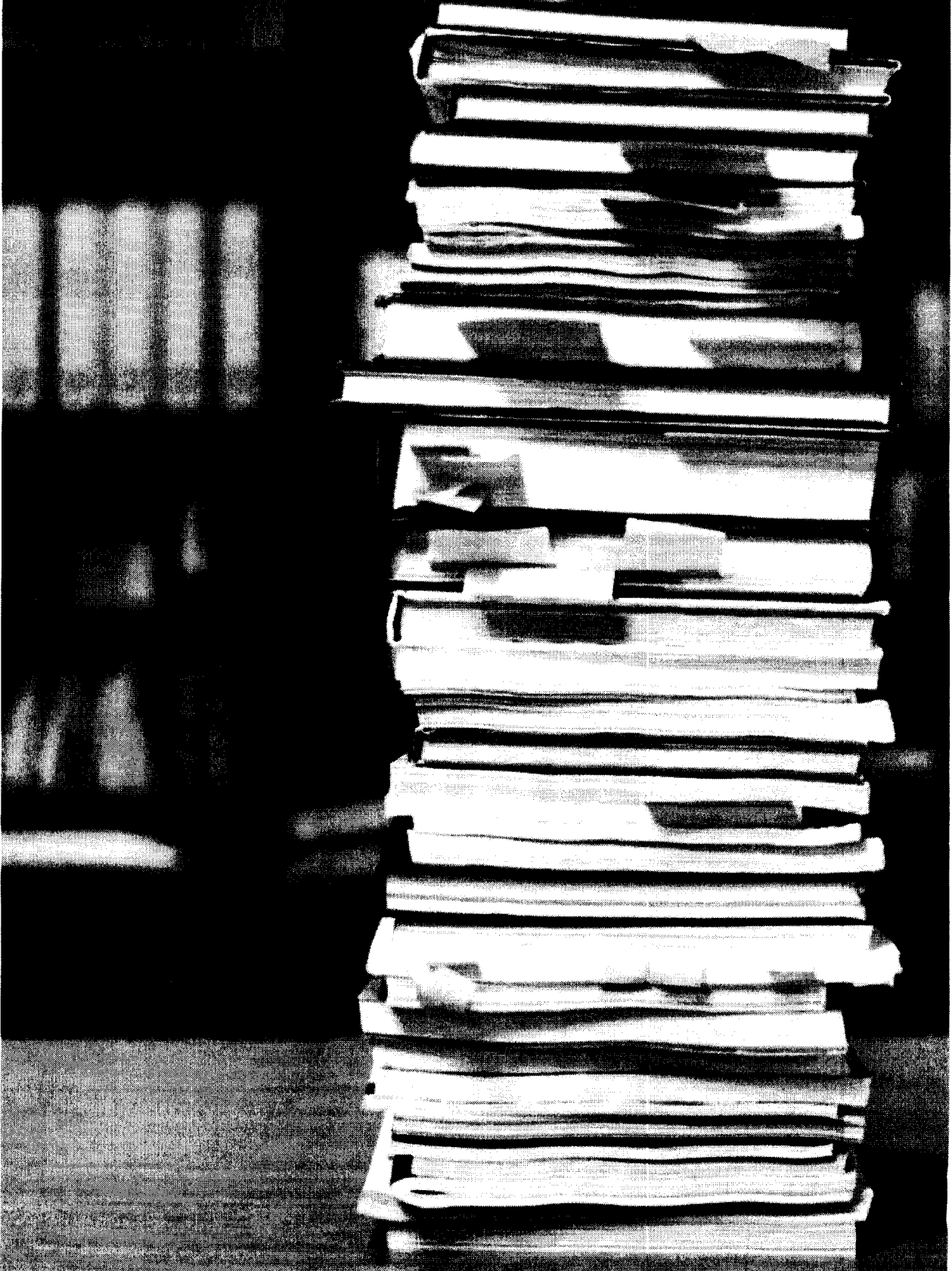
### Regulations

1. Regulation on Electronic GA and Electronic BoD Meetings
2. Regulation on Independent Audit
3. Regulation on the Supervision of the Independent Auditors
4. Regulation on the Ministry's Representative at the GA
5. Regulation on representation at the GA
6. Internal Regulation on the Moderation of Meetings in an A.Ş.
7. Regulation on the Definition of Small and Medium Enterprise
8. Regulation on the Web Site of the Company
9. Regulation on the Necessary Conditions for the Establishment of Trade Registry Directorates and the Cooperation between Trade Registry Chambers
10. Regulation on Annual Report

### Communiqués and Circulars

1. Communiqué on Advances for Dividends
2. Communiqué on A.Ş. Required to Obtain Authorisations
3. Communiqué on Registered Capital
4. Communiqué on Change in Legal Form of the Company
5. Communiqué on Group of Companies
6. Communiqué on Cumulative Voting
7. Communiqué on the Approval of Accounting Books
8. Communiqué on the Publication of Financial Statements
9. Communiqué on the Application of Regulations
10. Communiqué on Trademark Protection

## *Related Articles*



## *A. Related articles of Turkish Commercial Code No. 6102*

F) Merger, spin-off and conversion

I- Field of application and concepts

### **1. Field of application**

**Article 134-** (1) Articles 134 to 194 are applied to mergers, spin-offs and conversions of companies.

(2) The provisions of other codes that are not incompatible with Articles 135 to 194 of this code are reserved

### **2. Concepts**

**Article 135 – (1)** In the application of Articles 134 to 195; “company”, “shareholder”, “partnership interest”, “General Board”, “managing body”, “articles of incorporation” refer to trading companies; shareholders of companies and shareholders of limited companies, personal company and cooperatives; GA in joint stock companies, limited companies, limited companies divided into shares and cooperatives and assembly of shareholders and if deemed necessary, all the shareholders in personal companies; BoD in joint stock companies and cooperatives and manager(s) in limited companies, director in personal companies and limited companies divided into shares; core contract in joint stock companies, corporate charter in personal companies and in limited companies and core contract in cooperatives respectively.

(2) When small and medium-size enterprises are determined, the foreseen criteria in Article 1522 for personal companies and in Article 1523 for joint stock companies are applied.

II - Merger

### **1. General provisions**

#### **a) Principle**

**Article 136 – (1)** Companies can be merged in two ways:

a) Acquisition of a company by another company, technically called “merger by acquisition,” or

b) Union of two companies under a new company, technically called “merger by formation of a new company”.

(2) In the application of Articles 136 to 158, the company accepting the merger is called “transferee” and the company that is joined is called “assignee”.

(3) Merger occurs when the shares of the transferee are acquired by the shareholders of assignee on the basis of an exchange ratio in return for the wealth of assignee. The merger contract can include cash payment for withdrawal, as stated in Article 141, paragraph 2.



(4) The transferee takes over the wealth of assignee as a whole via merger. The company merged by acquisition collapses and is deregistered from Trade Registry.

#### **b) Valid Mergers**

**Article 137 – (1)** Joint stock companies can be merged with:

- a) joint stock companies
- b) cooperatives
- c) unlimited liability companies and commandite companies, provided that they will be the transferee.

(2) Personal companies can be merged with:

- a) personal companies
- b) stock companies (provided they will be the assignee)
- c) cooperatives (provided they will be the assignee)

(3) Provided that they will be the transferee, cooperatives can be merged with:

- a) cooperatives,
- b) stock companies
- c) personal companies

#### **c) Merger in case of dissolution of a company**

**Article 138- (1)** A company in dissolution can be joined to merger provided that distribution of its wealth is not started and that it will be the assignee.

(2) The existence of the condition in paragraph 1 is verified by the report of a process auditor which confirms the case in question as the report is submitted to the Trade Registry with which the transferee's headquarters are registered.

#### **d) Capital loss or merger in the case of a Company's being in default**

**Article 139 – (1)** A company which has lost half of the sum of its capital and statutory reserves due to damages, or whose liabilities exceed its assets, may merge with a company, provided that the latter is in possession of freely disposable equity sufficient to cover the capital loss or, if necessary, to remedy the state of excess of liabilities over assets.

(2) the existence of the condition in paragraph 1 must be confirmed by the report of a process auditor, as the report is submitted to the Trade Registry with which the transferee's headquarters are registered.

## **2. Partnership interests and rights**

### **a) Protection of partnership interests and rights**

**Article 140 – (1)** The shareholders of the assignee have the right to make a claim on the shares and rights in the transferee at a value that matches their existing partnership shares

and rights. The value of the assets of companies participating in the merger, the allocation of the voting rights and other significant matters are taken into account while assessing the said right to make a claim.

(2) An equalisation benefit can be provided while determining the change in partnership shares, providing that the partnership shares assigned to the shareholders of the transferee do not exceed one-tenth of their actual value.

(3) Shareholders with non-voting shares in the assignee are granted non-voting shares or shares with voting rights of the same value.

(4) Equal rights at the assignee or a reasonable consideration is given in exchange for preferential rights in the existing shares of the transferee.

(5) The transferee must grant equal rights to holders of the dividend shares in the assignee or to purchase such dividend shares at their value on the date the merger agreement is signed.

#### **b) Cash payment for withdrawals**

**Article 141 - (1)** In a merger contract, companies participating in the merger can provide shareholders with the option to choose either to have shares and partnership rights in the transferee or to receive a cash payment for withdrawal equal to the actual value of the company shares to be acquired.

(2) Companies participating in the merger can set forth in the merger contract that only the cash payment for withdrawals is granted.

### **3. Capital increase, formation of a new company and interim balance sheet**

#### **a) Capital increase**

**Article 142 - (1)** In a merger by acquisition, the transferee is obliged to increase its capital to the level necessary to protect the rights of the shareholders of the assignee.

(2) The provisions regarding public offerings of new shares in publicly held joint stock companies and regulations concerning contribution of capital in kind do not apply in the merger, except for the provisions regarding the registration with the CMB.

#### **b) Formation of a new company**

**Article 143 - (1)** In the merger by formation of a new company, articles of the New Law and of Cooperatives Law No. 1163, dated 24 April 1969, apply to the formation of the new company, excluding their provisions regarding contribution of capital in kind and the minimum number of shareholders.

#### **c) Interim balance sheet**

**Article 144 - (1)** If more than six months passes between the date the merger contract was signed and the date of the balance sheet, or if significant changes have occurred in the assets of companies participating in the merger since the last balance sheet has been prepared, the companies participating in the merger must prepare an interim balance sheet.

(2) Provided that the following provisions are reserved, the provisions and principles relevant to the annual balance sheet apply to the interim balance sheet. With regards to the interim balance sheet:

- a) Physical inventory does not need to be taken
- b) Changes to the valuations predetermined in the last balance sheet are limited to the entries in the commercial book; depreciation, valuation adjustments, provisions and valuation changes significant for the enterprise that cannot be determined from the commercial books are also taken into account.

#### **4. Merger contract, merger report and audit**

##### **a) Merger contract**

###### **aa) Drawing up merger contract**

**Article 145 - (1)** The merger contract must be in written form, signed by the management of companies participating in the merger, and approved by their GAs.

###### **bb) Content of the merger contract**

**Article 146 - (1)** The merger contract must contain:

- a) Trade names, legal status, headquarters of companies participating in the merger; in the case of a merger by formation of a new company, type, trade name and headquarters of the new company
- b) Transfer rates of company shares, and, if provided for, equalisation amount; explanations regarding shares and rights of shareholders of the assignee in the transferee
- c) Rights granted to the holders of privileged shares, non-voting shares and profit-sharing certificates by the transferee
- d) Method for transfer of shares
- e) Date on which the shares acquired through the merger gained the right to the profits, which is shown on the balance sheet of the transferee or newly established company, and all aspects related to such entitlement
- f) Cash payment for withdrawals in accordance with Article 141, if necessary
- g) Date on which the transactions and activities of the assignee is considered as performed on the account of the transferee
- h) Special benefits granted to managing bodies and managing partners
- i) Names of the shareholders with unlimited liability, if necessary

##### **b) Merger report**

**Article 147 - (1)** The managing bodies of the companies participating in the merger prepare a merger report, individually or jointly.

(2) The report explains the legal and economic grounds of the:

- a) Purpose and results of the merger
- b) Merger contract
- c) Exchange ratio of company shares, and if stipulated, equalisation payment; partnership rights granted to the shareholders of the assignee companies in the transferee
- d) If necessary, amount of cash payment for withdrawals and reasons for such payment instead of the company shares and partnership rights
- e) Aspects regarding the valuation of shares in terms of determining the exchange ratio
- f) If necessary, the amount of increase that will be made by the transferee
- g) If stipulated, information regarding the additional payments and other personal performance liabilities and personal responsibilities designated to the shareholders of the assignee due to merger
- h) In the mergers of companies of different types, liabilities imposed on the shareholders due to the new type
- i) Impact of the merger on the employees of companies participating in the merger, and, if possible, the content of a social plan
- j) Impact of the merger on the creditors of companies participating in the merger
- k) If required, approvals obtained from relevant authorities

(3) In a merger by formation of a new company, the articles of association of the new company must also be attached to the merger report.

(4) Small-sized companies can decide not to have the merger report prepared, if all shareholders approve.

### **c) Audit of the merger contract and of the merger report**

**Article 148 - (1)** Companies participating in the merger are required to have the merger contract, merger report and the balance sheet subject to the merger audited by a process auditor expert in this area.

(2) Companies participating in the merger are obliged to provide the process auditor with all relevant information and documents.

(3) The process auditor must inspect and state his/her opinion regarding the following in his/her report:

- a) Whether the capital increase stipulated to be made by the transferee is sufficient to protect the rights of the shareholders of the assignee.
- b) Whether the exchange ratio and cash payment for withdrawals are fair.
- c) The calculation method of the exchange ratio and whether the method applied is fair, determined by comparison with the calculation method of at least three different generally accepted methods.

- d) Which values can emerge through the other generally accepted methods.
  - e) If there is compensation, whether it is appropriate.
  - f) The properties taken into account while evaluating the shares in terms of the calculation of the exchange ratio.
- (4) Small-sized companies can decide not to be audited, if all shareholders approve.

## **5. Right to inspect and changes in assets**

### **a) Right to inspect**

**Article 149 - (1)** Each of the companies participating in the merger is required to submit the following for the inspection of the shareholders, holders of the profit-sharing certificate and bearers of securities issued by the company, stakeholders and other relevant people at their head offices and branches, or, for publicly held joint stock companies, at locations determined by the CMB, within 30 days prior to the GA resolution:

- a) merger contract
- b) merger report
- c) audit report
- d) year-end annual financial statements, annual reports and if necessary, interim balance sheets for the last three years. These are also posted on the Web sites of the relevant capital stock companies.

(2) Shareholders and the persons mentioned in the first article above can request to be provided with the copies of the documents listed in the same article and with their hard copies, if available. These must be provided at no charge.

(3) Each company participating in the merger must publish the right to inspect these documents in the announcements published in Turkish Trade Registry Gazette and posted on their Web sites.

(4) Each company participating in the merger must announce in the Turkish Trade Registry Gazette and in newspapers the articles of association, and capital stock companies must post on their Web sites where the documents mentioned in Article 1 were presented and where they are available for examination at least three business days prior to the submission.

(5) Small-sized companies can decide not to exercise the right to inspect, if all shareholders approve.

### **b) Information regarding changes in assets**

**Article 150 - (1)** If a significant change takes place in the assets or liabilities of one of the companies participating in the merger between the date the merger contract is signed and the date this contract is to be presented for approval of the GA, the managing body must report this situation in writing to its own GA and to the management of the other companies participating in the merger.

(2) The managements of all companies participating in the merger must review whether amendment of the merger contract is necessary or whether to abandon the merger. If such a conclusion is reached, the proposal to submit the merger for approval is withdrawn. In the merger is to proceed, the managing body must declare at the GA the reasons why modification of the merger contract is not required.

### **c) Resolution of merger**

**Article 151 - (1)** The managing body presents the merger contract to the GA. The merger contract must be approved at the GA:

a) joint stock companies and companies limited by shares require approval by three-quarters of the votes present at the GA, provided that those votes represent the majority of the basic or issued capital, without prejudice to sub-clause (b) of paragraph 5 of Article 421 of this code

b) capital stock companies to be acquired by a cooperative require approval by three-quarters of the votes present at the GA, provided they represents the majority of the capital

c) limited liability companies require approval by three-quarters of the votes of all shareholders, provided that they hold at least three-quarters of the shares representing the capital

d) cooperatives require approval by a two-thirds majority of the votes cast; if additional payment and other performance liabilities or unlimited liability have been accepted in the articles of association, or if these exist and have been extended, approval requires three-quarters of all shareholders registered in the cooperative

(2) In general companies and limited companies, the merger contract needs to be approved unanimously, unless the articles of association set forth that the merger contract requires approval by only three-quarters of all shareholders.

(3) In the event a company limited by shares acquires another company, in addition to the quorum in sub-clause (a) of paragraph 1, all unlimited shareholders must approve the merger in writing.

(4) If additional liability and personal performance liabilities are also provided for through the acquisition, or if these exist and are being extended in a joint stock company and a company limited by shares acquired by a company with limited liability, unanimous approval of all shareholders is required.

(5) If the merger contract sets forth a cash payment for withdrawals, approval by 90 percent of shareholders with voting right is required if the assignee is a personal company, or of all voting rights in the company if it is a capital stock company.

(6) If a change regarding the scope of activity of the assignee has been provided for in the merger contract, the merger contract must also be approved with the quorum required to amend the articles of association.

## **6. Provisions regarding implementation**

### **a) Registration at the Trade Registry**

**Article 152 - (1)** As soon as the merger resolution has been adopted by the companies participating in the merger, managing bodies apply to the Trade Registry to have the merger registered.

(2) If the transferee has increased its capital as a requirement of the merger, the amendments to the articles of association are submitted to the Trade Registry.

(3) The assignee is dissolved upon the registration of the merger at the Trade Registry.

### **b) Legal results**

**Article 153 - (1)** The merger takes effect upon the registration of the merger at the Trade Registry. At the instance of registration, all assets and liabilities of the assignee are automatically transferred to the transferee.

(2) The shareholders of the acquiree company become the shareholders of the acquirer company. However, the personal responsibilities of the shareholders' of the acquired company are not transferred to the acquiring company. .

(3) The provisions of Law No. 4054 on the Protection of Competition dated 7/12/1994 are reserved.

### **c) Announcement**

**Article 154 - (1)** The merger resolution is announced in Turkish Trade Registry Gazette.

## **7. Simplified merger of capital stock companies**

### **a) Scope of application**

**Article 155 - (1) a)** If the transferee capital stock company holds all shares with voting right of the assignee capital stock company, or

b) If a company or a real person or groups of persons connected due to law or contract hold all shares with voting right in capital stock companies participating in the merger, capital stock companies can merge in accordance with the simplified conditions.

(2) If the transferee capital stock company holds at least 90 percent of, but not all, shares with voting rights, the merger can take place under simplified terms provided that the minority shareholders are offered:

a) an option equal to the actual value of company shares in the transferee in accordance with Article 141 in addition to the company shares, and

b) No additional payment, personal performance liability or personal responsibility arises due to merger.

### **b) Simplifications**

**Article 156 - (1)** Capital stock companies participating in the merger and complying with the terms set forth in paragraph 1 of Article 155, must include the records indicated in

sub-clauses (a) and (f) to (i) of paragraph 1 of Article 146 in the merger contract. Such capital stock companies are not required to draw up the merger report stipulated in Article 147 and to provide the right to audit the merger contract in Article 148 and the right to inspect regulated under Article 149, nor can they submit the merger contract for the approval of the GA in accordance with Article 151.

(2) Capital stock companies participating in the merger and complying with the conditions set forth in paragraph 2 of Article 155 must include the records indicated only in sub-clauses (a), (b) and (f) to (i) of paragraph 2 of Article 147 in the merger contract. These companies are obliged neither to draw up the merger report indicated in Article 147 nor to submit the merger contract to the GA in accordance with Article 151. The right to inspect, which is stipulated in Article 149, must be provided 30 days prior to the application made to the Trade Registry for registration of the merger.

## **8. Protection of creditors and employees**

### **a) Securing creditor's receivables**

**Article 157 - (1)** If creditors of the companies participating in the merger make a claim within three months following the date on which the merger becomes legally effective, the transferee secures their receivables.

(2) Companies participating in the merger notify the creditors of their rights through an announcement in the Turkish Trade Registry Gazette, in three national newspapers (with a circulation of more than 50,000) three times at intervals of seven days, and capital stock companies also publish the announcement on their Web sites. If the process auditor confirms that there are no known or expected claims which cannot be paid by the available assets of the companies participating in the merger, announcement is not required.

(3) If the transferee proves by a process auditor report that the receivable is not under risk due to the merger, its liability to provide security is abolished.

(4) If it is obvious that the other creditors will not suffer a loss, the liable company can pay the debt instead of providing security.

### **b) Transfer of shareholders' personal responsibilities and business affairs**

**Article 158 - (1)** The responsibilities of the shareholders who were liable for the debts of the assignee before the merger continue after the merger, under the condition that these debts must have been incurred before the announcement of the merger resolution or the reasons causing these debts must have occurred before this date.

(2) Claims arising from the debts of the assignee regarding the personal responsibility of shareholders are barred by the statute of limitation after three years from the announcement date of the merger resolution. If the claim becomes due after the announcement date, the period of limitation begins as of the maturity date. This restriction does not extend to the responsibilities of shareholders who are personally liable for debts of the transferee.



(3) The responsibility arising from the publicly issued bonds and debentures continues until the date of redemption, unless otherwise specified in the prospectus.

(4) The provision of Article 178 applies to business affairs.

### III - Division

#### 1. General provisions

##### a) Principle

**Article 159 - (1)** A company can be divided through split-up or spin-off processes.

a) In a split-up all the company's assets are divided into parts and transferred to other companies. The shareholders of the divided company acquire the shares and rights of the transferees. The assignee, which is split up, terminates and its trade name is removed from the Trade Registry.

b) In a spin-off, one or more than one part of the company's assets is transferred to other companies. The shareholders of the divided company acquire the shares and rights of the transferees or obtain the shares and rights in the transferees in exchange for the asset parts acquired and establish its subsidiary.

##### b) Allowed divisions

**Article 160 - (1)** Capital stock companies and cooperatives can be divided into capital stock companies and cooperatives.

##### c) Protection of company shares and rights

**Article 161 - (1)** In split-up and spin-off processes, the company shares and rights are protected in accordance with Article 140.

(2) The following can be assigned to the shareholders of the transferor company:

a) In all companies participating in division, company shares in ratio with their existing shares, or

b) In some or all companies participating in division, company shares in different ratios according to the ratio of their existing shares. The division in sub-clause (a) is a division in which the "ratios are protected", and the division in sub-paragraph (b) is a division in which the "ratios are not protected".

#### 2. Provisions regarding application of division

##### a) Capital decrease

**Article 162 - (1)** In the event the capital of the transferor company is decreased due to division articles 473, 474 and 592; and in cooperatives based on Article 98 of the Cooperatives Law, Articles 473 and 474 of the New Law do not apply.

## **b) Capital increase**

**Article 163 - (1)** The transferee increases its capital at a level necessary to protect the rights of the shareholders of the transferor company.

(2) In division, provisions relevant to capital contribution in kind do not apply. Capital can be increased due to division without changing the cap, even if it is not in conformity with the authorised capital system.

## **c) Formation of a new company**

**Article 164 - (1)** The provisions regarding incorporation of a new company of the New Law and Cooperatives Law apply to incorporation of a new company within the framework of division. The provisions relevant to the minimum number of founders and to capital contribution in kind do not apply to the incorporation of capital stock companies.

## **d) Interim balance sheet**

**Article 165 - (1)** If more than six months pass between the balance sheet date and the date on which the division contract is signed or the preparation date of the division plan, or if significant changes have occurred in the assets of companies participating in the division since the last balance sheet date, an interim balance sheet is prepared.

(2) Provided that the provisions set forth in sub-clauses (a) and (b) of this paragraph are reserved, the provisions and standards relevant to the annual balance sheet apply to the interim balance sheet. For the interim balance sheet:

a) Physical inventory needs not be taken

b) Changes to the valuations predetermined in the last balance sheet are limited to the entries in the commercial book; depreciation, valuation adjustments, provisions and valuation changes significant for the enterprise incomprehensible from commercial books are also taken into account.

## **3. Right to audit and to inspect division documents**

### **a) Division contract and division plan**

#### **aa) In general**

**Article 166 - (1)** If a company transfers parts of its assets to existing companies through division, a division contract is made by the managing bodies of companies participating in the division.

(2) If a company transfers parts of its assets, through division, to the companies to be newly incorporated, the management prepares a division plan.

(3) Both the division contract and the division plan should be in writing and are subject to approval by the GA in accordance with the provisions in Article 173.

#### **bb) Content of the division contract and the division plan**

**Article 167 - (1)** Division contract and division plan specifically include:

- a) Trade names, headquarters and types of companies participating in the division;
- b) Division into parts and allocation of asset and liability items for transfer purposes; the inventories relevant to these sections with clear descriptions; an itemised list of the immovable properties, negotiable instruments and intangible assets
- c) Exchange ratio of shares and if necessary, the equalisation amount to be paid and the declarations of the shareholders of the transferor company with regard to their partnership rights in the transferee
- d) Rights assigned to holders of profit-sharing certificates, of non-voting shares and of special rights by the transferee
- e) The manner of share exchange
- f) Date from which company shares will gain the right to balance sheet profit and the properties of such right to make a claim
- g) Date on which the transactions of the transferor company are considered as performed in the account of the transferee
- h) Special benefits granted to members of managing bodies, managers and other persons entitled to the management right and auditors
- i) List of business affairs transferred to the transferee as a result of the division

#### **b) Assets excluded from division**

**Article 168 - (1)** Asset items which have not been allocated in the division contract or in the division plan:

- a) In the case of a split-up, are owned in co-ownership by all transferees, according to the rate of the net assets transferred to all transferees in accordance with the division contract or plan.
- b) In the case of a spin-off, are left to the transferor company.

**(2)** The clauses in the first article apply in comparable cases to receivables and intangible asset rights.

**(3)** Companies participating in the split-up are severally liable for debts that are not assigned to any company in accordance with the division contract or division plan.

#### **c) Division report**

##### **aa) Content**

**Article 169 - (1)** Either the managing bodies of companies participating in the division individually prepare a report regarding the division or a report is prepared jointly.

**(2)** The report explains the following in legal and economic aspects and indicates their reasons:

- a) purpose and results of the division
- b) division contract or division plan

c) exchange ratio of shares, and if necessary, the equalisation amount to be paid, and particularly the declarations of the shareholders of the transferor company with regard to their rights in the transferee

d) particularities regarding the valuation of shares in terms of determining the exchange ratio

e) if necessary, additional payment liabilities, other personal performance liabilities and unlimited liability that arise on the shareholders due to division

f) if the types of the companies participating in the division are different, the liabilities of shareholders incurred due to new type

g) impact and content of the division on the employees, and the content of a social plan, if any

h) impact of the division on the creditors of the companies participating in the division

(3) In the existence of the formation of a new company, the articles of association of the new company must also be attached to the division plan.

(4) If all shareholders approve, small-sized companies can dispense with preparing the division report.

#### **bb) Audit of the division contract or the division plan and the division report**

**Article 170 - (1)** The provision in Article 148 applies to the audit of division contract or division plan in comparable situations.

#### **d) Right to inspect**

**Article 171 - (1)** Each company participating in the division submits the following for inspection by shareholders of the companies participating in the division at their head offices and for publicly held joint stock companies at the locations determined by the CMB two months prior to the GA resolution:

a) division contract or division plan

b) division report

c) audit report

d) financial statements and annual reports for the last three years, and interim balance sheets, if any

(2) If all shareholders approve, small-sized companies can dispense with the right to inspect set forth in paragraph 1.

(3) Shareholders can request companies participating in the division to provide copies of the documents mentioned in paragraph 1. These must be provided free of charge.

(4) Each of the companies participating in the division publishes an announcement indicating the rights to inspect in Turkish Trade Registry Gazette, and capital stock companies also publish on their Web sites.

#### **e) Information regarding changes in assets**

**Article 172 - (1)** Article 150 applies, in comparable situations, to changes that occur in the assets of the companies participating in division.

#### **4. Division resolution**

**Article 173 - (1)** After the security stipulated in Article 175 is provided, the managing bodies of the companies participating in the division submit the division contract or the division plan to the GA.

**(2)** The resolution of approval is adopted in compliance with the quorums set forth in paragraphs 1, 3, 4 and 6 of Article 151.

**(3)** In a division where the ratio is not protected, the resolution of approval must be adopted by at least 90 percent of the shareholders entitled to vote in the transferor company.

#### **5. Protection**

##### **a) Protection of creditors**

###### **aa) Notice**

**Article 174 - (1)** The creditors of the companies participating in the division are invited to notify their receivables and to make a claim for security with an announcement to be published in Turkish Trade Registry Gazette, in at least three national newspapers with a circulation of more than 50,000 three times at intervals of seven days and, in the case of capital stock companies, also with an announcement to be posted on the Web sites.

###### **bb) Securing creditors' receivables**

**Article 175 - (1)** Companies participating in the division are obliged to secure the receivables of creditors who have made a claim within three months of the date on which the announcements set forth in Article 174 are published.

**(2)** If the process auditor determines that the claims of the creditors are not at risk due to division, the requirement to provide security is waived.

**(3)** If it is obvious that the other creditors will not suffer a loss, the company can pay the debt instead of providing security.

##### **b) Responsibility**

###### **aa) Secondary responsibility of the companies participating in division**

**Article 176 - (1)** The other companies participating in the division which are secondarily liable are severally liable for those claims that have not been paid by the company (which is the primarily liable company, to which the claims were assigned by the division contract or the division plan).

**(2)** The secondarily liable companies are subject to executive proceedings only if a claim is not under security and the primarily liable company:

- a) has entered bankruptcy
- b) has arranged a bankruptcy composition to oversee the orderly disposal of debts
- c) has been subject to execution proceedings and the conditions to obtain final insolvency certificate have been met
- d) has had its headquarters moved abroad and can no longer be prosecuted in Turkey
- e) has had its headquarters' location abroad changed and therefore its prosecution has become extremely difficult

#### **bb) Personal responsibility of shareholders**

**Article 177 - (1)** The provision in Article 158 applies to the personal responsibilities of shareholders.

#### **6. Transfer of business affairs**

**Article 178 - (1)** In a split-up or spin-off, provided that the related employee does not object, the service contracts with employees are transferred to the transferee with all rights and debts arisen thereby until the transfer day.

**(2)** If the employee objects, the service contract is terminated at the end of the legal period of dismissal; the transferee and the employee are liable to fulfil the contract until that date.

**(3)** The former employer and transferee are severally liable for the employees' receivables due before the division and for the employee's receivables which are due within the period that will pass until the date the service contract is to expire under ordinary circumstances or the date it is terminated due to the employee's objection.

**(4)** Unless otherwise decided or unless it is evident from the circumstance, the employer cannot transfer the rights arisen from the service contract to a third party.

**(5)** Employees can request that their due receivables and their receivables which are due as set forth in Article 1 be secured.

**(6)** The shareholders of the transferor company, who were liable for company debts before the division, continue to be severally liable for the debts arising from the service contract and that are due until the day of transfer and for the debts which would become due if the service contract were terminated under ordinary circumstances, or for the debts that arise until the service contract is terminated due to the employee's objection.

#### **7. Registration at Trade Registry and validity**

**Article 179 - (1)** When the division is approved, the managing body requests the registration of the division.

**(2)** If the capital of the transferor company is decreased due to spin-off, the amendment to the articles of association in this regard is also registered.

**(3)** In case of split-up, the transferor company is dissolved upon registration at the Trade Registry.

(4) The division becomes effective upon the registration at the Trade Registry. Upon registration all assets and liabilities in the inventory are transferred to the transferee at the instant of registration.

## IV - Structural Changes

### 1- Common Principles

#### a) Principle

**Article 180- (1)** A company can change its legal structure. The old company subject to conversion continues to exist

#### b) Valid structural changes

**Article 181- (1) a)** A capital stock company may be converted into:

- 1) A different legal form of capital stock company
- 2) A cooperative

b) A general company can be converted into:

- 1) A capital stock company
- 2) A cooperative
- 3) A limited company

c) A limited company can be converted into:

- 1) A capital stock company
- 2) A cooperative
- 3) A general company

d) A cooperative company can be converted into a capital stock company.

#### c) Special regulation regarding conversion of general companies and limited companies

**Article 182 - (1)** A general company can be converted into a limited company, if:

- a) A limited partner joins a general company
- b) A partner becomes a limited partner

(2) A limited company can be converted into a general company if:

- a) All limited partners withdraw from the company
- b) All limited partners become unlimited partners

(3) The provision of Article 257 in relation to a general or limited partnership that continues its activities as a commercial enterprise will remain valid.

(4) The provisions of Articles 180 to 190 shall not apply to conversions to be implemented in accordance with this article.

## **2. Protection of company shares and rights**

**Article 183 - (1)** In conversion the shares and rights of partners are protected. Holders of non-voting shares shall be given equal value of shares or shares voting right.

(2) In exchange for privileged shares, shares of equal value shall be given or an appropriate indemnity shall be paid.

(3) In exchange for profit-sharing certificates, rights of equal value are given or the actual value on the date that the conversion plan is drawn up shall be paid.

## **3. Incorporation and interim balance sheet**

**Article 184 - (1)** In conversion, the provisions relevant to incorporation of new legal form shall apply; however, the provisions relevant to the minimum number of partners and capital contribution in kind shall not apply to capital stock companies.

(2) If more than six months pass between the balance sheet date and the date on which the conversion report was prepared, or if significant changes occurred in the assets of the company as of the date on which the last balance sheet was prepared, an interim balance sheet shall be prepared.

(3) Provided that the following provisions remain in force, the provisions and principles relevant to the annual balance sheet shall apply to interim balance sheet.

For the interim balance sheet:

a) Physical inventory need not be taken

b) Valuations determined in the last balance sheet shall be amended taking into account only the entries in the commercial book, e.g. depreciations, valuation adjustments or provisions.

## **4. Conversion plan**

**Article 185 - (1)** The management body shall prepare a conversion plan.

The plan shall be in written form and be subject to the approval of the GA in accordance with Article 189. The conversion plan shall contain:

a) Company's trade name and headquarters before and after conversion, and the new legal form

b) Articles of association of the new legal form

c) Number, kind and amount of shares the shareholders will hold after the conversion or statements regarding the shares of shareholders after the conversion

## **5. Conversion report**

**Article 186 - (1)** The management body shall prepare a written report regarding the conversion.



(2) The report shall address the following in legal and economic aspects and indicate their reasons:

- a) Purpose and results of the conversion
- b) Fulfillment of the provisions of incorporation relevant to new legal form
- c) Articles of association of the new company
- d) Exchange ratio of shares that shareholders will hold after the conversion
- e) Additional payments and other personal performance liabilities and personal responsibilities of shareholders arisen from the conversion, if any
- f) Liabilities that have arisen regarding the new legal form for the shareholders

(3) If all shareholders approve, small-sized companies can disregard preparation of the conversion report.

## **6. Audit of conversion plan and conversion report**

**Article 187 - (1)** The company shall have the conversion plan, the conversion report and the balance sheet underlying the conversion audited by the operational auditor.

(2) The company must provide the operational auditor with all information and documents needed for an effective audit.

(3) The operational auditor is obliged to inspect and evaluate whether the conditions regarding conversion have been met, the balance sheet reflects reality and the legal status of the shareholders has been protected after the conversion.

(4) If all partners approve, small-sized companies can elect not to undergo auditing.

## **7. Right to inspect**

**Article 188 - (1)** The company shall submit the following for inspection by shareholders at their head offices and for publicly held joint stock companies at locations determined by the CMB 30 days prior to the GA resolution

- a) Conversion plan
- b) Conversion report
- c) Audit report
- d) Financial statements for the last three years, and interim balance sheet, if any

(2) Copies of the abovementioned documents shall be provided free of charge to shareholders who request them.

The company shall notify shareholders of their right of inspection.

## **8. Conversion resolution and registration**

**Article 189 - (1)** The management body shall submit the conversion plan to the GA.

The conversion resolution are subject to approval according to these standards:

a) In joint stock companies and companies limited by shares, by two-thirds of the votes present at the GA, provided that the majority represents the two-thirds of the basic or issued capital, without prejudice to Article 421 of the New Law; in case of conversion into a limited liability company, by the approval of all partners if additional payment or personal performance liability arises

b) If a capital stock company converts to a cooperative, by the approval of all partners

c) In companies with limited liability, by three-quarters of the votes of all partners, provided that they own at least three-quarters of the capital

d) In cooperatives

1. Under the condition that at least two-thirds of the partners are represented at the GA with a majority of the existing votes.

2. If additional payments, other personal performance liabilities or personal responsibilities are introduced or these liabilities or responsibilities are being extended, by positive votes of two-thirds of the partners registered in the cooperative.

e) In general and limited companies, the conversion plan shall be approved unanimously by all partners. However, the articles of association may establish that this resolution can be adopted by positive vote of three-quarters of all partners.

(2) The management body shall have the conversion and the articles of association of the new company registered. The conversion shall take effect upon registration. The conversion resolution shall be announced in Turkish Trade Registry Gazette.

## **9. Protection of creditors and employees**

**Article 190 - (1)** Article 158 shall apply to the personal responsibilities of the partners and Article 178 shall apply to obligations arising from service contracts.

## **V - Common Provisions**

### **1. Inspection of company shares and rights**

**Article 191 - (1)** In a merger, division or conversion, if a partner is not given the right to continue as a partner and company shares or rights are not provided for in accordance with the law or the cash payment for withdrawal is not adequate, each partner can demand from the court a compensation payment within two months of the announcement of the resolution to merge, divide or convert by appealing to the commercial court of first instance at the location of headquarters of one of the participating companies. Paragraph 2 of Article 140 shall not apply to the determination of the compensation payment.

(2) The court order shall govern all partners of the companies participating in the merger, division or conversion, provided they are in the same legal position as the plaintiff.

(3) The legal expenses of the lawsuit shall be borne by the transferee company. In special situations, court expenses can be partially or fully imputed to the plaintiff.

(4) The lawsuit relevant to inspection regarding the protection of the right to be a partner or of the partnership rights shall not affect the validity of the resolution to merge, divide or convert.

## **2. Cancellation of merger, division and conversion and the results of incompleteness**

**Article 192 - (1)** Should Articles 134 to 190 be violated, the partners of companies participating in the merger, division or conversion who have not cast positive votes for the merger, division and conversion resolution, and who have recorded this in the minutes, can file an action for cancellation within two months from the date of announcement of this resolution in Turkish Trade Registry Gazette. In cases where an announcement is not required the period shall start from the date of registration.

(2) This action can also be filed in the event the resolution is adopted by a management body.

(3) Should transactions relevant to the merger, division and conversion be incomplete, the court shall allow a period for parties to complete them. If the legal defect is not or cannot be made up for within the time granted, the court shall cancel the resolution and take the necessary measures.

## **3. Responsibility**

**Article 193 - (1)** All persons who have in some way participated in the merger, division or conversion transactions shall be responsible for the damage to the companies, partners and creditors resulting from any negligence on their part. The responsibilities of founders remain in effect.

(2) Persons who have audited the merger, division or conversion shall be responsible for the damage to the companies, individual partners and creditors should their negligence be demonstrated.

(3) The provisions of Articles 202 to 208, 755, 757 and 760 remain in force.

In the event a capital stock company or cooperative goes into bankruptcy, Articles 565 and 756 and Article 98 of the Cooperatives Law shall apply in comparable situations.

## **VI - Merger and conversion of commercial enterprise**

**Article 194 - (1)** A commercial enterprise can merge with a commercial company through acquisition by the commercial company. In this case, in accordance with the legal form of the transferee commercial company, the provisions of Articles 138 to 140, 142 to 158 and Articles 191 to 193 in relation to common provisions shall apply by analogy.

(2) In the event a commercial enterprise converts to a commercial company, Articles 182 to 193 shall apply comparably.

(3) In order for a commercial company to convert to a commercial enterprise, all shares of the commercial company must be acquired by the person or persons who will be operating the commercial enterprise and the commercial enterprise must be registered in the name

of this person or these persons. In this case, if the commercial company which has been converted into a commercial enterprise is a general or limited company, the former partners of the commercial company shall be responsible for the debts of the commercial company according to their responsibilities during the statutory period of limitations in Article 264, as will be the person or persons who operate the commercial enterprise jointly and severally. Articles 264 to 266 of the New Law shall apply to the said conversion.

(4) Paragraph 3 of the provision of Article 182 will remain valid.

## *G) Group of companies*

### I - Controlling Company and dependent company

**Article 195 - (1) a)** If a commercial company directly or indirectly:

1. Holds the majority of the voting rights of another commercial company, or
  2. has the right to ensure the election of members forming a resolution quorum in the management body of another commercial company in accordance with articles of association, or
  3. has the majority of the voting right of another commercial company alone or with other shareholders or partners based on a contract in addition to its own votes;
- b) if a commercial company is able to hold another commercial company under its control in accordance with a contract or through other means;

the former company is the controlling company and the latter is the dependent company. If the headquarters of at least one of these companies is in Turkey, the provisions relevant to the group of companies in the New Law shall apply.

(2) Apart from the cases stipulated in paragraph 1, if a commercial company holds the majority of the shares in another commercial company or holds adequate shares to make the decisions enabling it to manage the company, the existence of control by the first company is assumed.

(3) The control of a controlling company over another company through one or more than one dependent company is indirect control.

(4) Companies that are directly or indirectly affiliated with the controlling company shall constitute a group of companies together with the controlling company. Controlling companies are the parent companies and the dependent companies are subsidiaries.

(5) If the controlling company of the group of companies is an enterprise, the headquarters or domicile of which is in Turkey or abroad, Articles 195 to 209 and the provisions in the New Law relevant to the group of companies shall apply. The controlling enterprise is considered as merchant. The provisions regarding consolidated financial statements are reserved.

(6) In the application of provisions relevant to the group of companies, the term “board

of directors” refers to managers in limited liability companies, to managing directors in companies limited by shares and in personal companies, to the management body in other legal entities, and to the real person him/herself for real persons.

## II - Calculation of shares and voting ratios

**Article 196 - (1)** The percentage of a commercial company’s participation in a capital stock company shall be determined by the ratio of the total nominal value of the share or shares it holds in that capital stock company to the ratio of the capital of the company participated in. Shares in a capital stock company that are held by itself and the capital stock company’s own shares that are held by third parties acquired on its account shall be deducted from the basic or issued capital of that company in the calculation.

**(2)** The percentage of voting right of a commercial company in a capital stock company shall be determined by the ratio of the total exercisable voting rights arising from the shares that the commercial company holds in that capital stock company to the ratio of the total of the entire exercisable voting rights in the capital stock company. Voting rights arising from the shares in a capital stock company that are held by itself and from the capital stock company’s own shares that are held by a third party acquired on its account shall be deducted in the calculation.

**(3)** The shares held by a commercial company in a capital stock company shall be determined by also considering the shares that are held by dependent companies of a commercial company and shares that are held by a third party acquired on its account.

## III- Cross-shareholding

**Article 197 - (1)** Capital stock companies holding at least one-quarter of each other’s shares are in the state of cross-shareholding. Article 196 shall apply to the calculation of the percentages of these shares. If one of the said companies controls the other, the latter shall be considered as dependent company. If each of the companies in the state of cross-shareholding controls the other, both of them shall be considered as a dependent and controlling company.

## IV - Notification, registration, and announcement liabilities

**Article 198 - (1)** In case that an enterprise directly or indirectly owns an amount of shares representing 5, 10, 20, 25, 33, 50, 67 or 100 percent of the capital of a capital stock company or if its shares fall under these percentages, the enterprise shall notify the capital stock company and the competent authorities indicated in the New Law and other laws, of the situation within ten days following the completion of the said transactions. Acquisition or disposition of the shares in the above-mentioned ratios shall be declared under a separate heading in the annual and audit reports and announced on the capital stock company’s Web site. Article 196 shall apply to the calculation of percentages of the shares. The managing directors and board members of the enterprise and capital stock company shall make a notification in relation to the shares in that capital stock company owned by themselves, their spouses, children under their custody and a commercial company in which they hold at least 20 percent of its capital. Notifications shall be made in writing, registered with the Trade Registry and announced.

(2) Unless the notification, registration, and announcement liabilities set forth in paragraph 1 are fulfilled, other rights including the voting right pertaining to the relevant shares shall be suspended. The provisions related to other legal consequences regarding the breach of the notification liability are reserved.

(3) For the control agreement to be valid, the agreement must be registered with the Trade Registry and be announced. The invalidity of this agreement shall not prevent the application of the provisions in the New Law and other laws relevant to the liabilities and responsibilities pertaining to the group of companies.

## V - Reports of dependent and controlling companies

**Article 199 - (1)** The BoD of the dependent company shall prepare a report regarding the company's relations with controlling and dependent companies within the first quarter of the activity year. All legal transactions which the company conducted in the previous activity year with the controlling company, with a company dependent on the controlling company, through the direction of the controlling company that serves to its advantage or the advantage of its dependent company and all other measures taken or refrained from being taken to the advantage of the controlling company or of its dependent company in the previous activity year shall be explained in the report. In legal proceedings, the performances and counterperformances and the measures used to assess them shall be specified, as well as their advantages and disadvantages to the company. Where there is a provision for compensation for disadvantages, the way the compensation was obtained within the activity year or the advantages gained by the company which provided a right to claim shall also be declared.

(2) The report must comply with the true and fair view accounting principle.

(3) At the end of the BoD report it shall be explained whether the company, in the circumstances and conditions known to the board at the time at which the company conducted the legal proceeding or took or refrained from taking the measure, obtained appropriate counterperformance in relation to each legal proceeding and whether the company incurred any loss due to taking or refraining from taking the measure. If the company incurred loss, the BoD shall specify whether the loss has been compensated for. This explanation shall be only made in the annual report.

(4) Each board member of the controlling company can request that the chairman of the BoD have a report prepared in accordance with true and fair view accounting principles regarding the dependent companies' position in terms of the controlling company's finance and assets and its three-month accounting results, the relations of the controlling company with dependent companies, of dependent companies with each other, of controlling and dependent companies with their shareholders and their relatives; the proceedings they have conducted and results and effects thereof. and submit the said report to the BoD, and have the conclusion section of this attached to the annual and audit report. Dependent companies are required to provide the information and documents necessary for preparing this report to the experts of the controlling company assigned for this duty.. If a board member puts forward a claim for the interest of a third party, he/she shall be responsible for the results.

## VI - Access to information about dependent companies

**Article 200 - (1)** Each shareholder of the controlling company can request at the GA that careful, satisfactory information be provided in accordance with true and fair view accounting principles regarding dependent companies' position in terms of its finance and assets and the accounting results, the relations of the controlling company with dependent companies, of dependent companies with each other, of controlling and dependent companies with their shareholders, managing directors and their relatives, the transactions they have conducted and results thereof.

## VII - Suspension of rights

**Article 201 - (1)** A capital stock company which acquires the shares of another capital stock company and which therefore knowingly enters into a cross-shareholding position can only exercise one-quarter of the total votes arising from the shares which are the subject of participation and one-quarter of other shareholding rights; excluding the right to acquire gratis shares, all other shareholding rights shall be suspended. The said shares shall not be taken into account while calculating the quorum for meeting and resolution. The provisions in Article 389 and 612 are reserved.

**(2)** The restriction set forth in paragraph 1 shall not apply should the dependent company acquire the shares of the controlling company, or both companies control each other.

## VIII - Responsibility

### 1. Unlawful exercise of control

**Article 202 - (1) a)** A controlling company shall not exercise its control in a way that would make the dependent company incur a loss. In particular it cannot direct the dependent company to carry out legal transactions such as the transfer of business, asset, fund, staff, receivables and debt; to decrease or transfer its profit; to restrict its assets with real or personal rights; to undertake liabilities such as providing surety, guarantee and bill guarantee; to make payments; to adopt decisions or take measures which negatively affect its efficiency and activity such as not renovating its facilities, limiting, suspending its investments without reasonable grounds; to refrain from taking measures that will ensure its development. Such steps might be taken only if any loss incurred is made good within that activity year, or a right to claim of equivalent value is granted to the dependent company no later than the end of that financial year, with a specific explanation of how and when this loss will be recovered.

b) If compensation has not been made within the activity year or if a right of equivalent claim has not been granted within the due period, each shareholder of the dependent company can claim that the loss incurred by the company be made good by the controlling company and its board members, who caused the loss. If it is justifiable, rather than compensation the judge can decide that shares of the plaintiff shareholders are acquired by the controlling company, or decide on another solution which is acceptable and appropriate to the situation, in accordance with the provisions in paragraph 2 of this article.

c) Creditors can also request that the company's loss be compensated in accordance with sub-clause (b) even if the company has not gone into bankruptcy.

d) If it can be proven that under the same or similar conditions, the board members of an independent company would have carried a transaction causing a loss or refrained from undertaking an act that might have prevented one, compensation cannot be awarded.

e) Articles 553, 555 to 557, 560 and 561 shall apply to the action to be taken by shareholders and creditors, by analogy. If the headquarters of the controlling enterprise is located abroad, the action for compensation shall be taken in the commercial court of first instance at the location of the headquarters of the dependent company.

(2) Shareholders who have cast negative votes against the GA resolution and had them recorded in the minutes of this resolution in connection with transactions such as merger, division, conversion, termination, issuing securities and important amendments to articles of association initiated through application of control and without any clear reasonable grounds concerning the dependent company, or who have objected in writing to the board resolution on the same and similar subjects, can request from the court that their damages be compensated by the controlling enterprise, or their shares be purchased at stock exchange value if possible. If no such value exists or if the stock exchange value is not sufficient at actual values, or at a value to be determined in accordance with a method that is generally accepted, the data available at the date nearest to the date of the court order shall be the basis of this determination. The action for claim of compensation or purchase of shares is barred two years after the date of the resolution of the GA or of the date on which the board resolution is announced.

(3) When the action set forth in paragraph 2 is taken, the amount of funds covering the possible loss of plaintiffs or the purchase value of the shares is to be deposited in the name of the court as security with a bank determined by the court. Until the security has been deposited, no proceeding can be conducted in relation to the resolution of the GA or of the BoD. Should the actions stipulated in paragraphs 1 and 2 of this article be taken in bad faith, the defendant can file a claim against plaintiffs, seeking that the loss incurred be compensated severally and that a security is deposited with the court.

(4) In case of merger, division and conversion, the other rights granted to shareholders and partners remain in force.

(5) Managers of dependent company can request from the controlling enterprise to undertake through a contract all legal consequences of responsibilities that can arise against the shareholders and the creditors as a result of the provisions of this article.

## **2. In case of full control**

### **a) Instruction**

**Article 203 - (1)** If a commercial company directly or indirectly holds 100 percent of the shares and voting rights in a capital stock company, the BoD of the controlling company can give instructions concerning the direction and management of the dependent company even if it is of a nature which can cause results that could lead to a loss, provided that it is



a requirement of the specified and concrete policies of the group of companies. The bodies of the dependent company are obliged to comply with the instruction.

#### **b) Exception**

**Article 204 - (1)** No instruction can be given which has a characteristic that clearly exceeds the dependent company's solvency and that can endanger its existence or can cause significant assets loss.

#### **c) Non-liability of dependent company's bodies to the company and its shareholders**

**Article 205 - (1)** Members of the BoD of the dependent company, its managers and related persons who can be held responsible cannot be held liable to the company and to its shareholders due to compliance with the instructions within the scope of Articles 203 and 204.

#### **d) Right of action of the company's creditors**

**Article 206 - (1)** In the event the loss incurred by the dependent company due to instructions given by the controlling company and its managers within the context of Article 203 is not compensated within that financial year or the company is not granted an equal right to make a claim, specifying its time and form, the creditors who have incurred loss can take an action for compensation against the controlling company and its board members responsible for the loss. The defendants can base their claims on sub-clause (d) of paragraph 1 of Article 202. Sub-clause (e) of paragraph 1 of Article 202 shall apply to this action.

**(2)** The defendants can avoid responsibility for receivables resulting from credit and similar reasons by proving that the plaintiff entered into the relationship leading to the said receivable in the knowledge that the compensation was not made or the right to make a claim was not granted, or that they should have known of this situation as a requirement of the nature of business.

### **IX - Miscellaneous**

#### **1. Special audit**

**Article 207 - (1)** If the auditor, operational auditor, special auditor, early risk identifier and management committee have delivered an opinion stating the existence of fraud and conspiracy in the dependent company's relationship with the controlling company or with another dependent company, any shareholder of the dependent company can request the assignment of a special auditor from the commercial court of first instance at the location of the company's headquarters for the purpose of clarifying this matter.

#### **2. Right to purchase**

**Article 208 - (1)** If the controlling company, directly or indirectly, holds at least 90 percent of shares and voting rights in a capital stock company and if the minority prevents the company from running its business, does not act in good faith, creates obvious trouble or behaves in a reckless manner, the controlling company can purchase the shares of the minority at stock exchange value, if any, or at the value determined in accordance with the method set forth in paragraph 2 of Article 202.

### **3. Responsibility arisen from trust**

**Article 209 - (1)** In cases where the controlling company attains a level where its group reputation inspires confidence among the community or consumers, it shall be liable for any consequences of such.

## Part Four

### **Joint Stock Company**

#### Section One

#### **General provisions, incorporation and fundamental principles**

##### A) General Provisions

###### **I – Definition**

**Article 329 - (1)** A joint stock company is a company whose capital is certain and divided into shares and which is solely responsible for its debts as an amount of its assets.

(2) Shareholders are solely responsible to the company and their responsibility is limited to their subscribed shares.

###### **II – Joint stock companies that are subject to special laws**

**Article 330 - (1)** The provisions in this Section shall apply to joint stock companies that are subject to special laws, with the exception of certain provisions.

###### **III - Purpose and scope**

**Article 331 - (1)** Joint stock companies can be incorporated for any economic purposes and scopes not legally prohibited.

###### **IV –Minimum capital amount**

**Article 332 - (1)** The capital stock representing the entire capital subscribed in the articles of association cannot be less than TRY50,000. The initial capital cannot be less than TRY100,000 in non-public joint stock companies which have adopted the registered capital system disclosing the authorisation ceiling given to the BoD. This minimum capital amount can be increased by the Council of Ministers.

(2) Within the meaning of the New Law, the initial capital in joint stock companies which adopt the registered capital system is the mandatory capital which must be possessed at stage of incorporation and when initially adopting the system, whereas the issued capital is the capital which represents the total of nominal values of the entire shares issued.

(3) Non-public joint stock companies can leave the registered capital system with permission of Ministry of Industry and Trade when they cease to qualify for the system; they shall also be removed from the system by this Ministry even in the absence of their claim if they lose the qualifications required for entry to the system.

(4) The provision in Article 12 of Capital Markets Law No. 2499, dated 28 July 1981, will remain valid.

## **V - Government supervision**

### **1. Permission**

**Article 333 - (1)** Joint stock companies whose operational areas are determined and declared with the communiqué published by Ministry of Industry and Trade are established with permission of Ministry of Industry and Trade. The amendments to the articles of association of these companies shall also be subject to the permission of this Ministry. The inspection of the Ministry can be carried out only in terms of whether there is any contradiction to the mandatory provisions in the law. Apart from this, regardless of nature, scope of activity and the legal position of the joint stock company, its incorporation and amendments to its articles of association are not subject to the permission of any authority.

### **2. Representation of public legal entities on the board of directors**

**Article 334 - (1)** The state, special provincial administration, municipalities and other public legal entities, even if they are not shareholders, can have the right to appoint a representative to the BoD of public service joint stock companies under the provision stated in the articles of association.

(2) The board of representatives of public legal entities holding shares in the companies described in paragraph 1 can be removed from appointment only by these public legal entities.

(3) The representatives of public legal entities on the BoD shall have the rights and duties of the members elected by the GA. Public legal entities are responsible to the company, its creditors and shareholders for the actions and transactions carried out by their representatives on the company's BoD. The legal entity's right to recourse will remain valid.

## **B) Incorporation**

### **I - Incorporating act**

**Article 335 - (1)** The company shall be incorporated upon the founders' declaration stating their decision to incorporate a joint stock company in the articles of association approved by a notary and prepared in accordance with law and in which the founders absolutely committed to pay the entire capital.

(2) The provision in paragraph 1 of Article 355 will remain valid.

## **II – Incorporation documents**

**Article 336 - (1)** The articles of association, the declaration of founders, fair value reports, agreements with founders and other entities related to incorporation and the transaction auditor report are incorporation documents. All incorporation documents shall be placed in the registration file and a copy of each shall be kept by the company for a period of five years.

## **III – Founders**

### **1. Definition**

**Article 337 - (1)** Real persons and legal entities who have subscribed to a share and signed the articles of association are founders.

(2) If the founders perform the transactions stated in paragraph 1 on behalf of a third party, this person shall also be considered as a founder in terms of liability resulting from incorporation. The third party cannot claim that he/she was unaware of the matter which is known or is required to be known by the person acting on his/her behalf.

### **2. Minimum number**

**Article 338 - (1)** One or more shareholder founders are required for incorporation of a joint stock company. The provision in Article 330 will remain valid.

(2) If the number of shareholders decreases to one, the BoD shall be notified of this situation in writing within seven days as of the date of the transaction causing this result. The BoD shall register and announce that the company is a single-shareholder joint stock company within seven days of the date of receipt of this notification. Furthermore, in the event the company is incorporated by a single shareholder or the shares come to be held by a single person, the name, domicile and nationality of the single shareholder shall be registered and announced. A shareholder who fails to announce this and the BoD that fails to register and announce this shall be responsible for any damage incurred.

(3) The company cannot acquire or have acquired its own shares if it becomes a single shareholder.

## **IV – Articles of association**

### **1. Contents**

**Article 339 - (1)** The articles of association must be in writing and the signatures of all founders must be authorised by a notary.

(2) The following shall be written in the articles of association:

- a) company's trade name and location of the headquarters
- b) company's scope of activity with its fundamental points specified and defined
- c) company's capital and the nominal value of each share, condition and circumstance of their payment

- d) whether share certificates are registered or bearer; privileges provided for certain shares; transfer restrictions
- e) rights and non-monetary assets contributed as capital and their values; amount of shares to be given in consideration of these, in case of an acquisition of a business and non-monetary assets; consideration of goods and rights purchased by the founders on behalf of the company for the incorporation of the company and amount of the fee; the allowance or the bonus that needs to be paid to those who provided services during the incorporation of the company
- f) benefits to be provided from the company profit to the founders, members of the BoD and other persons
- g) number of members of the BoD; members who are authorised signatories on behalf of the company.
- h) invitation for GA; voting rights
- i) if duration of the company is limited to a period, such period
- j) the form of announcements related to the company
- k) types and amounts of capital shares subscribed by shareholders
- l) accounting period of the company

**(3)** The members of the first BoD shall be assigned the articles of association.

## **2. Mandatory provisions**

**Article 340 - (1)** The articles of association can depart from the provisions in the New Law relevant to joint stock companies only if allowed in the New Law. The supplementary provisions of articles of association allowed to be stipulated by other laws shall be effective specifically for that law.

### **V – Approval of subscription**

**Article 341 - (1)** The subscription of the entire shares constituting the basic capital which was made by the founders in the articles of association shall be approved by a notary annotation to be affixed to the articles of association.

### **VI – Capital in kind**

#### **1. Assets that can be contributed as capital in kind**

**Article 342 - (1)** Assets without such restriction as measure, pledge and encumbrances on them, which can be convertible to cash and which are transferable, including intellectual property rights and virtual environments, can be contributed as capital in kind. Service, personal effort, commercial reputation and non-due receivables cannot be contributed as capital.

**(2)** The provision in Article 128 will remain valid.

## **2. Evaluation**

**Article 343 - (1)** Enterprises and non-monetary assets to be acquired during incorporation with capital in kind shall be evaluated by experts assigned by the commercial court of first instance at the location of the company's headquarters. The valuation report must explain in detail and with justifications the existence of receivables, the possibility of collection and compliance with Article 342, and that the selected evaluation method is appropriate. Shares amount and Turkish lira equivalence related to each asset contributed as capital in kind shall be explained satisfactorily and in accordance with the accountability principle. The founders, the transaction auditor and stakeholders can object to this report. The expert report approved by a court is definitive.

## **VII – Payment of shares**

### **1. Capital in cash**

**Article 344 - (1)** At least 25 percent of the nominal value of the shares subscribed in cash must be paid before registration and the remaining shall be paid within 24 months following the registration. The entire issuance premium of shares shall be paid before registration.

**(2)** The provisions in the Capital Markets Law relevant to the payment of shares are reserved.

### **2. Location of payment**

**Article 345 - (1)** Cash payments shall be made into a special account opened on behalf of the company which will be incorporated, at a bank which is subject to Banking Law No. 5411, dated 19 October 2005, and this account can be used only by this company. The fact that the amount stated in law or articles of association for subscribed shares has been paid and a higher amount than foreseen in the law has been paid for subscribed shares shall be proven with a bank letter to be addressed to the Trade Registry. Upon the submission of a letter prepared by the registration office confirming that the company has acquired a legal personality, the bank shall pay the amount concerned only to the company.

**(2)** If the company is unable to acquire legal personality within three months as of the date of notarisation stated in paragraph 1 of Article 335, the amounts shall be paid by the bank to their owners, upon the submission of a letter prepared by the registration office confirming this matter.

### **3. Shares to be offered to public**

**Article 346 - (1)** The equivalent of shares subscribed in the articles of association, determined and also guaranteed in the articles of association to be offered to the public at latest within two months as of the registration of the company shall be paid from the income from the sale. The public offering of share certificates shall be initiated in accordance with the capital markets legislation. At the end of the sale period, the nominal value and issuance premium less expenses if any shall be paid to the company and the amount that will remain after the expenses are deducted shall be paid to shareholders offering their share certificates to the public.

(2) The total amount of shares offered to public but not sold within the prescribed period and 25 percent of the equivalent of shares not offered to public within the prescribed period shall be paid within three days after the two-month period.

### **VIII – Shares Premium**

**Article 347 - (1)** A share cannot be issued at a price less than its nominal value and shares cannot be issued at less than fair value. Shares can be issued at more than fair value if there are provisions in the articles of association determined by GA resolution.

### **IX – Benefits of Founders**

**Article 348 - (1)** Granting a benefit resulting in a decrease of the company's capital, such as paying money and giving shares to founders for their efforts during the incorporation of the company, is prohibited. Rules in the articles of association that conflict with this article are invalid. However, after legal reserves stipulated in paragraph 1 of Article 519 and a dividend of 5 percent for the shareholders are allocated from the distributable profit, one-tenth of the remaining amount shall be paid to founders as redeemed shares.

(2) Joint stock companies incorporated after the effective date of this law shall cancel redeemed shares before public offering without any payment. Otherwise, redeemed shares are invalid by themselves.

(3) If there is distributable profit, founders get profit as stated in the articles of association even the company decides to not distribute any profit.

### **X –Founders declaration**

**Article 349 - (1)** A declaration regarding incorporation shall be signed by the founders. The declaration shall be prepared accurately and completely in accordance with the principle of providing information in a true and fair manner. If capital in kind is contributed or if an enterprise or a non-monetary asset is acquired, the declaration must contain explanations, justifications and definite expressions regarding the appropriateness of the amount given, the necessity of such capital and the acquisition and the benefit of these for the company. In addition, securities acquired by the company, their acquisition cost, information regarding the valuation and analysis of financial or if necessary consolidated financial statements for the last three years of those who have issued this securities, significant commitments undertaken by the company, connections, prices, commissions regarding the purchase of machinery and similar goods and of any asset and all kinds of debts shall be explained by comparison with equivalents.

(2) Furthermore, the benefits with justification provided for the founders shall be stated in the declaration. Those who have subscribed shares for the purpose of public offering and the number of shares subscribed, the relationship of those who have subscribed shares with another; if these are included in a group of companies, their relationship with the group, the fees paid to the transaction auditor inspecting the corporation and to others providing services shall be explained in the declaration with comparing equals.

### **XI - Commitment for public offering**

**Article 350 - (1)** In accordance with Article 346, in the event a share is subscribed for

public offering, the public offering shall be considered as approved by the founders, BoD or any authorised body.

## **XII - Transaction auditor report**

**Article 351 - (1)** The report regarding the audit of the incorporation shall be prepared by one or more transaction auditor. The transaction auditor shall declare that all shares have been subscribed; that the minimum amount of the share equivalent, stated in the law or in the articles of association, has been deposited in the bank in accordance with the law and that the bank letter in this regard has been made available; that there is no indication that this liability has been evaded; that a valuation has been made for contribution and acquisition in kind by experts appointed by the court and that the report which has been certified by the court has been presented in the file; that the benefits of the founders comply with law; that there is no express non-conformity regarding the declaration of founders and that there is no over-valuation and no obvious corruption in the transactions, that all other incorporation documents have been made available and that the required notary approvals and permissions have been obtained in line with the accountability principle with statement of justifications.

## **XIII – Transfer of share subscription before incorporation**

**Article 352 - (1)** Transfer of share subscription before the company's registration shall be invalid as regards the company.

## **XIV – Termination court case**

**Article 353 - (1)** A joint stock company cannot be declared null and void. However, if the interests of creditors, shareholders or public are being risked or violated during the incorporation of the company, on the request of the BoD the Ministry of Industry and Trade, the related creditor or shareholder the commercial court of first instance at the location of the company's headquarters shall rule on the termination of the company. The court shall take necessary measures on the date the court case is opened.

**(2)** The court can give time to complete pending matters and to correct matters conflicting with the articles of association or with the law.

**(3)** The evidence and all required information shall be included in the court application. Once the trial stage commences no additional evidence or proof can be presented unless court determines that a concrete reason exists for the plaintiff to present additional evidence and information. In the event of such findings, the court can set a deadline for the presentation of such material. REWORDED, PLEASE NOTE.

**(4)** The court case must be opened within the three-month prescription period as of the registration and announcement of the company.

**(5)** When a court case has been opened, the definitive court decision shall be, immediately and ex officio, registered with the Trade Registry and announced in Turkish Trade Registry Gazette. In addition, the BoD shall declare the registered and announced matter in at least one national newspaper with a circulation of at least 50,000 and publish it on its Web site.



## **XV –Registration and announcement of the company**

**Article 354 - (1)** The full version of the articles of association of the company shall be registered with the Trade Registry at the location of the company's headquarters and announced in Turkish Trade Registry Gazette within 30 days as of obtaining permission for the incorporation of a joint stock companies from the Ministry of Industry and Trade and other companies incorporated in accordance with sub-clause 1 of Article 335. Apart from those listed below, the provision in paragraph 1 of Article 36 shall not be applied for the registered and announced articles of association. These points are as follows:

- a) date of articles of association
- b) company's trade name and headquarters
- c) duration of the company, if any
- d) company's capital, the method and terms of its payment and the nominal values of shares, privileges, if any
- e) types of shares, and whether they are bearer or registered shares
- f) representation of the company
- g) Names and surnames, titles, domiciles and nationalities of members of the BoD **and** those who are authorised to represent the company.
- h) form of announcements to be made by the company; the way the decision of the BoD shall be notified to shareholders in case there is a provision relevant to this in the articles of association

**(2)** Branches shall be registered with the Trade Registry at their location by reference to the Trade Registry of the headquarters.

**(3)** Expert report in accordance with Article 343 is registered and announced.

## **XVI –Acquiring legal personality**

**Article 355 - (1)** The company shall acquire legal personality upon registration at the Trade Registry.

**(2)** Those who conduct transactions and enter into commitments on behalf of the company before registration shall be personally and successively responsible for these transactions and commitments. However, if it is declared that transactions and commitments have been carried out on behalf of the company that will be incorporated in the future and if such commitments have been accepted by the company within the three-month period following the registration of the company with the Trade Registry, the company shall be exclusively responsible for these transactions.

**(3)** Unless accepted by the company, the incorporation costs shall be paid by the founders. They shall not have any right to recourse to shareholders.

## C) Fraud

**Article 356 - (1)** Contracts regarding acquisition or lease of an enterprise or of non-monetary assets in return for an amount exceeding one-tenth of the capital made within two years as of the registration of the company shall not be valid unless they are approved by the GA and registered with the Trade Registry. All transaction made prior to the approval and registration of such contracts, including payments for execution thereof, shall be invalid.

(2) An expert assigned by the commercial court of first instance at the location of the company, upon the request of the BoD, shall evaluate the enterprise and non-monetary assets to be acquired or leased by the company prior to the GA's resolution. The report must be of an official nature.

(3) Paragraphs 3 and 4 of Article 421 shall be applied for the meeting and resolution.

(4) The contract shall be registered and announced upon an approval resolution by the GA.

(5) The provisions in this article cannot be applied for enterprises and non-monetary assets acquired compulsorily or which constitute the company's scope of activity.

## D) Basic principles

### I – Equal treatment principle

**Article 357 - (1)** Shareholders shall be subject to equal treatment under equal terms.

### II – Prohibition of shareholders becoming indebted to company

**Article 358 - (1)** Shareholders cannot become indebted to the company, excluding the debt arising from subscription, unless the debt arises from a transaction conducted with the company as a requirement of the company's scope of activity or the business of a shareholder's enterprise and unless such debt is subject to identical and similar terms applicable in similar cases.

## Section Two

### Board of Directors

#### A) In general

#### I – Appointment and election

##### 1. Number and qualifications of the members

**Article 359 - (1)** The joint stock company shall have a BoD which consists of one or more persons assigned by the articles of association or elected by the GA. At least one member who is authorised for representation must be a Turkish citizen domiciled in Turkey.

**(2)** In the event a legal entity is elected as a member of the BoD only one real person, determined by the legal entity on its behalf, shall also be registered and announced with the legal entity; in addition the registration and an announcement shall be immediately declared on the company's Web site. Only this registered person can participate in and vote on behalf of the legal entity at the meetings.

**(3)** The members of the BoD and the real person registered on behalf of the legal entity must be able to act in full capacity. At least one-quarter of the members of the BoD must be university graduates. This requirement is not applicable in the case of boards consisting of a single member.

**(4)** If a member of the BoD is terminated, then this person cannot seek re-election to the BoD.

##### 2. Representation of certain groups on the board of directors

**Article 360 - (1)** Provided that it is stated in the articles of association, certain share groups, shareholders consisting of a certain group in terms of their qualities and nature, and minorities can be granted the right to be represented on the BoD. For this purpose the articles of association can stipulate that board members shall be elected from among shareholders comprising a certain group, certain share groups and minorities, or that the right to nominate a candidate for the BoD can also be granted to them in the articles of association. It is mandatory that the candidate nominated by the GA as a board member or who is a member of the group and the minority to whom the right to nominate is granted shall be elected absent fair cause to oppose that candidate. The number of board members performing representation in this way cannot exceed half of the members of the BoD in public joint stock companies. The regulations regarding independent board members remain in force.

**(2)** The shares entitled to be represented on the BoD according to this article shall be considered as privileged shares.

##### 3. Insurance

**Article 361 - (1)** If the damage incurred by the company through the fault of board members while performing their duties is insured at a price exceeding 25 percent of the company capital and the company is secured, in the case of public companies this

matter shall be announced in the bulletin of the CMB and if the shares are listed on a stock exchange this shall also be announced in the stock exchange bulletin, and such matter shall be taken into account in the assessment of compliance with the principles of corporate governance.

#### **4. Term of appointment**

**Article 362 - (1)** BoD members are elected for a term of no more than three years. Unless otherwise specified in the articles of association, board members may be candidates for re-election.

**(2)** The provision in Article 334 will remain valid.

#### **II – Vacancy on the board**

**Article 363 - (1)** Without prejudice to the provision in Article 334, in the case of a vacancy on the board for any reason, the BoD shall elect a person who meets the legal requirements as a board member on temporary basis and submit him/her to the approval of the first GA. A member elected in this way shall perform his/her duties until the GA meeting at which he/she is submitted for approval, and in the event his/her membership is approved he/she shall complete the appointment term of his/her predecessor.

**(2)** If a board member goes bankrupt or under interdiction, or if he/she loses the legal conditions or the qualifications required to be a member stated in the articles of association, this person's membership shall automatically terminate without any proceeding.

#### **III – Dismissal from appointment**

**Article 364 - (1)** Even if board members have been assigned through the articles of association, in case of fair cause and despite the existence or absence of a relevant item on the agenda, they can be dismissed from the board by resolution of the GA. The legal entity who is a board member can, at any time, replace the person registered in his/her name.

**(2)** The provision in Article 334 and the right to indemnity of the member removed from appointment remain in force.

### **B) Management and representation**

#### **I – In general**

##### **1. Principle**

**Article 365 - (1)** The joint stock company shall be managed and represented by the BoD. The exceptional provisions in the law remain in force.

##### **2. Division of duties**

**Article 366 - (1)** Every year the BoD shall elect a chairman, and at least one vice chairman from among its members to replace the chairman in case of absence. The articles of association may stipulate that the chairman and the vice chairman, or one of them, be elected by the GA.

(2) The BoD can establish committees and commissions which can also have board members for the purpose of monitoring the course of business, having reports prepared regarding matters to be presented to the board, enforcing BoD decisions or for internal audit purposes.

### **3. Delegation of management**

**Article 367 - (1)** In accordance with an internal regulation to be drawn up by the board based on a provision to be inserted into the articles of association, the BoD can be authorised partially or fully to delegate management to one or more board members or to a third party. This regulation shall organise the management of the company; it shall define the duties required for management, indicate their positions, and particularly specify who is subordinated to whom and who is obliged to provide information. The BoD shall, upon request, inform in writing the shareholders and the creditors who can make a persuasive case that their interests are worthy of protection.

(2) In the event management is not delegated the company shall be managed by all board members.

### **4. Commercial representatives and commercial agents**

**Article 368 - (1)** The BoD can appoint commercial representatives and commercial agents.

### **5. Duty of care and duty of loyalty**

**Article 369 - (1)** BoD members and third parties in charge of management shall be held liable for prudent performance and protection of the company's interests.

(2) The provisions in Articles 203 to 205 remain in force.

## **II. Authority to represent**

### **1. In general**

**Article 370 - (1)** Unless otherwise stipulated in the articles of association or unless the BoD comprises one member, representational authority shall be exercised by the BoD by affixing two signatures.

(2) The BoD can delegate this authority to one or more executive directors or to third parties, but at least one board member must have representational authority.

### **2. Scope and limits**

**Article 371 - (1)** Those who are authorised to represent can carry out on behalf of the company all manner of business and legal transactions within the purpose and scope of activity of the company and can use the trade name of the company for this purpose. The company reserves the right to recourse arising from transactions contrary to law and the articles of association.

(2) Transactions conducted with third parties outside the scope of activity by those who are authorised to represent the company shall bind the company, provided it is proven that the third party was aware that the transaction is outside the scope of activity or they

were capable of being aware as a requirement of the situation. The announcement of the company's articles of association shall not be solely sufficient evidence to prove this matter.

(3) The restriction on representational authority shall not be effectual against third parties in good faith; however, the restrictions which are registered and announced in relation to limiting representational authority solely to the business of the headquarters or a branch or to the exercising thereof jointly are valid.

(4) The fact that the transaction performed by authorised persons is against the articles of association or the GA resolution does not prevent third parties, acting in good faith, from making claims due to that transaction.

(5) The company shall be responsible for tort by those authorised to represent or manage while performing their duties. The company reserves its right to recourse.

(6) Regardless of whether the company is represented by a single shareholder during the conclusion of a contract, in single-shareholder joint stock companies the validity of such contract between this shareholder and the company requires that the contract be in written form. This requirement shall not apply to contracts regarding daily, insignificant and ordinary transactions according to market conditions.

### **3. Form of signature**

**Article 372 - (1)** Persons entitled to sign on behalf of the company shall affix their signatures under the trade name of the company. The provision in paragraph 2 of Article 40 will remain valid.

(2) The headquarters of the company, the location where it is registered and the registration number shall be indicated in the documents prepared by the company.

### **4. Registration and announcement**

**Article 373 - (1)** The BoD shall submit the notarised copy of the resolution indicating the persons authorised to represent and the forms of representation to the Trade Registry for registration and announcement.

(2) Following the registration of representational authority at the Trade Registry, any legal defect regarding the election or appointment of the concerned persons can be put forward by the company against third parties, provided it is proven that the legal defect is known by these persons.

## **III - Duties and powers**

### **1. In general**

**Article 374 - (1)** The BoD and the management, to the extent delegated to them, shall be authorised to make decision with regard to all business and transactions required to perform the company's scope of activity, excluding those subject to the authority of the GA by law and the articles of association.

## **2. Non-delegable duties and powers**

**Article 375 - (1)** The non-delegable and indispensable duties and powers of the BoD are as follows:

- a) Top-level management of the company and giving instructions in this regard.
- b) Determination of the company's management organisation.
- c) Establishment of the necessary system for financial planning to the extent required, and for accounting and finance audit.
- d) Appointment and dismissal of managers and persons performing the same function and authorised signatories.
- e) High-level supervision of whether the persons in charge of management act in accordance with the law, articles of association, internal regulations and written instructions of the BoD.
- f) Keeping the share book, resolution book of the board and the GA meeting and discussion register, preparation of the annual report and corporate governance disclosure and submission thereof to the GA, organisation of GA meetings, and enforcement of GA resolutions.
- g) Notifying the court regarding the company's state of excess of liabilities over assets.

## **3. Capital loss, excess of liabilities over assets.**

### **a) Liability to convoke and notify**

**Article 376 - (1)** If it is clear in the last annual balance sheet that half of the sum of the capital and statutory reserves is unsecured due to loss, the BoD shall immediately convoke the GA and submit the remedial measures it considers appropriate.

**(2)** According to the last annual balance sheet, if it is clear that two-thirds of the sum of the capital and statutory reserves are unsecured due to loss, unless the GA immediately convoked decides to fully supplement the capital or to be satisfied with one-third of the capital, the company shall automatically terminate.

**(3)** If suspicions are raised that the company's liabilities exceed its assets, the BoD shall have an interim balance sheet prepared based on the going concern value and based on liquidation value of the assets and shall give it to the auditor. The auditor shall inspect this interim balance sheet within seven business days and shall present his/her evaluation and proposals to the BoD in the form of a report. The proposals of the early detection committee regulated in Article 378 must also be taken into account in the proposals of the auditor. If it is clear in the report that the assets are not sufficient to cover the receivables of creditors of the company, the BoD shall notify the commercial court of first instance at the location of the company's headquarters of this situation and shall file a claim for bankruptcy. This shall be done provided that before the adjudication of bankruptcy, the company's creditors representing an amount sufficient to cover the company's deficit and to eliminate the indebtedness of the Company accept in writing that they will be ranked after all other creditors and that the legitimacy, authenticity and validity of this

declaration or contract is verified by experts assigned by the court which shall be notified of the request for bankruptcy by the BoD. Otherwise the application made to the court for an expert inspection shall be considered as notification of bankruptcy.

#### **b) Postponement of bankruptcy**

**Article 377 - (1)** The BoD or any creditor can request the postponement of bankruptcy by presenting to the court an improvement project indicating the objective and actual sources and measures, including the new capital contribution in cash. In such case, Articles 179 to 179/b of the Execution and Bankruptcy Law shall be applied.

#### **4. Early risk detection and management**

**Article 378 - (1)** For companies whose shares are listed in the stock exchange the BoD is required to set up an expert committee to run and to develop the system for the purpose of early detection of the causes that jeopardize the existence of the company, its development and continuity of the business unit in danger, of applying the necessary measures and remedies in this regard, and of managing the risk. In other companies a similar committee, if deemed necessary and if the BoD is notified in writing by the auditor, shall be constituted and shall submit its first report at the end of the month following its constitution.

**(2)** In a bimonthly report to the BoD, the committee shall evaluate the situation, indicate the dangers, if any, and suggest remedies. The report shall also be sent to the auditor.

#### **5. Company's acquisition of its own shares or acceptance thereof as pledge**

##### **a) In general**

**Article 379 - (1)** A company cannot acquire and accept as pledge its own shares in return for consideration, at an amount which exceeds or will exceed as a result of a transaction, one-tenth of its basic or issued capital. This provision shall also be applicable to the shares which a third party acquires or accepts as pledge in his/her name, but in the account of the company.

**(2)** In order for the shares to be acquired or accepted as pledge in accordance with the provision in paragraph 1, the GA must have authorised the BoD to act in this matter. This authorisation, which can be granted for a maximum of five years, must show the lower limit and upper limit of the price which can be paid for shares to be acquired and the total nominal values of the shares to be acquired or accepted as pledge. The BoD must state in each of its proposals for permission that the legal requirements have been met.

**(3)** In addition to the requirements set out in paragraphs 1 and 2, after the prices of the shares to be acquired are deducted, the company's remaining net assets must be at least equal to the sum of the reserves that may not be distributed according to law and articles of association, and of basic or issued capital.

**(4)** In accordance with the above-mentioned provisions only shares that have been paid in full can be acquired.



(5) The provisions in the paragraphs above shall also be applied in case that the parent company's shares are acquired by its subsidiary. The CMB shall determine the regulation needed in accordance with the principles of transparency and in regard to the price of the companies whose shares are listed in the stock exchange.

#### **b) Evasion of law**

**Article 380 - (1)** Legal transactions which the company performs with a person for the acquisition of its shares with regard to granting an advance, a loan or security, shall be null and void. This nullity provision shall not be applied to transactions within the scope of activity of credit and finance organisations and to legal transactions in regard to granting an advance, a loan or security to the employees of the company or of its dependent companies for the purpose of acquiring the company's shares. However, these exceptional transactions shall be invalid if they reduce the reserves which the company is obliged to allocate according to law and the articles of association, if they violate the rules in Article 519 regarding the expenditure of legal reserves and if they make it impossible for the company to allocate the legal reserves stipulated in Article 520.

(2) Furthermore, a regulation between the company and a third party which grants this person the right to acquire the company's own shares in the account of the company, of its dependent company or of a company the majority shares of which are possessed by the company, or which stipulates such a liability for this person in this regard, shall be null and void if the transaction is in conflict with Article 379 in the event these shares were acquired by the company.

#### **c) Prevention of an imminent and serious loss**

**Article 381 - (1)** In the event it is necessary to avoid an imminent and serious loss, a company can acquire its own shares in accordance with Article 379 in the absence of a GA resolution regarding authorisation.

(2) In the event the shares are acquired as above, the BoD shall provide the first GA with written information regarding:

- a) Reason and purpose of the acquisition
- b) Number of acquired shares, sum of their nominal values and percentage of the capital they represent
- c) Price and terms of payment

#### **d) Exceptions**

**Article 382 - (1)** A company can acquire its own shares without being subject to the provisions in Article 379 in the following cases:

- a) If it is applying the provisions of Articles 473 to 475 relevant to decreasing its basic or issued capital.
- b) If it is a requirement of the universal succession rule.
- c) If such acquisition is arising from a statutory purchase liability.

d) Provided that the full price is paid and if it is intended for the collection of a company receivable through execution proceedings.

e) If the company is a securities and investment banking company.

#### **e) Gratuitous acquisition**

**Article 383 - (1)** A company can acquire its own shares gratuitously provided that their prices are fully paid.

(2) The provision in paragraph 1 shall apply comparably in the event a subsidiary acquires shares in the parent company gratuitously.

#### **f) Disposal**

**Article 384 - (1)** According to sub-clauses (b) to (d) of Article 382 and to the provisions in Article 383, the acquired shares shall be disposed of as soon as their transfer is possible without causing any loss to the company and in any case within three years as of their acquisition, unless the sum of these shares owned by the company and by the subsidiary exceeds 10 percent of the company's basic or issued capital.

#### **g) Disposal in case of an acquisition contrary to law**

**Article 385 - (1)** Shares acquired or accepted as pledge in a way contrary to Articles 379 to 381 shall be disposed or the pledge on them shall be released within six months from the date of their acquisition or acceptance as pledge.

#### **h) Capital decrease**

**Article 386 - (1)** Shares that cannot be disposed in accordance with Articles 384 and 385 shall be redeemed immediately through a decrease of capital.

#### **i) Provisions reserved**

**Article 387 - (1)** Provisions in other laws regarding the company's acquisition of its own shares will remain valid.

#### **j) Prohibition of subscription of its own shares**

**Article 388 - (1)** A company cannot subscribe to its own shares.

(2) Subscription to the company's shares by a third party or a subsidiary in its own name but on behalf of the company shall be considered as the company subscribing to its own shares.

(3) In case of an act contrary to paragraphs 1 and 2, the shares in question shall be considered as subscribed to by the founders while incorporating the company and by the board members while increasing the capital, and they shall be responsible for the share prices. During the founding of the company and while increasing capital, board members who have proved that they are faultless in the subscription contrary to law shall be exonerated from responsibility.

(4) The provisions in paragraphs 1 and 3 shall be applied to subsidiaries subscribing to the shares of the parent company by analogy. The shares in question shall be considered

as subscribed to by the board members of the subsidiary. Members are responsible for the share prices.

#### **k) Exercise of rights**

**Article 389 - (1)** The company's own shares acquired by the company and the shares of the parent company acquired by the subsidiary shall not be taken into account while calculating the parent company's GA meeting quorum. Excluding the acquisition of gratis shares, the company's own shares taken over by the company shall not grant any shareholding rights. The voting right pertaining to the parent company shares acquired by the subsidiary and affiliated rights shall be suspended.

### **IV – Board meetings**

#### **1. Resolution**

**Article 390 - (1)** Save as provided otherwise by an aggravating clause in the articles of association, the BoD shall convene with the majority of all members and make its decisions with the majority of the members present at the meeting. This rule shall apply also in the event the BoD convenes in an electronic environment.

**(2)** The board members cannot vote to represent each other nor are they allowed to participate in the meeting by proxy.

**(3)** In the event the votes are tied the matter shall be left to the next meeting. If the votes are tied at the second meeting as well, the matter in question shall be deemed to be rejected.

**(4)** In the event none of the board members request a discussion, BoD resolutions on a proposal regarding a certain matter made by one of the members can be taken by obtaining the written approval of a majority of all members. All members of the BoD must receive the same proposal. Approvals are not required to be on the same paper; however, all papers containing approvals must be attached to the board resolution register or converted into a resolution containing the signatures of approvers and attached to the board resolution book to ensure the validity of the resolution.

**(5)** The resolutions shall be valid only if they are in written form and signed.

#### **2. Null and void resolutions**

**Article 391 - (1)** The court can be asked to determine that the board resolution is null and void. In particular this applies to resolutions that:

- a) contradict the principle of equal treatment
- b) do not comply with the basic structure of the joint stock company or do not maintain the principle of protecting the capital
- c) violate the rights of shareholders or restrict or make these rights difficult to exercise
- d) are within the non-delegable authorities of other bodies and relevant to the transfer of these authorities

### **3. Right to information and to inspect**

**Article 392 - (1)** Each board member can request information, ask questions, and conduct an inspection regarding all business and transactions of the company. The request of a board member for any book, record, contract, correspondence, or document to be brought to the board meeting, inspection or discussion thereof by the board or members, or a request for information from a manager or employee concerned with any matter cannot be rejected. If rejected, the provision in paragraph 4 shall apply.

(2) Persons and committees in charge of company management, as well as all board members, are required to provide information at board meetings. A member's claim regarding this matter cannot be rejected and the member's questions must be answered.

(3) Every board member can obtain information outside of board meetings, from people in charge of managing the company regarding the course of business and about certain individual tasks, with the permission of the chairman of the board, and if required to perform his/her duty, he/she can request from the chairman of the board the company books and files for inspection.

(4) If the chairman rejects a member's claim to obtain information, to ask questions and to conduct an inspection as set forth in paragraph 3, the matter shall be brought to the board within two days. If the board does not convene or rejects this claim, the member can apply to the commercial court of first instance at the company's headquarters. The court can review the claim without a hearing and deliver an order; the court's order shall be final.

(5) The chairman of the board cannot obtain information and inspect company books and files outside of the board meetings without permission of the board. Should a request by the chairman be rejected, the chairman can apply to the court in accordance with paragraph 4.

(6) The board member's rights arising from this article cannot be restricted or abolished. The articles of association and the BoD can extend the members' rights to information and inspection.

(7) Each member of the board can ask the chairman in writing to convene the BoD.

### **4. Prohibition of participation in discussion**

**Article 393 - (1)** A board member cannot participate in discussions regarding matters which lead to a conflict between interests of the company and personal interests of the member or a person of his/her lineal consanguinity or his/her spouse or one of his/her blood and in-law relatives up to and including the third degree. This prohibition shall also be applied in cases where acting in good faith requires the non-participation of a board member in the discussion. If in doubt about the existence of such conflict, a decision shall be made by the BoD, and the member involved may not participate in this voting. Even if the conflict of interest is unknown to the BoD, the concerned member is obliged to declare it and abide by the prohibition.

(2) A board member who acts in contravention of these provisions, members who do not object to the participation of the concerned member in the meeting while the conflict of

interest objectively exists and is known, and board members who decide in favour of the participation of the said member in the meeting shall be liable for damages incurred by the company in regard to this matter.

(3) The reason for non-participation in the discussion because of this prohibition, and related transactions, shall be written in the resolution of the BoD.

#### **V – Pecuniary rights of board members**

**Article 394 - (1)** Provided that the amount is determined by the articles of association or the GA resolution, board members can be paid an honorarium, salary, bonus, a premium and a portion of the annual profit.

#### **VI –Prohibition of conducting transaction with company, to become indebted to company**

**Article 395 - (1)** A board member cannot conduct any transaction with the company in his/her or any other person's name without permission from the GA. If this provision is violated, the company can claim the transaction is null and void. The counterparty cannot make such a claim.

(2) The board member, his/her relatives specified in Article 393, the personal companies of which the said member and his/her relatives in question are partners, and joint stock companies in which they have at least 20 percent shareholding cannot become indebted in cash or in kind to the company. The company cannot provide surety, guarantee or security for these persons, undertake liability or take over their debts. Otherwise, the creditors of the company can start execution proceedings directly against these people for the debt of the company in the amount for which the company is liable.

(3) Provided the provision in Article 202 remains valid, companies in the group of companies can provide surety and guarantee for each other.

(4) Special provisions of the Banking Law remain valid.

#### **VII –Non-compete obligation**

**Article 396 - (1)** No board member can conduct any transaction of a commercial nature falling under the scope of activity of the company in his/her account or any other person's account without obtaining permission from the GA, and he/she cannot participate in a company involved in the same kind of commercial business as a partner with unlimited liability. The company shall be free to file a claim for compensation from the board members acting in contravention of this provision, or instead of compensation, to consider the transaction conducted as made in the name of the company and to file a lawsuit and claim any benefits arising from contracts made in the account of third parties belong to the company.

(2) Board members other than the one who has acted contrary to the provision in paragraph 1 shall have the right to exercise one of the rights stated above.

(3) These rights shall become statute barred three months from the date on which the other board members learned that the said commercial transactions have been conducted

or that the board member has participated in another company, and in any case one year after they were conducted.

(4) The provisions relevant to the responsibilities of board members remain valid.

## Section Three

### Audit

#### A) In general

**Article 397 - (1)** The financial statements of a joint stock company and group of companies shall be audited in accordance with Turkish Auditing Standards which are in compliance with international auditing standards. Whether the financial information included in the annual report prepared by the BoD is consistent with the audited financial statements and whether they have a true and fair view is to be included in the scope of audit.

(2) The financial statements and the annual report prepared by the BoD are not regarded as sufficient unless audited by the auditor.

(3) If the company's and group of companies' financial statements and the annual report prepared by the BoD have been revised after the audit report, and if the revision has a significant impact on the auditor's opinion, the financial statements and within the context of paragraph 1, the annual report prepared by the BoD, shall be re-audited. Re-audit and its result shall specifically be explained in the report. Appropriate appendices reflecting the re-audit shall be included in the auditor's opinion.

#### B) Subject and scope

**Article 398 - (1)** The audit of the company's and group of companies' financial statements and annual reports prepared by the BoDs refers to the audit inventories, internal audit in the provided scope of accounting and TAS, the reports submitted in accordance with Article 378 within the framework of this Section and the annual reports prepared by the BoD in accordance with paragraph 1 of Article 397. This also included auditing compliance with TAS, the law and the provisions of the articles of association related to financial statements. In the context of the provisions defined by the board and institution set down by temporary Articles 2 and 3, audit shall be conducted with due care and in accordance with the requirements of the audit profession and the professional ethics. Audit shall be carried out in a way that expressly puts forward whether the financial statements give a true and fair view, as described in Article 515, of the financial position of the company and group of companies, and, if not, the reasons for qualifications.

(2) The audit shall be conducted in a way that will provide an opinion as to whether the following comply with the information obtained during the audit:

a) The company's financial statements and the annual report prepared by the BoD within the framework of paragraph 1 of Article 397 and paragraph 2 of Article 402.

b) The group of companies' consolidated financial statements and the annual report prepared by the BoD within the framework of paragraph 1 of Article 397 and paragraph 2 of Article 402.

(3) The auditor of the group of companies is also responsible for auditing the financial statements of companies which have been taken into the scope of consolidation and related consolidation adjustments in conjunction with paragraph 1, unless these financial statements have been audited in accordance with the provisions of this section as required by law or as voluntary. This exception shall also be applicable in the event that a foreign company has been audited in accordance with auditing standards identical to those set down by the New Law.

(4) The auditor shall prepare a separate report explaining whether the BoD has established a system and an authorised committee in accordance with Article 378 to determine the risks that threaten the company and provide risk management; and if such a system and committee exist, the report shall include the structure of the risk management system and the activities of risk management committee. This report shall be submitted to the BoD with the audit report.

C) The auditor

#### **I. Appointment, dismissal and termination of contract**

**Article 399 - (1)** The auditor shall be appointed by the company's GA; the auditor of the group of companies shall be appointed by the parent company's GA. An auditor must be appointed for each fiscal year and before the end of the fiscal year in which he/she will perform his/her duty. After the appointment, the BoD shall register the appointment of the auditor with the Trade Registry and announce it in the Turkish Trade Registry Gazette and on its Web site.

(2) The auditor can be dismissed from the audit engagement only in the manner set forth in paragraph 4 and provided that another auditor has been appointed.

(3) If no other auditor is appointed, the auditor of the parent company is considered to be the auditor of the group.

(4) If questions arise about whether the elected auditor is acting subjectively and fair cause can be established, the commercial court of first instance at the location of the company's headquarters can appoint another auditor after hearing the concerned parties and the elected auditor upon the request of any of the following:

a) The BoD.

b) The shareholders representing 10 percent of the capital, or, in public companies 5 percent of the basic or issued capital.

(5) The action regarding dismissal and appointment of a new auditor shall be filed within three weeks from the date on which the auditor election has been announced in the Turkish Trade Registry Gazette. In order for minority shareholders to file this action, they must have voted against the election of the auditor at the GA, had their opposing votes

recorded in the minutes and been a shareholder for at least three months prior to the date of the GA at which the election was made.

(6) If an auditor has not been appointed within the first four months of the fiscal year, an auditor shall be appointed by the court as specified in paragraph, upon the request of the BoD, of each member of the board or of any shareholder. The same provision shall also apply in cases where the appointed auditor rejects the appointment or terminates the contract, that the resolution for his/her appointment is cancelled, declared null and void, or that the auditor fails to perform his/her duty due to legal or any other reason, or that he/she is prevented from performing his/her duty. The order of the court shall be final.

(7) In the event the auditor is appointed by the court, the advance payment required to be paid to the court treasurer for his/her fee and possible expenses shall be determined by the court by taking similar cases into consideration. An objection to the fee and the expenses can be made within three business days. The order of the court shall be final.

(8) The auditor can terminate the audit contract only in the case of the existence of a just cause or only if an action for his/her dismissal has been filed. The conflict regarding the content of audit opinion, a qualified opinion and an opinion with a disclaimer letter cannot be deemed as just cause. The termination of the contract by the auditor must be justified and communicated in writing. The auditor shall be liable to submit the results he/she obtained until the date of termination to the GA, and these results shall be presented to the GA in the form of a report complying with Article 402.

(9) In the event the auditor gives a notice of termination in accordance with the provision in paragraph 6, the BoD shall immediately elect a temporary auditor, and shall inform the GA of the termination notice and present the auditor elected by the board for the approval of the GA.

## **II. Persons who can be auditors**

**Article 400 - (1)** The auditor must be an independent auditing firm whose shareholders hold the title of sworn financial advisor (YMM) or a certified public accountant (SMMM). Small and medium-sized joint stock companies can elect one or more sworn financial advisors or certified public accountants as auditor. The incorporation and performance rudiments of independent auditing firms and the qualifications of auditing personnel shall be arranged by a regulation that shall be drawn up by the Ministry of Industry and Trade and put into effect by the Council of Ministers. In case one of the following situations exists, a sworn financial advisor (YMM), a certified public accountant (SMMM), the independent auditing firm and one of its shareholders, and persons working with its shareholders or person(s) with whom the persons mentioned in this sentence are working together cannot be an auditor in the concerned company. If one of the above-mentioned falls into one of the following categories, he/she cannot be an auditor. However, if these stipulations create an intolerable situation, the Union of Chambers of Independent Financial Advisors and Certified Public Accountants of Turkey (TÜRMOB) can repeal the prohibition in paragraph (h) for a specific and limited time:



- a) shareholder in the company to be audited
- b) managing director or an employee of the company to be audited, or someone who has held this title within the last three years before being appointed auditor
- c) the statutory representative or representative, board member, managing director, owner or shareholder owns more than 20 percent of the shares of a legal entity, of a commercial company or of a commercial enterprise having a connection with the company to be audited; or if he/she is a lineal consanguinity or is spouse or one of blood and in-law relatives up to and including third degree of a board member or a managing director of the company to be audited
- d) works in an enterprise which is connected with the company to be audited or which has more than 20 percent of the shares in such a company, or is working for a person holding more than 20 percent of the shares in the company of which he/she is to be the auditor
- e) is active in or has contributed to bookkeeping or organising the financial statements of the company to be audited, without carrying out an audit
- f) the statutory representative, representative, employee, board member, partner, owner of the legal entity or real person, or of one of its shareholders, who cannot be the auditor in accordance with paragraph (e) or is personally him/herself as the real person due to being active in or contributed to bookkeeping or organising the financial statements of the company to be audited, without carrying out an audit
- g) works for an auditor who cannot be an auditor because of meeting the conditions in paragraphs (a) to (f)
- h) has earned more than 30 percent of his/her total income from his/her occupational activities related to auditing within the last five years from his/her auditing and consulting activities provided for the company to be audited, or to companies who have participated in such company through a shareholding corresponding more than 20 percent of the capital and if they expect to earn the same in the current year

(2) If an auditor appointed by an independent auditing firm to audit a company has given auditing reports for that company for seven years, that auditor shall be replaced for at least two years.

(3) The auditor cannot provide consultancy or other services other than tax consultancy and tax auditing for the company he/she audits and he/she cannot provide such services through one of its subsidiaries.

(4) The provisions in this article shall also apply to operational auditors set forth in Article 554. Unless otherwise set forth in law or in the articles of association, the operational auditor shall be appointed and removed from office by the GA.

#### D) Liability of presentation and right to information

**Article 401 - (1)** The company's BoD shall have the financial statements and the annual report prepared and shall approve and submit it to the auditor without delay. The BoD shall provide the auditor with necessary conditions for auditing via inspection of books,

correspondences, documents, assets, liabilities, cash, negotiable instruments and inventory of the company.

(2) The auditor and within the framework of the auditing scope the transactional auditor shall request that the BoD provide all information necessary for a lawful and meticulous audit and present supporting documentation. The auditor shall have the authorisations set forth in sub-clause 2, paragraph 1 and sub-clause 1 of this paragraph before the financial statements are prepared if necessary for the planning of year-end audit. When necessary for a meticulous audit, the auditor can also use the authorities in sub-clauses 1 and 2 of this paragraph for subsidiaries or parent companies.

(3) The BoD of the company responsible for having the consolidated financial statements prepared shall be obliged to provide the auditor that will audit the consolidated financial statements with group of companies' financial statements, group of companies' annual report, individual company's financial statements, BoD annual reports of the companies; if an audit has been conducted they must also provide the auditing reports of parent company and subsidiaries. The auditor can use the authorities set forth in sub-clauses 1 and 2 of paragraph 1 for parent companies and subsidiaries.

#### E) Audit report

**Article 402 – (1)** The auditor will prepare a report, written in understandable and simple language, regarding the financial statements and the type, scope, characteristic and results of the audit of financial statements prepared with comparative information.

(2) In a separate report, the examinations included in the annual report of the BoD regarding the company's or group of companies' condition shall be evaluated by the auditor in terms of consistency with the financial statements and their accuracy and truthfulness.

(3) The auditor shall base his/her evaluation on the company's financial statements while his/her audit is based on the parent company and group of companies' financial statements. The auditor shall evaluate the BoD examinations regarding the conditions for continuity of the company's and the group of companies' existence, and development thereof within the framework indicated by the relevant working and reporting standards set forth in TAS and to the extent that the audited documents render it possible.

(4) In the main section of the audit report, the following shall clearly be stated:

a) Whether the bookkeeping method, the financial statements and group of companies' financial statements are consistent with the provisions of law and of the articles of association with regard to financial reporting.

b) Whether the BoD provided the explanations and the documents requested by the auditor within the context of audit.

(5) Additionally, whether the financial statements and the books on which such statements are based:

a) were kept in accordance with stipulated chart of accounts

b) reflect the company's assets, financial and profitability position in accordance with true and fair view principle

(6) If an evaluation has been made in accordance with paragraph 4 of Article 398 within the framework of the audit, its result shall be declared in a separate report.

(7) The auditor shall sign his/her report and submit it to the BoD.

#### F) Opinion letter

**Article 403 - (1)** The auditor shall indicate the result of the audit with an opinion. This letter shall include the auditor's evaluation of the result as well as the subject, type, characteristic and scope of the audit. If the auditor gives a clean/unqualified opinion, in his/her letter he/she shall state that no conflicts were determined; that according to the information obtained during audit and to the evaluation he/she has conducted in accordance with TAS, the financial statements of the company or group of companies are correct and give a correct and fair view of the company's and group of companies' financial position in the audit in accordance with Article 398.

(2) In the opinion, it shall be additionally stated that the BoD is not responsible for the issues relating to financial statements and problems, if any, shall also be indicated. The wording of the opinion must be understandable to everyone.

(3) If the auditor has reservations he/she can list these on a clean opinion letter (a qualified opinion) or express them in an adverse opinion letter. Qualified opinion shall be expressed where financial statements can be corrected by authorised committees and where conflicts exist that have limited effect on the result explained in the financial statements. The subject and scope of restriction and the method of correction must be clearly stated in the letter.

(4) The auditor can refrain from expressing an opinion, without having to provide any proof, by explaining the reasons if the legal books of the Company contain uncertainties to the extent that the audit cannot be conducted in accordance with the provisions in this Section or to achieve results, or if there are major restrictions applied by the company during the audit. An opinion with a disclaimer shall result in the consequences of an adverse opinion.

(5) In cases where an adverse opinion or an opinion with a disclaimer has been expressed, the GA, based on the said financial statements, cannot adopt any resolution directly or indirectly with regard to the reported profit and loss. In such cases, the BoD shall convene the GA within four business days of the date of the opinion and shall resign, effective on the date of the meeting. GA shall elect a new BoD. This board shall have the financial statements prepared in accordance with law, the articles of association and standards within six months and shall submit it to the GA together with the auditing report. Where a qualified opinion has been expressed, the GA shall decide on necessary actions for corrections.

### G) Auditor's responsibility regarding confidentiality

**Article 404 - (1)** Auditors, operational auditors and special auditors, their assistants and their representatives who assist the independent audit firm in conducting the audit are under obligation to conduct the audit in a honest and unbiased way and not to disclose the company's secrets. The persons in question cannot, without permission, use business and operational secrets related to the audit which they learn while performing their duties. Those who breach their obligations deliberately or by negligence shall be responsible to the company and if they cause damage to the dependent companies. If more than one person has caused such damage, they shall be severally responsible.

(2) Compensation for the damages up to TRY100,000 for each audit, and up to TRY300,000 for joint stock companies listed on the stock exchange, can be awarded against persons who are negligent in the performance of their obligations set forth in paragraph 1. This limitation, which is related to the persons who caused damage by negligence, shall be applied in case more than one person is involved in audit or that more than one action giving rise to the responsibility have been performed. Such limitation shall be applicable if some of the involved persons have acted intentionally.

(3) If the auditor is an independent auditing firm, the confidentiality obligation shall be applicable to the BoD, board members and employees of such firm.

(4) The obligation to compensate arising from this provision can neither be cancelled nor limited by a contract.

(5) Claims related to the auditor's responsibilities arising from this article shall be barred by the statute of limitations five years from the reporting date. However, if the act is a crime, and if according to the Turkish Penal Code it is subject to a longer statute of limitations, this statute of limitations shall apply to the action for compensation.

(6) The provisions in penal legislation with regard to crime reporting will be maintained.

### H) Divergence of opinions between the company and the auditor

**Article 405 - (1)** The commercial court of first instance at the location of the headquarters of the company, upon the request of the BoD or the auditor, shall award a judgment without hearing regarding the divergence of opinions between the company and the auditor concerning the year-end accounts, financial statements of the company and the group of companies and annual report of the BoD and concerning interpretation or implementation of administrative acts or provisions in the articles of association. The judgment shall be final.

(2) Legal costs shall be borne by the company.

### I) Audit by special auditor for relations of group of companies

**Article 406 - (1)** Upon the request of any shareholder the commercial court of first instance at the location of the headquarters of the company can appoint a special auditor

to inspect the company's relations with the controlling company or with a company dependent on the controlling company if:

- a) The auditor has expressed a qualified opinion or qualified opinion letter about the relations of the company with the controlling company or with the group companies.
- b) The BoD has disclosed that the company has suffered losses by the group of companies due to certain legal transactions or applied measures and that compensation has not been made as a consequence.

## Part Six

### Limited Liability Company

#### Section One

#### Definition and incorporation

##### A) Concept

**Article 573 – (1)** A limited liability company shall be incorporated by one or more real persons or legal entities under a trade name; its basic capital shall be definite and consist of the sum of basic capital shares.

**(2)** Partners shall not be responsible for the debt of the company; they shall be responsible only for paying for the basic capital shares for which they subscribed and for fulfilling their obligations to make additional payments and for secondary performances set forth in the articles of association.

**(3)** Limited liability company can be incorporated for all kinds of economic purposes and scopes that are not prohibited by law.

##### B) Number of partners

**Article 574 – (1)** The number of partners cannot exceed 50.

**(2)** If the number of partners is down to one, the situation shall be reported to managers within seven days as of the date of the transaction that caused this result. The managers shall, within seven days of being notified, register and announce that the company is a single-member company with limited liability, and name, surname, nationality and domicile of the single partner; otherwise the managers shall be responsible for damages to be incurred. The managers shall fulfill the same obligation where the company is incorporated with a single partner.

**(3)** The company cannot acquire its own basic capital shares if it will become a single-member company.

##### C) Articles of association

###### I – Form

**Article 575 – (1)** The articles of association must be drawn up in written form and the signatures of the founders must be approved by notary public.

## **II – Content**

### **1. Mandatory entries**

**Article 576 – (1)** The following entries must be clearly stated in the articles of association:

- a) company's trade name and location of the headquarters
- b) scope of activity of the company, with main points expressed and defined
- c) nominal value of basic capital, number of basic capital shares, their nominal values, privileges if any, groups of basic capital shares
- d) names, surnames, titles and nationalities of the managers
- e) form of announcements to be made by the company

### **2. Provisions binding on condition they are stipulated in articles of association**

**Article 577 – (1)** The following entries are binding provisions if they are set forth in the articles of association:

- a) Regulations diverging from statutory provisions regarding the restriction of transfer of basic capital shares.
- b) Granting the right of being the first to be offered subscription, of first refusal, redemption and acquisition regarding basic capital shares, to the partners or the company.
- c) Imposing additional payment obligations, the form and scope thereof.
- d) Imposing secondary performance liabilities, the form and scope of thereof.
- e) Provisions granting veto right to designated partners or partners that could be designated or superior voting right to certain shareholders in case of a tie vote as consequence of voting on a GA resolution.
- f) Penalty provisions that can be applied when liabilities set forth in law or in the articles of association are not fulfilled at all or in time.
- g) Provisions with regard to non-compete obligation, diverging from statutory regulation.
- h) Provisions granting privileged rights with regard to convoking GA.
- i) Provisions, diverging from statutory regulation, with regard to making decisions at GA, voting right and calculation of voting right.
- j) Authorisation provisions with regard to assignment of company management to a third party.
- k) Provisions diverging from law, with regard to using balance sheet profit.
- l) Granting the right to withdraw and its exercise conditions, the type and the amount of cash payment for withdrawal to be made in such cases.
- m) Provisions indicating special reasons with regard to dismissal of a partner from the company.

n) Provisions regarding termination reasons other than those defined in law.

### **3. Capital in kind, acquisitions in kind and special benefits**

**Article 578 – (1)** Provisions concerning joint stock companies shall apply to capital in kind, acquisition of enterprises and of non-monetary assets, and special benefits.

### **4. Mandatory provisions**

**Article 579 – (1)** The articles of association can diverge from the provisions of the New Law related to limited liability companies only if it is clearly permitted by law. The articles of association's provisions, which are complementary in nature and are allowed by other laws to be stipulated, shall be in effect for that law.

## **D) Capital**

### **I – Minimum amount**

**Article 580 – (1)** Registered capital of limited liability company shall be at least TRY10,000.

(2) The minimum amount stated in this article can be increased as much as ten-fold by the Council of Ministers.

### **II – Capital in kind**

**Article 581 – (1)** Assets, including intellectual property rights and virtual environments and also names, which can be appraised and transferred and on which there is no restricted real right, attachment or measures, can be contributed as capital in kind. Service performances, personal labour, commercial reputation and undue receivables cannot be contributed as capital.

(2) Provision in Article 127 will remain valid.

### **III – Value of assets and founder benefits**

**Article 582 – (1)** Cost of assets purchased by the founders for the company with regard to incorporation of the company and the benefits granted to those who served for incorporation of the company shall be indicated in the articles of association.

(2) The provision in Article 128 will remain valid.

## **E) Basic capital shares**

**Article 583 – (1)** Nominal values of the basic capital shares can be determined in the articles of association as at least TRY25 but can be set below this value in order to improve the company's status.

(2) Nominal values of the basic capital shares can differ. However, the value of basic capital shares must be TRY25 or a multiple thereof. Calculation of a vote, granted by a basic capital share, as per nominal value pursuant to Article 618 does not mean division of basic capital shares. The same provision shall be valid for situations where a right or liability is defined according to nominal value.

(3) A partner can own more than one basic capital share.

(4) Basic capital shares can be issued at nominal value or at a value exceeding it.

(5) The value of basic capital shares shall be paid as set forth in the articles of association, in cash or in kind, or by exchanging a receivable or, as in capital increase, by conversion of freely utilised equity into basic capital.

#### F) Redeemed shares

**Article 584 – (1)** Issuance of redeemed shares can be stipulated in the articles of association; provisions with regard to joint stock companies shall apply comparably.

#### G) Incorporation

##### I – Establishment of company

**Article 585 – (1)** The company shall be established when the founders disclose their will to incorporate a limited liability company in the articles of association drawn up in accordance with law, subscribe the entire capital unconditionally and pay the amount to be contributed in cash fully and immediately. Paragraph 1 of Article 588 will remain valid.

##### II – Registration

###### 1. Request

**Article 586 – (1)** After preparation of articles of association as set forth in Article 575, application for registration shall be filed with the Trade Registry where the headquarters are located.

(2) The application shall be signed by all managers. The following documents shall be appended to the application:

- a) A certified copy of the articles of association.
- b) Founder's declaration drawn up in accordance with Article 349 with its appendices, and operational auditor's report prepared in accordance with Article 351.
- c) The document indicating the persons authorised to represent the company, together with their domiciles and the elected auditor.

(3) The following entries shall be inserted into the application:

- a) names, surnames, or titles, domiciles, nationalities of all partners
- b) basic capital share committed by each partner and total amount they paid
- c) names, surnames and titles of the managers and whether he/she is a shareholder or a third party
- d) representation method of the company

###### 2. Registration and announcement

**Article 587 – (1)** The entire articles of association shall be registered with the Trade Registry where the headquarters of the company is located and be announced in the Turkish Trade Register Gazette within 30 days from the certification of the founder's



signatures by notary public. Paragraph 1 of Article 36 shall not be applied to the registered and announced articles of association except as follows:

- a) date of the articles of association
- b) trade name and headquarters of the company
- c) scope of activity of the company, with its fundamental points specified and defined; duration of the company if such a provision is contained in the articles of association
- d) nominal value of basic capital
- e) name, surname and domicile of real person partner and trade name, headquarters of the legal entity partner and basic capital shares that each partner committed
- f) capital in kind items and basic capital shares to be given in return for such capital; in case of acquisition in kind, the subject and counter party of the relevant contract, counter-performance undertaken by the company; content and value of special benefits.
- g) if stipulated, number of redeemed shares and content of rights granted to them
- h) names, surnames or titles and domiciles of managers and other persons authorised to represent the company
- i) the way of exercising representational authority
- j) auditor's domicile, headquarters, branch registered with the Trade Registry, if any; if the auditor is a sworn financial advisor (YMM) or certified public accountant (SMMM), his/her name, surname, domicile, trade association number
- k) privileges, additional liabilities or secondary performance liabilities, being the first to be offered for subscription regarding basic capital shares, right of first refusal, redemption and purchase set forth in the articles of association
- l) form and type of announcements to be made by the company, and the form of notification to be made to the partners by the managers, if there is such a provision in the articles of association

### **III – Legal personality**

**Article 588 – (1)** The company shall acquire a legal personality upon registration with the Trade Registry.

**(2)** If not accepted by the company, incorporation expenses shall be covered by the founders, without recourse to the partners.

**(3)** Persons who have conducted transactions on behalf of the company before the registration shall be responsible for these transactions personally and severally.

**(4)** If it is clearly stated that such commitments have been made on behalf of the company to be incorporated and if those are accepted by the company within three months of the registration of the company at the Trade Registry, only the company shall be responsible for them.

## Section Two

### **Amendment to the Articles of Association**

#### A) In general

**Article 589 – (1)** Unless otherwise provided in the articles of association, the articles of association can be amended by the resolution of the partners representing two-thirds of basic capital. The provision in Article 621 will remain valid.

(2) Any amendment made to articles of association shall be registered and announced.

#### B) Special amendments

##### **I – Increase of basic capital**

###### **1. Principle**

**Article 590 – (1)** Basic capital can be increased provided that the increase is made in accordance with the provisions regarding incorporation of the company and especially with the rules regarding contribution of capital in kind and acquisition of an enterprise and non-monetary assets.

###### **2. Pre-emptive right**

**Article 591 – (1)** Unless provided otherwise in the articles of association or resolution of capital increase, every partner shall have the right to participate in the increase of basic capital at the ratio of their basic capital shares.

(2) The pre-emptive right of the partners in relation to the acquirement of new shares can be restricted or cancelled by the GA resolution regarding capital increase only in the event of just cause and by the quorum set forth in sub-clause (e), paragraph 1, Article 621. Acquisition of a business, parts thereof, subsidiaries and participation of employees in the company can be accepted as a just cause. No person can unfairly be conferred benefit on incur a loss due to the restriction or the cancellation of pre-emptive rights.

(3) Pre-emptive rights shall be exercised within at least 15 days.

##### **II – Decrease of basic capital**

**Article 592 – (1)** The provisions with regard to the decrease of basic capital of joint stock companies shall apply to limited liability companies by analogy. Basic capital can be decreased only in order to resolve balance-sheet insolvency and in the event the additional payment obligations set forth in articles of association are fully met.

## Section Three

### **Rights and duties of partners**

#### A) Basic capital share as a subject of transactions

##### **I – In general**

**Article 593 – (1)** Excluding the situations set forth in paragraph 2 of Article 612 regarding acquisition of the basic capital share by the company, including the transfers between the

partners, the basic capital share can be transferred or inherited only in accordance with the provisions below.

(2) Basic capital share shall be issued as a proof instrument or as registered share certificates. Additional payment or secondary performance liabilities, non-compete obligation which is aggravated or formulated as to cover all partners, rights of being the first to be offered for subscription, first refusal, redemption and purchasing set forth in the articles of association must be clearly indicated on these bonds.

## **II – Share register**

**Article 594 – (1)** The company shall keep a share register which includes basic capital shares. Names, addresses and number of basic capital shares of each partner, transfers and transitions, nominal value, groups of basic capital shares, and usufruct and pledge rights on basic capital shares, names and addresses of the holder of such rights shall be recorded in this book.

(2) **Partners can inspect the share register.**

## **III –Transition circumstances of basic capital shares**

### **1. Transfer**

**Article 595 – (1)** Transfer of basic capital share and the transactions giving rise to transfer obligations shall be made in written form and parties' signatures shall be certified by public notary. Additionally, additional payment or secondary performance liabilities, if non-compete obligation is aggravated or extended as to cover all partners, this issue and rights of being the first to be offered for subscription, first refusal, redemption and purchasing and conditions of contractual penalties shall be stated in the transfer contract.

(2) Unless provided otherwise in the articles of association, the approval of GA shall be required for transfer of basic capital share. Transfer shall be valid upon this approval.

(3) Unless a provision to the contrary is provided in the articles of association, the GA can refuse to approve the transfer without disclosing any reason.

(4) Transfer of capital shares can be prohibited through the articles of association.

(5) If the articles of association prohibited the transfer of shares or the GA has refused to approve such a transfer, the partner retracts the right to withdraw from the company by providing a just cause.

(6) Provided that additional payment or secondary performance liabilities are set forth in the articles of association and if the security requested from the transferor because his/her ability to pay seems questionable or has not been provided, the GA can refuse to approve the transfer even if a provision in this regard has not been stipulated in the articles of association.

(7) The approval shall be considered as given if the GA has not made a rejection within three months from the application.

## **2. Inheritance, marital property and execution**

**Article 596 – (1)** In the event of basic capital share being transferred through inheritance, provisions regarding marital property, or execution proceedings, all rights and debts shall, without any need for GA approval, be transferred to the person who acquires the basic capital share.

(2) The company can refuse to approve the person to whom the basic capital shares have been transferred within three months of being notified of the acquisition. In such a case, To do this, the company must offer to acquire the shares at actual value through the account of him/herself or his/her partner or a third party indicated by him/her.

(3) Resolution regarding rejection shall be retroactively effective from the date on which the transfer was made. Rejection shall not affect the validity of GA resolutions adopted within the period elapsed until the relevant resolution was made.

(4) The transition of basic capital share shall be considered as approved, if the company has not clearly rejected the transition in writing within three months.

## **3. Determination of the actual value**

**Article 597 – (1)** In cases where actual value is set forth for basic capital share price in law or the articles of association, and if the parties have not been able to agree, such value, upon request of one of the parties, shall be determined by the commercial court of first instance where the headquarters are located.

(2) The court shall divide the expenses regarding the trial and the value assessment, at its own discretion. The court order shall be final.

## **4. Registration**

**Article 598 – (1)** The company managers shall apply to the Trade Registry for registration of transition of basic capital shares.

(2) In the event that the application has not been made within 30 days, the outgoing partner can apply to the Trade Registry to erase his/her name with regard to these shares. Thereupon, the registry manager shall grant a period to the company for notification of the acquiring person's name.

(3) The trust of the person in good faith who filed the Trade Registry records shall be protected.

## **IV – Basic capital share owned by more than one partner, various rights on this share**

### **1. Co-ownership**

**Article 599 – (1)** In case that a basic capital share is owned by more than one partner, co-owners shall be severally liable to the company for additional payment or secondary performance liabilities set forth in the articles of association.

(2) Co-owners can exercise their rights arising from basic capital share only through a common representative they appoint.

## **2. Usufruct and pledge rights**

**Article 600 – (1)** The provisions regarding the transition of basic capital share shall be applied to the establishment of usufruct right on a basic capital share.

**(2)** Establishment of pledge right on basic capital share can be subjected to the approval of the GA via the articles of association. In such a case, transition provisions shall apply. The GA can, for just cause, refrain from approving the establishment of the pledge right.

**(3)** In case of existence of a usufruct right on a basic capital share, the share shall be represented by usufruct right owner; in such case if the owner of usufruct right does not protect the benefits of basic capital share owner in a just manner he/she shall be liable for compensation.

### **B) Prohibition to refund**

**Article 601 – (1)** Except for the decrease of basic capital, basic capital share price cannot be refunded, nor can the partners be released from this debt.

### **C) Responsibility of partners**

**Article 602 – (1)** The company shall be responsible for its debts and liabilities only with its assets.

### **D) Additional payment and secondary performance liabilities**

#### **I – Additional payment liability**

##### **1. Principle**

**Article 603 – (1)** Partners can be held liable for additional payment other than the basic capital share price, via articles of association. Partners can be asked to fulfill this liability only in the event that:

a) The sum of basic capital and statutory reserves does not cover the company's losses.

b) It is not possible for the company to conduct its business properly without such additional instruments.

c) A situation defined in the articles of association results in a need for equity.

**(2)** In case of adjudication of bankruptcy, additional payment liability shall become due.

**(3)** Additional payment liability can be set forth in the articles of association only as a certain amount, based on the basic capital share. This amount cannot exceed two times the basic capital share's nominal value.

**(4)** Each partner shall be liable to pay only his/her part of the additional payment applicable to his/her basic capital share.

**(5)** If conditions have been met, additional payments may be requested by the managers.

**(6)** Additional payment liability can be mitigated or cancelled only if the sum of the basic capital and statutory reserves fully cover the losses. The provisions regarding the decrease

of basic capital shall apply to mitigation or cancellation of additional payment liability, in comparable situations.

## **2. Continuity of liability**

**Article 604 – (1)** If the company has gone into bankruptcy within two years of the registration of the outgoing partner, the company can request fulfillment of the additional payment liability from that outgoing partner.

**(2)** If the additional payment liability has not been fulfilled by the successor, the liability of the partner shall continue to the extent that he/she could have been held liable at the date on which such liability occurred.

## **3. Refund**

**Article 605 – (1)** In order that additional payment liability which has been fulfilled is to be refunded fully or partially, freely utilised reserves and funds must be sufficient for the amount of additional payment and such circumstance must be confirmed by the operational auditor.

## **II – Secondary performance liability**

**Article 606 – (1)** Secondary performance liabilities that can help realize the company's scope of activity can be set forth by the articles of association.

**(2)** The subject, scope, conditions and other important points of secondary performance liabilities attached to a basic capital share shall be indicated in the articles of association. Items that require detailed explanations can be left to be formulated by the GA.

**(3)** Cash and non-monetary performance liability that serves to satisfy the need for equity and does not have any or appropriate provision clearly stated in the articles of association shall be subject to the provisions regarding additional payment liability.

## **III –Liability: by means of amendment to articles of association**

**Article 607 – (1)** The GA resolutions which amend the articles of association and set forth additional or secondary performance liabilities or raise the current liabilities can be adopted only by approval of all relevant partners.

## **E) Dividend and other relevant provisions**

### **I – Dividend and reserves**

**Article 608 – (1)** A dividend can be distributed only from the net profit for the period and reserves allocated in this regard. Distribution of a dividend can be decided only if statutory reserves that must be allocated in accordance with the law and the articles of association and reserves set forth in the articles of association are allocated.

**(2)** Unless provided otherwise by the articles of association, a dividend shall be calculated in accordance with the ratio of basic capital share to nominal value; additionally, the amount of the additional payment liabilities that have been fulfilled shall be added to the nominal value while calculating a dividend.

(3) The GA of the company can decide to allocate reserves which are not set forth by law or the articles of association, or exceed the one stipulated only under the following conditions:

a) If necessary to make up losses.

b) If any investment need for the development of the company was seriously expressed, if the benefit of all partners justifies allocating such reserves, and if these issues have been clearly stated in the articles of association.

## **II – Interest prohibition and preparatory period interest**

**Article 609 – (1)** Interest shall not be accrued to basic capital and additional payments. Payment of preparatory period interest can be set forth by the articles of association. In this case, provisions regarding joint stock companies shall apply.

## **III – Financial statements and reserves**

**Article 610 – (1)** The provisions in articles 514 to 527 regarding joint stock companies shall also be applied to limited liability companies.

## **IV – Refund of unfairly received dividend**

**Article 611 – (1)** Partner and manager shall be liable for any refund dividend that was unfairly received.

(2) If they are bona fide, the partner or the manager' liability to refund the unfairly received dividend cannot exceed the amount necessary to settle the claims of the creditors of the company.

(3) The company's right to refund the unfairly received dividend shall be limited by statute of limitations to five years, and in case of good faith, to two years as of the date on which the money was collected.

## **F) The company's acquisition of its own basic capital shares**

**Article 612 – (1)** The company can acquire its own basic capital shares only if it has the necessary equity that can be freely used to purchase them and the nominal value of shares to be purchased does not exceed 10 percent of the total basic capital.

(2) In case of acquisition of basic capital shares due to withdrawal or dismissal from the company set forth in the articles of association or awarded by the court decision the maximum limit in paragraph 1 (20 percent) shall apply. The basic capital shares acquired above 10 percent of the basic capital of the company shall be disposed of or redeemed through capital reduction in two years.

(3) The company shall allocate reserves in an amount that it paid for its own basic capital shares.

(4) The voting rights arising from its own basic capital shares that the company acquired and other rights attached to them shall be suspended as long as the shares are in the possession of the company.

(5) The additional and secondary payment liabilities regarding its own basic capital shares acquired by the company cannot be claimed as long as they are in the possession of the company.

(6) The provisions regarding limitations on the company's acquisition of its own shares shall also be applicable where the basic capital shares are acquired by a subsidiary in which the majority of the shares are owned by the company.

#### G) Loyalty duty and non-compete obligation

**Article 613 – (1)** Partners may not disclose the company's secrets. This obligation cannot be rescinded by the articles of association or GA resolution.

(2) Partners cannot act in a way that impairs the interests of the company. In particular, they cannot carry out transactions that will provide special benefits to themselves and damage the company's purpose. It can be stipulated by the articles of association that partners refrain from transactions and acts of competitive nature against the company.

(3) Provisions in Article 626 that set forth non-compete obligations for managers remain in effect.

(4) Provided that all remaining partners give written consent, partners may engage in activities contrary to loyalty duty and non-compete obligation. The articles of association can require a GA resolution instead of the consent mentioned in the first sentence.

#### H) Right to information and to inspect

**Article 614 – (1)** Each partner can request information about all company business and accounts from managers and can conduct inspections regarding certain matters.

(2) If there is a risk that a partner who obtained information may use it in such a way that will damage the company, the managers can prevent access to information and inspection to the extent necessary; a partner who wishes to dispute this finding and who wishes to prove that he/she did not misuse information may request a finding by the GA, which can decide whether this individual shall have access to the information..

(3) If the GA prevents access to information and inspection without just cause, the partner may seek a court order on this issue, and the court's decision shall be final.

#### I) Loans that substitute for equity

**Article 615 – (1)** Loans that substitute for equity and which are given to the company by the partners or persons close to them shall rank after all other receivables, including those are at the bottom of the list due to a contract or a declaration.

(2) The following shall be considered loans substituting for equity:

a) loans given when basic capital and statutory reserves are not covered by assets

b) loans given by partners or persons close to them in substitute for equity, at a time when it is necessary to provide equity due to the company's financial position



(3) Payments made for the purpose of refunding the loans substituting for equity within one year before adjudication of bankruptcy shall be repaid by the receiver of such payments.

## Section Four

### Company bodies

#### A) General assembly

##### I - Authorities

**Article 616 – (1)** The GA's non-delegable authorities are as follows:

- a) To amend the articles of association.
- b) To appoint and to dismiss managers.
- c) To appoint and to dismiss auditors, including group of companies' auditors and operational auditors.
- d) To approve year-end financial statements and the annual report of group of companies.
- e) To approve year-end financial statements and the annual report; to decide on distribution of dividend; to determine profit sharing for board members.
- f) To determine the salaries and approve of managers. .
- g) To approve the transfer of basic capital shares.
- h) To ask the court to dismiss a partner from the company.
- i) To authorise a manager regarding the acquisition of the company's own shares, or to approve such an acquisition.
- j) To terminate the company.
- k) To adopt resolutions regarding issues on which the GA is authorised by law or the articles of association or on matters presented to the GA by the managers.

(2) The following are the GA's non-delegable authorities, provided that they are set forth in the articles of association;

- a) To approve activities of the managers and conditions in which approval of the GA is required by the articles of association.
- b) To adopt resolutions on exercising the rights of being the first to be offered for subscription, first refusal, redemption and purchase.
- c) To approve the establishment of pledge right on basic capital shares.
- d) To issue internal directives regarding secondary performance liabilities.

e) To give the permission necessary for managers and partners to take part in activities incompatible with obligations to the company or non-compete obligation, in the event the partners' approval is not adequate according to the articles of association, in line with paragraph 4 of Article 613.

f) To dismiss a partner from the company for reasons set forth in the articles of association.

(3) In single-member companies with limited liability, this member shall have all authorities of the GA. Resolutions adopted by the single member in his/her capacity as GA must be in written form.

## **II – Convening general assembly**

### **1. Convocation**

**Article 617 – (1)** The GA shall be convened by the managers. The ordinary GA shall convene annually within three months as of the closing of the accounting period.

In accordance with the articles of association and when necessary, the GA may be called as an extraordinary meeting.

(2) The GA shall be called to session at least 15 days prior to the date of the meeting. The articles of association can extend this period or shorten it to as few as to 10 days.

(3) Provisions regarding joint stock companies on convocation, minorities' right to convene and propose, agenda, proposals, GA meeting without convocation, preparatory measures, minutes and unauthorised attendance, excluding those regarding the Ministry delegate, shall be applied by analogy. Each partner can have himself/herself represented at the GA by a person who is or is not a partner.

(4) Unless a partner makes a request for an oral deliberation, GA resolutions can be adopted by the written consent of other partners to the proposal of one of the partners regarding an agenda item. It is mandatory for the validity of the resolution that the same proposal be presented for approval by all partners.

### **2. Voting right and its calculation**

**Article 618 – (1)** The voting right of partners shall be calculated according to the nominal value of their basic capital shares. Unless a higher amount has been set forth in the articles of association, every TRY25 shall confer one voting right. However, the voting rights of partners who have more than one share can be restricted by the articles of association. A partner shall have at least one voting right. If it is clearly stated in the articles of association, voting can be made in writing.

(2) The articles of association can also specify the voting right as each basic capital share corresponding to one voting right, independent of its nominal value. In this case, the nominal value of the minimum basic capital share cannot be less than one-tenth of the total of nominal values of other basic capital shares.

(3) The provision in the articles of association regarding determination of the voting

right according to the number of basic capital shares shall not be applied in the following circumstances:

- a) election of auditors
- b) election of special auditor for the audit of company management or some of its departments
- c) decision regarding filing a lawsuit for responsibility

### **3. Exclusion of voting right**

**Article 619 – (1)** Those who have in any way participated in the company's management cannot vote on resolutions regarding release of managers.

**(2)** A partner who has transferred his/her basic capital shares cannot vote on resolutions regarding the company's acquisition of its own basic capital shares.

**(3)** A partner cannot vote on the resolutions regarding approval of his/her activities conducted contrary to loyalty duty or non-compete obligation.

## **III – Adoption of resolution**

### **1. Adoption of ordinary resolution**

**Article 620 – (1)** Unless provided otherwise by law or articles of association, all GA resolutions, including resolutions on election, shall be adopted with the simple majority of votes represented in the meeting.

### **2. Important resolutions**

**Article 621 – (1)** The following GA resolutions can be adopted with at least two-thirds of represented votes together with the absolute majority of the total of basic capital shares with voting right:

- a) To change company's scope of activity.
- b) To introduce basic capital shares with privileged voting rights.
- c) To restrict, prohibit or facilitate the transfer of basic capital shares.
- d) To increase basic capital.
- e) To restrict or cancel pre-emptive rights.
- f) To change location of the headquarters.
- g) To approve the performance of activities of managers and partners contrary to loyalty duty and non-compete obligation.
- h) To start legal proceedings for dismissal of a partner for just cause and to dismiss a partner for a reason set forth in the articles of association.
- i) To terminate the company.

**(2)** If an increased quorum (qualified majority) is required for certain resolutions by law, the provisions in the articles of association that further increase such quorum can be

accepted only by the majority to be set forth in the articles of association.

#### **IV – Nullity and cancellation of GA resolutions**

**Article 622 – (1)** The provisions regarding the nullity and cancellation of joint stock companies' GA resolutions in the New Law shall apply comparably to companies with limited liability.

#### **B) Management and representation**

##### **I – Managers**

###### **1. In general**

**Article 623 – (1)** Company's management and representation shall be laid down by the articles of association. Management and representation of the company can be delegated to one or more partners with the title of "manager" or to all partners or to third parties. At least one partner must have the authority to manage and represent the company.

**(2)** If one manager of the company is a legal entity, it shall appoint a real person to perform this duty on behalf of such legal entity.

**(3)** The managers shall be authorised to adopt and to execute resolutions on all management issues which are not reserved to the authority of the GA by law or the articles of association.

###### **2. More than one manager on duty**

**Article 624 – (1)** If there is more than one manager at the company, one of them, regardless of whether he/she is a partner or not, shall be appointed by the GA as chairman of the board of managers.

**(2)** The chairman manager, or should there be only one manager, shall be authorised to convene and conduct the GA and to make all declarations and announcements as well, unless the GA decides otherwise or the articles of association stipulates differently.

**(3)** If there is more than one manager, decisions will require a majority. In the case of tie votes, the chairman shall have the deciding vote. The articles of association can set forth a different arrangement regarding adoption of resolution by managers.

##### **II – Duties, authorities and liabilities**

###### **1. Non-delegable and indispensable duties**

**Article 625 – (1)** The managers shall be appointed and authorised for all issues which are not reserved for the duty and authority of GA by law and the articles of association. The managers cannot delegate and dispense with the following duties and authorities:

- a) To execute ultimate direction and management; to give necessary instructions.
- b) To determine the company management organisation in accordance with law and the articles of association.
- c) To develop accounting, financial auditing and financial planning when necessary for the

management of the company.

d) To supervise whether the persons to whom one or more divisions of company management have been entrusted are acting in accordance with law, articles of association, internal regulations and instructions.

e) To establish a committee for early risk detection and management, except for small-sized limited liability companies.

f) To prepare the company's financial statements, annual report, and where necessary the group of companies' financial statements and annual report.

g) To organise GA meetings and to execute GA resolutions.

h) To notify the court should the company's liabilities exceed its assets.

(2) Manager or managers can be required by the articles of association to present:

a) Certain decisions taken.

b) Specific problems to the GA for approval. The approval of the GA shall not eliminate or limit the managers' responsibility. Provisions in Articles 51 and 52 of the Turkish Code of Obligations remain in force.

## **2. Care and loyalty duty, non-compete obligation**

**Article 626 – (1)** Managers and persons in charge of management shall be liable to perform their duties with due care, and to safeguard the interest of the company in good faith. The provisions in Article 202 and 205 remain in force.

(2) Managers cannot perform any activity which is competitive against the company unless expressly permitted by the articles of association and all other partners have given written consent. The articles of association can require the approval of the GA rather than the partners.

(3) Managers shall be subject to the loyalty duty required for the partners.

## **3. Equal treatment**

**Article 627 – (1)** Managers shall provide partners with equal treatment under similar conditions.

## **III – Domicile of managers**

**Article 628 – (1)** At least one manager of the company must be domiciled in Turkey and must be solely authorised to represent the company.

(2) When a contradiction to paragraph 1 is determined, the Trade Registry manager shall fix a time limit for the company to establish compliance with law. If requirements are not met within such time limit, the Trade Registry manager shall ask the court to dissolve the company.

## **IV – Scope of and restrictions on authority to represent**

**Article 629 – (1)** The related provisions in the New Law regarding joint stock companies

shall apply to the scope of manager's authority to represent, the restriction on authority, determination of the signatories, the form of signature, registration and announcement of all mentioned in this paragraph by analogy.

(2) Regardless of whether the company is represented by a single partner during the signing of a contract, in single-member limited liability company, the validity of such a contract between this partner and company shall depend on the condition that the contract is in written form. This requirement shall not apply to contracts regarding transactions which are daily, insignificant and ordinary according to market conditions.

#### **V – Removal from office, revocation of and restriction on management and authority to represent**

**Article 630 – (1)** The GA can remove the manager or managers from office or restrict their management rights and representative authority.

(2) Each partner can, for just cause, request that the court revoke or restrict the managers' management rights and representative authority.

(3) Material breach of care and duties and of obligations arising from other laws and the articles of association or loss of qualifications necessary to manage the company in a proper manner can be accepted as a just cause.

(4) The indemnity rights of the manager removed from office are reserved.

#### **VI – Commercial representatives and commercial agents**

**Article 631 – (1)** Unless provided otherwise by the articles of association, commercial representatives and commercial agents can only be appointed by a GA resolution; their authorities can be restricted by the GA.

(2) Commercial representatives and commercial agents who do not fall within the scope of Article 623 can, at any time, be suspended in their functions by a manager or majority of managers. If this individual has been appointed by the resolution of the GA, the GA shall be immediately convened for removal of this person from office or restriction of his/her authorities.

#### **VII – Tort liability**

**Article 632 – (1)** The company shall be liable for torts committed by the person authorised to manage and represent the company while performing his/her duty regarding company business.

#### **C) Capital loss and excess of liabilities over assets**

##### **I – Duty to notify**

**Article 633 – (1)** Provisions regarding joint stock companies shall apply comparably in case of capital loss and excess of liabilities over assets. Provisions regarding additional payment liability are reserved.

## **II – Notification and postponement of bankruptcy**

**Article 634 – (1)** Provisions regarding joint stock companies shall apply to notification and postponement of bankruptcy.

### **D) Auditor**

**Article 635 – (1)** Provisions regarding joint stock companies on auditors, operational auditors, audit and special audit shall also be applied to limited liability companies.

## **Section Five**

### **Dissolution and withdrawal**

#### **A) Grounds for and consequences of dissolution**

**Article 636 – (1)** A limited liability company shall be dissolved under the following circumstances:

- a) In accordance with one of the grounds for dissolution set forth in the articles of association.
  - b) Upon GA resolution.
  - c) Upon adjudication of bankruptcy.
  - d) In accordance with other grounds for dissolution stipulated by law.
- (2)** If the company fails to have one of the bodies required by law for a long time or if the GA is unable to convene, upon a partner's or a creditor's request for dissolution of the company the commercial court of first instance where the company head office is located shall hear the managers and shall grant a period for the company to return to compliance with law, and if that is not achieved, the shall dissolve the company.
- (3)** In case of just cause, each partner can request the dissolution of the company from the court, which retains the right to decide that the plaintiff partner be paid the actual value of his/her shares or be dismissed from the company. The court may also find another solution that is suitable and acceptable.
- (4)** The court can take necessary measures upon the request of one of the parties when the action for dissolution is filed. .
- (5)** The provisions regarding joint stock companies shall apply to the consequences of dissolution.

#### **B) Registration and announcement**

**Article 637 – (1)** If the company has been dissolved due to a reason other than bankruptcy or court judgment, the manager, or at least two managers if there is more than one, shall register the dissolution with the Trade Registry and announce it.

## C) Withdrawal and dismissal

### I – In general

**Article 638 – (1)** The right to withdraw from the company can be granted to the partners; exercise of such rights can be subjected to certain conditions by the articles of association.

(2) Each partner, in the presence of just cause, can file suit to obtain a judgment for his/her withdrawal from the company. The court, upon request, can order suspension of some or all of the rights and debts of the plaintiff arising from his/her partnership, or other measures to secure the plaintiff partner's position.

### II – Participation in the withdrawal

**Article 639 – (1)** In the event that a partner requests to withdraw based on the provision in the articles of association or files a lawsuit to withdraw from partnership due to a just cause, the manager or managers shall inform other partners without delay.

(2) Each of the other partners shall, within one month of being aware of such information, have the right:

a) To inform the managers that he/she shall also participate in the withdrawal, if the just cause set forth in the articles of association is also valid for himself/herself.

b) To participate in the lawsuit for withdrawal based on just cause through filing a lawsuit.

(3) All outgoing partners shall be treated equally regarding their basic capital shares.

(4) This provision shall not be applied should a partner be dismissed due to a provision in the articles of association or a just cause.

### III – Dismissal

**Article 640 – (1)** Grounds for dismissal of a partner from the company through a GA resolution can be set forth in the articles of association.

(2) The partner can file an action to cancel the resolution regarding dismissal, within three months of being notified by public notary.

(3) Dismissal from company by a court judgment based on just cause upon the request of the company will remain valid.

### IV – Cash payment for withdrawal

#### 1. Request and amount

**Article 641 – (1)** In the event that a partner withdraws from the company, he/she shall be entitled to request cash payment for withdrawal corresponding to the actual value of his/her basic capital share.

(2) Due to the right to withdraw set forth in the articles of association, cash payment for withdrawal can be regulated in a different way in the articles of association.



## 2. Payment

**Article 642 – (1)** Cash payment for withdrawal shall become due after withdrawal:

- a) If the company is disposing of utilised equity.
- b) If the outgoing partner's basic capital shares are transferrable.
- c) If basic capital has been decreased by relevant provisions.

(2) The transactional auditor shall determine the utilised equity amount. If this amount is not sufficient to make the cash payment for withdrawal, the operational auditor shall indicate the necessary amount to be drawn from the basic capital.

(3) The unpaid amount of the cash payment for withdrawal of the outgoing partner shall constitute a debt against the company which ranks after all creditors. This issue shall become due upon the determination of utilised equity in the annual report.

### D) Liquidation

**Article 643 – (1)** Provisions regarding joint stock companies shall apply for liquidation method and authorities of company bodies during liquidation.

### E) Provisions to be applied

**Article 644 – (1)** The following provisions regarding joint stock companies shall also be applied to limited liability companies:

- a) Article 549 regarding documents and declarations being in contradiction with law; Article 550 regarding false declarations concerning capital and awareness of payment deficiency; Article 551 regarding corruption in valuation; Article 553 defining the responsibility of founders, board members, managers and liquidation officer; Articles 554 to 561 regarding the responsibility of auditors and operational auditors.
- b) Articles, 353 regarding dissolution; Article 358 regarding prohibition on borrowing against the company.
- c) Articles, 391 regarding nullity of board resolutions; Article 392 regarding the managers' rights to receive information to be applied in comparable situations.
- d) Those who act contrary to Articles 549 to 551, which are also applicable to limited liability companies, shall be penalised according to paragraphs 8 to 10 of Article 562.

B. Code on effectiveness and enforcement of Turkish Commercial Code Law  
No. 6103

Article I

General provisions

**A) Objective**

**Article 1- (1)** The objective of this section is to set the rules and basis of effectiveness and enforcement of the New Law.

**B) Conditions where former Code and New Law are to be applied**

**Article 2- (1)** Unless the opposite is ruled or have been regulated differently:

a) The conclusion of law for events occurring before the New Law is in effect are based on the provisions of the effective Code at the time of occurrence.

b) With respect to the substance of their binding effects and conclusion of laws, juridical acts that occurred before the New Law is in effect are subject to the provisions of the effective Code at the occurrence.

c) The New Law is applied only to circumstances arising after the effective date of the New Law.

**(2)** If the court applied former Code No. 6762, dated 29 June 1956 on the lawsuits opened after the effective date of the New Law, this fact and the legal basis is explicitly stated.

**(3)** “Former Code”, as stated in the New Law, refers to Code No. 6762 together with other related legislation.

**C) Application to events prior to effective date of New Law**

**I- Regulated legal relations under the New Law**

**Article 3- (1)** The New Law is applied to legal relations regulated with the New Law, even if they took place before the New Law comes into effect, independent of the behest of the parties.

**II- Inchoate rights**

**Article 4- (1)** The New Law is applied to the factual background for events at the time the former Code was in effect and for which no rights have been vested as of the effective date of the New Law.

**D) Vested rights**

**Article 5- (1)** Vested rights are protected with the New Law

## **E) Statutory limitation and prescription period**

**Article 6- (1)** Statutory limitations and prescription periods commencing before the New Law comes into effect are subject to the former Code.

**(2)** Other matters related the statutory limitation and prescription period are subject to the New Law when it comes into effect.

## **F) Referrals**

**Article 7- (1)** With the coming into effect of this Code and the New Law, referrals made by other legislation to the superseded or amended clauses of Code No. 6762 are interpreted to be made to the corresponding clauses within the New Law. Otherwise, applicable Article 1 of Civil Code No. 4721, dated 22 November 2001, is applied. The provision in the first sentence is also applicable to the referrals made to the former Code within all agreements, including articles of association, affirmative covenants, representations and similar texts.

## Article II

### Special Provisions

#### Section One

#### Introduction

### **A) Lawsuits related to maritime trade and maritime insurance**

**Article 8- (1)** Existing lawsuits judged by a maritime specialised court, which is established based on paragraph 3 of Article 4 of Code No. 6762, are transferred to the commercial court of first instance; those are assigned for lawsuits related to maritime trade and maritime insurance under the New Law and other codes, by the Supreme Council of Judges and Prosecutors (HSYK) within one month after the New Law comes into effect as regulated under paragraph 2, Article 5 of the New Law.

**(2)** Courts cannot transfer the pending lawsuits and duties within their jurisdiction and purviews on maritime trade and maritime insurance claimed before the New Law comes into effect.

### **B) Compound interest**

**Article 9- (1)** Current account agreements based on paragraph 2 of Article 8 of Code No. 6762, in which interest is calculated by accumulating the interest on capital amount and for which both parties are not traders, are amended within three months after the New Law comes into effect, and the articles on incurring interest on interest and the arrangements enforcing these circumstances are excluded from the agreement; otherwise written articles are treated as absent at the end of the mentioned period.

**(2)** Compound interest accrued within the three-month period stated in paragraph 1 can be requested from the debtor until the arrangement about the compound interest is excluded from the agreement;.

**(3)** Having only the changes stated in this article applied does not incur stamp duty.

## **Section Two**

### **Commercial enterprise**

#### **A) Commercial enterprise**

**Article 10- (1)** Existing arrangements are applied until the Cabinet decision stated under paragraph 2 of Article 1 of the New Law is obtained.

#### **B) Business name**

**Article 11- (1)** As from when the New Law comes into effect, the articles on business name in the New Law are applied.

#### **C) Official registration of Turkish branch of a commercial enterprise whose headquarters are located in Turkey and abroad and moving headquarters in Turkey abroad**

**Article 12- (1)** In order for a commercial enterprise or a cooperative whose headquarters is located outside of Turkey to officially register its branches in Turkey, the conditions related to the official registration of branches should be met in the source country law where the headquarter locates. In addition, all the necessary documents required for registration in the source country's articles of association and a certified copy of the articles of association for the joint stock company are to be submitted to Trade Registry Association in Turkey. Other than this, the branch's name, address, capital allocated to branch, names of people who are to represent the branch in private and public organisations, including courts, the form of main enterprise, core business, the form of capital and the amount, registration number, Internet site, applicable law and European Union membership information, if applicable, are to be submitted to commercial registration association by a declaration with relevant documents. Items to be registered and detailed regulations on branch registration are stated in the commercial registration regulations.

**(2)** A Turkish company can be moved to another foreign country without liquidation and re-establishment in target country. For this the following should be proved:

- a) Conditions in Turkish law are met
- b) The operations are allowed to continue under the foreign country's laws where the company is to move
- c) Creditors of the company are informed by public announcement of such a change; creditors are invited to declare their receivables, and creditors' receivables are paid or guaranteed

**(3)** The business name of the company moving the headquarters to a foreign country is not deleted from the Trade Registry unless all of the creditors are fully satisfied. Detailed regulations on moving the headquarters to a foreign country are stated at commercial registration regulations.

**(4)** Adjustments to the Commercial Registration Regulations should be made within six months of the commencement of the New Law.

#### **D) Evidence with Account books**

**Article 13-(1)** Articles 82 to 86 in Code No. 6762 are applied to lawsuits opened before the New Law comes into effect and currently in progress. This also applies to lawsuits opened within the additional period stated in Article 158 of Turkish Code of Obligations No. 6098, dated 11 January 2011, detailing those lawsuits opened after the New Law comes into effect.

#### **E) Restraint of trade agreement for the agency**

**Article 14- (1)** Article 123 under New Law is applicable for agency agreements made before the commencement of the New Law and still under way.

### **Section Three**

#### **General Provisions for Commercial Enterprises**

##### **A) Commercial enterprises' capacity to acquire rights**

**Article 15- (1)** In case the commercial enterprises' capacity to acquire rights is limited with the core business stated in the articles of incorporation, which complies with Article 137 of Law No. 6762, such articles are treated as not applicable as of the date the New Law comes into effect.

##### **B) Putting capital into business**

**Article 16- (1)** In case some fixed assets are put as a capital into business before the New Law comes into effect and the official registration of those fixed assets are not made in the name of the enterprise at the Land Registry, creditors and shareholders of the enterprise can request the registration. In addition, the Ministry of Industry and Trade can order the Trade Registry managers to carry out such registration. Filing fee and other fees and charges are collected from the enterprise based on the Collection of Public Receivables Code No. 6183, dated 21 July 1953.

##### **C) Mergers, spin-offs, conversions in type of company and conglomerates**

###### **I- Judicial notices and amendments**

**Article 17- (1)** The rules and basis for the necessary procedures on filing and recording documents, people allowed to apply and documents required for title deed and merchant vessel registers related to the form changes as the mergers, spin-offs and conversions in type of company and the intellectual property registers and other similar registers are regulated with judicial notices prepared by Ministry of Industry and Trade, together with collecting the views of Ministry of Culture and Tourism, Undersecretariat of Maritime Business, General Directorate of Deed and Cadastre and Turkish Patent Institute, within six months after publishing New Law.

**(2)** Execution of articles ensuring the transparency and use of rights related to mergers, spin-offs, conversions in type of company are regulated by Commercial Registry Regulations.

## **II- Abuse of Control**

**Article 18- (1)** If a subsidiary has a loss or losses in scope of paragraph 1 of Article 202 of the New Law, at the time the New Law comes into effect, those losses are compensated within two years or the right of claim is given to compensate for the loss or losses of the company. Otherwise, lawsuit rights stated in Article 202, paragraph 1 of the New Law can be executed immediately after the end of the above-mentioned period.

(2) Share and voting rights calculations stated at Article 196 of the New Law and the rules and basis about the obligations for notification, registration and declaration within Article 198 of the New Law are regulated by Commercial Registry Regulations.

## **III- Subsidiary's owning of shares of controlling company**

**Article 19-(1)** The clause related to the limitation of the use of the voting rights under paragraph 1 of Article 201 of the New Law will be effective two years from the publication of the New Law. The limitations on other rights will be effective as of the date the New Law comes into effect.

## **Section Four**

### **Joint stock company and limited liability company**

#### **A) General provisions, establishment and basic principles**

##### **I- Minimum capital**

**Article 20- (1)** Joint stock and limited liability companies are to increase their share capital in accordance with the provided amounts stated under Articles 332 and 580 of the New Law, within three years of the publication date of the New Law; otherwise at the end of such period these companies will be treated as being in dissolution.

(2) During the GA on increasing the capital amount in compliance with New Law, no quorum is necessary; the decisions are taken with the majority of the existing votes in meeting and the conditions stated under Article 389 of Code No. 6762 and conditions stated under Article 454 of the New Law are not applied. This also applies for the general shareholders' meeting on amendments to the articles of association in accordance with Articles 26 and 28 of the New Law.

(3) The rules and basis of non-listed joint stock companies' acceptance of and later transition to the registered capital system, on increasing their shareholder capital, on increasing the authorised capital amount, on deregistering from the system, on the board of management's issuance of preferred and premium stocks, on limitation of the preemptive rights in the scope of the New Law and on other matters are regulated by judicial notices prepared by the Ministry of Industry and Trade. Matters related to the registration and announcement are regulated by Commercial Registry Regulations.

(4) The Ministry of Industry and Trade can extend the period stated in paragraph 1 for one year, twice at most. .

## **II- Establishment**

**Article 21-** (1) Clauses about the establishment of joint stock and limited liability companies are effective as of the date the New Law comes into effect. However, during the establishment period if the articles of association for a joint stock company and founding charter for a limited liability company have already been prepared, and the shareholders' signatures are witnessed at public notary, establishment clauses stated in Code No. 6762 are applied in the event of an application for the registration of the company at Trade Registry within one month of the public notary registration.

## **III- Articles of association**

**Article 22-** (1) Effective from the publication of the New Law, joint stock and limited liability companies must align their articles of association with the New Law within 18 months. If such an alignment is not made, New Law clauses are applied instead of the existing articles of association.

(2) Paragraph 2 of Article 20 of the New Law is applied for a GA to be conducted on making the necessary amendments to the articles of association within the scope of paragraph 1 stated above.

(3) The Ministry of Industry and Trade can extend the period stated in this clause for at most one year.

## **IV- Single-shareholder joint stock company and single-owner limited liability company**

**Article 23-** (1) As of the date the New Law comes into effect, the real or legal entity single shareholder of a joint stock company and single owner of a limited liability company is supposed to declare their title, name, address and nationality to the joint stock company's BoD and to the limited liability company's company management via public notary. Recipients of this declaration make the registration and publication of the relevant points under New Law Articles 338 and 574 within seven days, effective from receipt; otherwise the proposed conclusions of law under above referred clauses comes into effect.

## **V- Prohibition of shareholders and owners' going into debt with company**

**Article 24-** (1) Shareholders of joint stock companies and owners of limited liability companies who get into debt with the Company in contravention of Article 358 of the New Law are obliged to settle this debt by cash payments within three years as of the effective date of the New Law. Partial or full transfer of the debt to the other party, issuing commercial documents, making payment arrangements and such methods do not settle the debt in this provision.

(2) If the settlement has not been made within the period stated in paragraphs 1 and 5 Article 562 of the New Law is applied.

(3) After the settlement, creditors of the company can prosecute the shareholder or the owner for their receivables.

## **VI- Board of Directors**

**Article 25- (1)** At the time the New Law comes into effect, the joint stock company's BoD and limited liability company's Board of Partners continue to function until the term is completed, unless they are dismissed or their board membership terminates for any reason. However, the board member who is an assigned real person on behalf of a legal entity is supposed to resign within three months from the date the New Law comes into effect, and the legal entity or someone else should be assigned as a replacement. For limited liability companies in which whole owners manage the business and represent the company as company management, the paragraphs under Article 623 of the New Law are applied within a three-month period. In circumstances where election is made in joint stock companies in accordance with paragraph 1 of Article 363 of the New Law, board members meeting the conditions listed under Article 359 of the New Law should be elected. Should the terms of the members expire at different dates, the education prerequisite is applied when the most convenient members' terms expire.

(2) The due care and loyalty clause of board members is not applied in ongoing legal cases at the time the New Law comes into effect. Code No. 6762 articles on due care and loyalty are applied in those circumstances.

## **VII- Meeting and *resolution quorums* in amendments to articles of association**

**Article 26- (1)** If in the articles of association of a capital stock or a limited liability company with regard to the BoD meeting and conclusion quorums it is specified that Code No. 6762 clauses are to be applied, either with or without the article references, then the necessary amendments shall be made to the articles of association to align it with the New Law within a six-month period after the new Law comes into effect. Otherwise the New Law's clauses on the BoD meeting and conclusion quorums are applied after such period. The BoD meeting and conclusion quorum clauses of Code No. 6762 are applicable only within this six-month period.

(2) The references made to Article 388 of Code No. 6762 or its content within any agreement, any vesting deed, any letter of conveyance or any other document are assumed to be made to Article 421 of the New Law.

(3) If the clauses on amendments to the articles of association are proposed to be more strict than Article 388 of Code No. 6762, those are also stronger than those in Article 421 of the New Law; such clauses can remain within the articles of association. If any clauses on weighted quorums within the articles of association or other legal declaration are less strict than Article 421 of the New Law, this article should be applied.

(4) Paragraphs 2 and 3 of this Article are also applicable for limited liability companies.

## **VIII- Special auditor**

**Article 27- (1)** Special auditors assigned before the New Law comes into effect should perform their duties in accordance with New Law clauses if the audit report has not been submitted. If this is the case, a special auditor can resign without paying indemnity or facing any obligation.



## **IX- Limitation of voting rights, voting preference shares and registered shares transfers**

**Article 28-** (1) Articles 434 and 435 of the New Law come into effect 18 months from the publication of the New Law.

(2) Given the nomination right of board members to share groups through the articles of association while former Code No. 6762 was effective and at least one year before the New Law is approved, that right is accepted as a vested right, although it exceeds the limit stated under Article 360 of the New Law.

(3) Articles of association contradicting paragraph 1 of Article 479 of the New Law are amended in accordance with the stated paragraph of the Code within a three-year period from the publication of the New Law.

(4) Articles of association which propose voting privileges above the limits stated in paragraph 2 of Article 479 of the New Law are amended in accordance with the stated paragraph of the New Law within three years of its publication and a court decision on the voting privileges is taken in accordance with the stated paragraph.

(5) Paragraph 3 of Article 479 of the New Law is applied within a one-year period as of the publication of the Code.

(6) In circumstances where the necessary amendments and adaptations in the articles of association are not performed within the periods stated under paragraphs 1 and 3 of this article, articles of association clauses on the voting privileges become ineffective at the end of the periods stated therein and all the clauses proposed for privileges on voting expire by law.

(7) Joint stock companies limiting the transfer of registered shares and not stating the reasons should amend and adapt their articles of association in accordance with Articles 492 to 498 of the New Law within one year as of the date the Code comes into effect. Such limitations will be ineffective after this period.

## **Section Five**

### **Transportation**

#### **A) Transportation agreements**

**Article 29-** (1) Transportation agreements signed while Code No. 6762 was in effect are subject to the New Law, together with all the clauses on bills of lading. However, the retrospective responsibility clauses related to the loss, damage and late delivery and transporters' limits of obligations stated under the New Law are applied as of the date the New Law comes into effect.

## **Section Six**

### **Maritime trade**

#### **A) Registration of Turkish flag usage right and amendments**

**Article 30-** (1) Turkish flag usage right on merchant vessels is subject to the New Law as of

the date the New Law comes into effect. Merchant vessels acquiring the Turkish flag usage right should be registered with the Turkish Marine Registry within two months of the New Law coming into effect.

(2) All the changes on items previously registered with the Marine Registry should be immediately declared to Turkish Marine Registry as of when the New Law comes into effect.

#### **B) Registration of vehicles qualified as merchant vessels**

**Article 31- (1)** The owners of water craft vehicles qualified as merchant vessels by the New Law should make a compulsory registration at the Marine Registry Authority in accordance with Article 955 of the New Law within two months of the date the New Law comes into effect.

#### **C) Acquisition of merchant vessel property**

**Article 32- (1)** The persons who acquired the ownership of a merchant vessel or a merchant vessel share of a merchant vessel property in accordance with Code No. 6762 by an agreement should register this with the Marine Registry as an owner of a merchant vessel or a merchant vessel share within one month of the New Law coming into effect.

#### **D) Requesting the cancellation of a lien**

**Article 33- (1)** The creditor with a lien on a merchant vessel when the New Law comes into effect is eligible to request the status of a more privileged or equal degree lien which is expired.

#### **E) Transformation of personal security and underlying security into right of retention**

**Article 34- (1)** All the guarantees given to the transporter under Code No. 6762 within the transportation agreements are transformed to the right of retention in the favour of creditor for the receivables that have started to be collected at the time the New Law comes into effect.

#### **F) General average**

**Article 35- (1)** The New Law's clauses on general average is applied only for the travels of a merchant vessel that started after the New Law comes into effect. Prior travel continues to be subject to Code No. 6762.

#### **G) Continuity of merchant vessel creditor right**

**Article 36- (1)** Receivables in accordance with Code No. 6762 prior to the New Law coming into effect and those not eligible for merchant vessel creditor right in accordance with the New Law continue to be subject to Code No. 6762.

#### **H) Agreements dated 1976 and 1992**

**Article 37- (1)** Articles 1328 to 1349 of the New Law are effective as of the effective date of the New Law. The exceptions are the International Agreement on the Limitation of Responsibilities for Maritime Receivables, signed on 19 November 1976 and published in Official Gazette No. 17007, dated 04 June 1980 and applicable in Turkey as of 01 July

1998; the International Agreement on the Legal Responsibility for Damages as a Result of Fuel Oil Pollution in the year 1992, published in Official Gazette No. 24472, dated 24 July 2001, and applicable in Turkey as of 17 August 2002; the International Agreement on the Establishment of an International Fund to Compensate for Damages as a Result of Fuel Oil Pollution in the year 1992, published in Official Gazette No. 24466, dated 18 July 2001, and applicable in Turkey as of 17 August 2002.

#### **I) Compulsory performance**

**Article 38- (1)** If an execution proceeding becomes judgment in law via liquidation of a merchant vessel before the New Law comes into effect or a seizure is made on a merchant vessel under construction, former clauses before the New Law came into effect are executed.

### **Section Seven**

#### **Insurance Law**

##### **A) Insurance agreement**

**Article 39- (1)** Articles of Code No. 6762 are applied to insurance agreements signed during the period Code No. 6762 remain in effect for a one-year period from the date the New Law comes into effect. However, during this one-year period the New Law articles protecting the policy holder, insurance holder and beneficiary party are effective, except those stated under Article 1517.

**(2)** If the insurance agreements stated in paragraph 1 above and subject to expiration within one year are extended or renewed, then Law clauses will be executed.

##### **B) Protecting clauses**

**Article 40-(1)** Insurance agreements made when the Code No. 6762 was in effect which contradict Articles 1452, 1486, 1488 and 1450 of the New Law are subject to Article 39 of the New Law.

### **Amended and superseded articles of other codes and final articles**

#### **Amended and superseded articles**

##### **Superseded articles and final articles**

#### **Amended and superseded articles**

**Article 41- (1)** The law about the relationship between foreign joint stock companies and joint stock companies and foreign insurance companies, dated 30 November 1930, is superseded.

(2) The following changes are made to Execution and Bankruptcy Law No. 2004, dated 09 June 1932:

a) Article 23 is changed to:

Article 23- During the application of the New Law;

1. The term 'Hypothec' refers to hypothecs [more commonly known as liens], debenture certificates, annuity charge bonds, real securities as allocated based on the former law, real obligations, particular privileges on some real properties and process of distraints on real property additions,

2. The term 'Conveyable privilege' refers to privileges bound up in delivery, privileges stated under Article 940 of the Turkish Civil Code, enterprise privileges, retention rights, privileges on the receivable and other rights,

3. The sole term 'privilege' refers to all particular and conveyable privileges within the scope of 'hypothec' and 'conveyable privilege.'

Other than explicitly stated exceptions, the New Law's clauses on the conveyable items are applied to merchant vessels regardless of their flag and registration. Annotations given on merchant vessel registrations under the New Law are subject to Article 977 of the New Law.

b) Article 26 is changed to:

Article 26- When a final court decision on evacuation and confiscation of a real property is given to the execution office, executive authority charges the debtor to deliver the decided item within seven days via written executionary order as stated under Article 24.

If the debtor does not follow this charge while utilising the real property, final court decision is executed by force.

If the debtor re-utilises a real property returned to the creditor without any rights, then the debtor is evicted by force without an additional court decision.

Goods not included in the final court decision but stated under real property are removed and given to the debtor and if not ready delivered to the assignee or an adult from the family or employee. If none of those parties are found, those goods are taken from the creditor and kept in a safe place or with the ancillary receiver on condition that the fees are to be charged to debtor in future; and based on the immediate written notice made by execution office, the debtor either declares receipt of the goods or payment of the fees within five days where the debtor is based at the same location as the enforcement agency or within 30 days where its location is elsewhere. Optionally, when necessary, the enforcement agency can sell the goods and collect the charges and fees after obtaining the ruling of the execution court. The excess is deposited in the name of the debtor to a bank described in the regulations of the Ministry of Justice.

c) Article 28 is changed together with its heading as follows:

Notification of the real property lawsuit clauses to the Title Registry Office:

Article 28- If a decision is given in favour of the litigant party in a real property lawsuit,

the court notifies the pronouncement explanation and abstract to the Title Registry Office without a request from the litigant party. The Title Registry Office puts an annotation on the real property. Such an annotation is subject to paragraph 2 of Article 1010 of the Turkish Civil Code.

If the court decision is finalised to the disadvantage of the litigant party in future, the court also communicates the summary to the Title Registry Office immediately.

d) Article 29 is changed to:

Article 29- Alterations made after the submission of the decision to the Title Registry Office do not have an effect on execution procedures. Items stated in the decision are delivered to the creditor by obtaining them from any holder.

If a third party shows a Title Deed Registry declaration of real property without taking over it from the debtor, seven days period is provided to the third party to open a lawsuit in the court. If a lawsuit opens, execution is divested.

e) Article 31 is changed together with its heading as follows:

Final Court decisions about the easement rights:

Article 31- When a final court decision about cancellation of an easement right or imposition of an easement right is given to the execution office, the enforcement agency sends an execution notification within a seven-day period as stated under Article 24. If the debtor contests this, the final court decision is executed by force.

f) The following article is included on the condition it follows Article 31:

Execution of final court decision about the merchant vessels and related real rights:

Article 31/a- Court decisions about the merchant vessels and related real rights, no matter what its flag and whether it is deed registered, cannot be executed before it is finalised.

If a decision is given in favour of the litigant party in lawsuits for registered Turkish merchant vessels and related real rights, the court notifies adjudication to the Merchant Vessel Registry Authority without requesting the litigant party's will. An annotation is put on the Merchant Vessel Register. If the decision is finalised to the disadvantage of the litigant party, the court also sends the summary of this final decision to the Merchant Vessel Registry Authority. The court makes the notifications to the nearest embassies where the foreign-flagged merchant vessels belong without considering the registration. Without having a new final court decision on the disadvantage of the party and who holds possession of the merchant vessel, the execution is made in accordance with paragraph 3 of this article after the annotation is put on the merchant vessel register.

Without considering its flag and whether it is registered or not, when a final court decision on the evacuation and confession of a merchant vessel is submitted to execution office, enforcement agency charges the debtor on evacuation of the merchant vessel within seven days period via executionary order. In the executionary order the following are stated: the names and addresses of the creditor and debtor and their agents, if any, the name of the

court rendering the decision, identification of the merchant vessel subject to evacuation and transfer, the date and number of the final court decision and the notification for processing this execution unless a cancellation of execution decision from execution court or appeal or is submitted.

If the debtor does not execute this order although possessing the merchant vessel, the final court decision is executed by force. If the debtor does not possess the merchant vessel, the creditor can execute one of the following written options:

1. The creditor can ask for the collection of the final court decision value for the merchant vessel. If the debtor does not pay this amount, the amount is confiscated from the debtor without additional notification for an executionary order. If the value of the merchant vessel is not written in the final court decision and the parties do not agree on such value, court experts assigned by the enforcement agency decide on the value. Court experts use the value of the vessel during the valuation process.

2. The creditor can use the rights of the debtor against a third party who owns the merchant vessel. If the third party possesses the merchant vessel based on an agreement registered with merchant vessel deed which is made after the lawsuit and before the final court decision, the paragraph 1 clauses are applied.

If the debtor or the third party re-utilises the merchant vessel, it is returned to the creditor and the debtor is evicted by force without an additional court decision.

Goods not included in the final court decision but stated as being part of the merchant vessel are removed and given to the debtor if not already delivered to the assignee. If none of those parties are found, those goods are taken from the creditor and kept in a safe place or with the ancillary receiver on condition that the fees are charged to the debtor in the future; and based on the immediate written notice made by execution office, the debtor either declares receipt of the goods or pays the fees within five days, if the debtor is in same location as the execution office or within 30 days if the debtor is a different location from the execution office. Optionally, when necessary, the enforcement agency can sell the goods and collect the charges and fees after obtaining the execution court decision. Any excess amount is deposited in name of the debtor in a bank determined in the regulations of Ministry of Justice.

When a final court decision about establishing hypothec or usufruct right on registered Turkish merchant vessels submitted to execution office, the enforcement agency sends a collection order within a seven-day period, as stated under paragraph 3. If the debtor does not execute the order, the order is executed by force.

Article 30 is applied on the execution of the final court decision about execution or non-execution of an item for a merchant vessel and not captured under former paragraphs.

g) The term “to the deed and to the registered office if it is a seized merchant vessel” which is stated under sub-clause 2, paragraph 1, Article 91 is changed to “the deed registry office”; and the term “above-mentioned offices” in paragraph 2 is changed to “to the deed registry office”.

h) The term “within rented property or within registered merchant vessels” which is stated in the seventh paragraph of Article 97 is changed to “within rented real properties or merchant vessels”.

i) Article 136 is changed together with its heading as follows:

Application of the terms about the selling of real properties on merchant vessels:

Article 136- Terms about the selling of real properties are applied to all registered merchant vessels without considering the flags. The term ‘deed registry’ refers to merchant vessel registry, ‘hypothec’ refers to merchant vessel hypothecs and ‘easement right’ refers to easement right on all the registered merchant vessels in these clauses.

j) The following article is included on condition it follows Article 144:

Application of terms about the allocation of cash for merchant vessels:

Article 144/a- The terms regarding allocation of the cash are also applied during the sale of the merchant vessel. The list prepared in accordance with Article 140, which shows the sequence of payments to the creditors, is subject to Articles 1389 to 1397 of the New Law for all merchant vessels without considering the flag and whether it is deed registered.

The execution office that liquidates the merchant vessel which is registered with the Turkish Merchant Vessel Deed performs the cancellation and transfer of the deed registered hypothec and usufruct right records and makes notification for execution to the embassies to which the foreign flagged merchant vessels belong.

k) The following article is included on condition it follows Article 153:

Application of the terms about the converting the pledge into cash for merchant vessels:

Article 153/a- The terms about converting the convertible pledges into cash is also applied on the conversion of the retention right on a merchant vessel into cash and on the conversion of the pledge right provided by a receivable on a merchant vessel into cash without considering the flag and whether or not it is deed registered.

The terms on converting the hypothec into cash is also applied on converting the merchant vessel hypothecs into cash. The term ‘real property’ refers to the merchant vessels registered either in Turkey or in abroad; ‘deed registry’ refers to deed of merchant vessels and ‘hypothec’ refers to merchant vessel hypothecs stated under these articles. During conversion of the merchant vessel hypothecs into cash, the execution office at which the merchant vessel is seized as a precaution or where the merchant vessel is registered is in charge.

Mutual terms on conversion of conveyable pledge or hypothec into cash are also applied on the conversion of the pledge rights on merchant vessels into cash; indeed:

1. The period stated under paragraph 1 of Article 150/e of the New Law is three months for all the merchant vessels without considering the flag and whether it is deed registered.

2. Article 1337 of the New Law is applied as a replacement for Article 150/h.

3. The list prepared in accordance with paragraph 2 of Article 151, which shows the sequence of payments to the creditors, is subject to Articles 1389 to 1397 of the New Law for all merchant vessels, without considering the flag and whether or not it is deed registered.

4. Article 1052 and 1053 of the New Law are applied as a replacement to Article 153.

l) Article 179/a is changed as follows:

Article 179/a- In the event that postponement of bankruptcy is requested, the court immediately assigns a trustee for inventory arrangement and for replacement of the board or for approving the BoD decisions; in addition the necessary precautions are taken to protect the property of the company and cooperative.

The decision on the assignment of trustee, the duties of the trustee as specified by the court and representation right and its boundaries and the request on postponement of bankruptcy are published and registered with the Trade Registry by the court together with the procedures stated under paragraph 2 of Article 166. In the meantime, the court rules on the postponement of the request for bankruptcy.

If the bankruptcy is postponed, the trustee reports to the court every three months regarding whether the company is experiencing recovery in accordance with the project; the court evaluates the postponement decision based on this report or based on a court expert report, when needed, and if it decides that the recovery is not possible, the court cancels the postponement.

m) Sub-clause 2, paragraph 3, Article 206 is excluded and the following paragraph is included in the article:

The list showing the sequence of payments to the creditors is subject to Articles 1389 to 1397 of the New Law for all the merchant vessels without considering the flag and whether or not it is deed registered.

n) Sub-clause 4, paragraph 1, Article 288 is excluded from the article.

o) Paragraph 7 of Article 24, paragraph 2 of Article 27, paragraph 4 of Article 92, paragraph 5 of Article 144, paragraph 3 of Article 153, and paragraphs 4 and 5 of Article 257 are superseded.

(3) Turkish Commercial Code about the Validity and Exercise form with code number 6763 and dated 29/6/1956 is superseded.

### **Rules and regulations**

**Article 42-** (1) The New Law and the rules and regulations in accordance with this code should be published within one year of the publication of the New Law.

(2) Until the rules and regulations stated under the first paragraph are published, justifiable clauses of the rules and regulations settled in accordance with Code Nos. 6762 and 6763 or those settled in accordance with the other codes which are superseded by the New Law can be applied. Unjustifiable clauses can be applied once amended appropriately.



(3) Required arrangements in a period less than the one stated under paragraph 1 can be done by amendments to the rules and regulations stated in paragraph 2.

**Effective date**

**Article 43-** (1) This code comes into effect on 01 July 2012.

**Execution**

**Article 44-** (1) The Council of Ministers executes the New Law.

# **FOREIGN DIRECT INVESTMENT LAW**

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**Law No. 4875**

**Date of Passage:** June 5, 2003

**Date of Official Gazette:** June 17, 2003

## **OBJECTIVE AND SCOPE**

**Article 1.** The objective of this Law is to regulate the principles to encourage foreign direct investments; to protect the rights of foreign investors; to define investment and investor in line with international standards; to establish a notification-based system for foreign direct investments rather than screening and approval; and to increase foreign direct investments through established policies. This Law establishes the treatment to be applied to foreign direct investments.

## **DEFINITIONS**

**Article 2.** The terms used in this Law shall have the following meanings:

### **a) Foreign investor:**

- 1) Real persons who possess foreign nationality and Turkish nationals resident abroad, and
- 2) Foreign legal entities established under the laws of foreign countries and international institutions, who make foreign direct investment in Turkey.

### **b) Foreign direct investment:**

- i) Establishing a new company or branch of a foreign company by foreign investor,
- ii) Share acquisitions of a company established in Turkey (any percentage of shares acquired outside the stock exchange or 10 percent or more of the shares or voting power of a company acquired through the stock exchange)

by means of, but not limited to the following economic assets:

- 1) Assets acquired from abroad by the foreign investor:
  - Capital in cash in the form of convertible currency bought and sold by the Central Bank of the Republic of Turkey,
  - Stocks and bonds of foreign companies (excluding government bonds),
  - Machinery and equipment,
  - Industrial and intellectual property rights;
- 2) Assets acquired from Turkey by foreign investor:
  - Reinvested earnings, revenues, financial claims, or any other investment-related rights of financial value,
  - Commercial rights for the exploration and extraction of natural resources.

**c) The Undersecretariat:** The Undersecretariat of Treasury.

## **PRINCIPLES CONCERNING FOREIGN DIRECT INVESTMENTS**

### **Article 3.**

#### **a) Freedom to Invest and National Treatment**

Unless stipulated by international agreements and other special laws:

1. Foreign investors are free to make foreign direct investments in Turkey,
2. Foreign investors shall be subject to equal treatment with domestic investors.

#### **b) Expropriation and Nationalisation**

Foreign direct investments shall not be expropriated or nationalised, except for public interest and upon compensation in accordance with due process of law.

#### **c) Transfers**

Foreign investors can freely transfer abroad: net profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or special financial institutions.

**d) Access to Real Estate** (annulled by B.2003/71, R: 2008/79 decision of the Constitutional Court dated of 03/11/2008)

#### **e) Dispute Settlement**

For the settlement of disputes arising from investment agreements subject to private law and investment disputes arising from public service concessions contracts and conditions which are concluded with foreign investors, foreign investors can apply either to the authorised local courts, or to national or international arbitration or other means of dispute settlement, provided that the conditions in the related regulations are fulfilled and the parties agree thereon.

#### **f) Valuation of Non-Cash Capital**

Non-cash capital is valued within the regulations of Turkish Commercial Law. In case that stocks and bonds of companies established abroad are used as foreign capital share of foreign investors, the values determined by the relevant authorities in the home country, or by the experts designated by the courts of the home country, or any other international institutions performing valuations will be accepted.

### **g) Employment of Expatriates**

Work permits are issued by the Ministry of Labour and Social Security for foreign personnel to be employed in the companies, branches and entities established within the scope of this Law.

In accordance with the Article 23 of the Law on Work Permits for Foreigners No. 4817 dated 27 February 2003, the definition of the key personnel within the scope of the Regulation the companies and the entities with foreign capital which shall be in the context of the Regulation, and other special procedures and principles concerning the work permits of the key personnel will be determined in a Regulation to be prepared jointly by the Undersecretariat of Treasury and the Ministry of Labour and Social Security,

Provisions stipulated in Article 14, paragraph 1, sub-paragraph (b) of Law No. 4817 will not be applicable to those personnel to be employed within the context of this Regulation. The conditions under which the provisions stipulated in paragraph 1 of Article 13 of Law No. 4817 are to be applied to key foreign personnel employed will be specified in the Regulation.

### **h) Liaison Offices**

The Undersecretariat is authorised to permit foreign companies established under the laws of foreign countries to open liaison offices, provided that they do not engage in commercial activities in Turkey.

## **DETERMINATION OF POLICIES AND DATA COLLECTION**

**Article 4.** Considering the objectives of the development plans and annual programs, the general economic status of the country, trends in international investments and the opinions of the relevant public institutions and private sector professional organisations, the Undersecretariat is authorised to determine the general framework of policies concerning foreign direct investments, and for this purpose to participate in the activities of other organisations. The consent of the Undersecretariat shall be taken before any amendment or enactment of a regulation related with foreign direct investments.

For the purpose of establishing and developing an information system related to foreign direct investments, the Undersecretariat is authorised to request statistical information concerning the investments from all public establishments and institutions and private sector professional organisations.

Foreign investors shall submit the statistical information on their investments according to the procedures and principles to be determined by a regulation to be enacted by the Undersecretariat. Such information cannot be used as evidence other than for statistical purposes.

## **OTHER PROVISIONS**

### **Article 5.**

#### **a) Existing Companies with Foreign Capital**

The companies with foreign capital established pursuant to Law No. 6224 dated 18 January 1954 shall be subject to this Law, reserving their granted rights.

#### **b) Regulations**

The implementing principles for this Law will be determined in a regulation to be prepared by the Undersecretariat within one month following the publication of the Law.

#### **c) Repealed Provisions**

The Law for Encouragement of Foreign Capital No. 6224 dated 18 January 1954 is repealed.

The references made to Law No. 6224 in the legislation are considered as referring to the related provisions of this Law.

**d)** Any amendments concerning the articles of this Law can only be done by means of amending or appending provisions to this Law.

**PROVISIONAL ARTICLE 1.** The provisions of the decrees, communiqués and circulars in effect, which are in conformity with this Law, shall remain in force until new regulations for the implementation of this Law take effect.

## **EFFECTIVENESS**

**Article 6.** This Law shall come into force on the date of its publication.

## **ENFORCEMENT**

**Article 7.** The provisions of this Law shall be enforced by the Council of Ministers.

**THE LAW OF THE UNION OF CHAMBERS AND COMMODITY EXCHANGES OF  
TURKEY, AND THE CHAMBERS AND COMMODITY EXCHANGES**

**UNOFFICIAL TRANSLATION**

**Law No. 5174**

**Date of Adoption: May 18, 2004**

**SECTION ONE  
Purpose, Scope and Definitions**

**Purpose**

**ARTICLE 1.** – The Law of the Union of Chambers and Commodity Exchanges of Turkey and the Chambers and Commodity Exchanges (the “Law”) aims to regulate the principles of the establishment and the operation of the chambers of commerce and industry, the chambers of commerce, the chambers of industry, the chambers of maritime commerce, commodity exchanges and the Union of Chambers and Commodity Exchanges of Turkey.

**Scope**

**ARTICLE 2.** – The Law specifies the principles of the establishment of chambers of commerce and industry, chambers of commerce, chambers of industry, chambers of maritime commerce, commodity exchanges and the Union of Chambers and Commodity Exchanges of Turkey, and of the characteristics and election procedures within their organs, circumstances and procedures concerning the loss of their organic characterizations, duties, powers and working principles of such organs, their rights and obligations *vis-à-vis* their members, and their incomes, expenses, and budgets.

**Definitions**

**ARTICLE 3.** – In the implementation of this Law, the terms express the followings:

- a) Ministry: The Ministry of Industry and Trade,
- b) Chamber: Chamber of commerce and industry, chamber of commerce, chamber of industry and chamber of maritime commerce,
- c) Commodity Exchange: Product exchanges having the title of commodity exchange and product specific commodity exchanges,
- d) Union: The Union of Chambers and Commodity Exchanges of Turkey,
- e) Personnel: Employees of chamber, commodity exchange and the Union.

**SECTION TWO  
Chambers**

**CHAPTER ONE  
General Principles on Chambers**

**Chambers**

**ARTICLE 4.** – Chambers are occupational establishments having the nature of public legal entities established in order to fulfill the common needs of their members, to facilitate such members' occupational activities, to ensure the development of

occupations in line with common benefits, to maintain occupational discipline, ethics and cooperation so as to ensure honesty and trust among their members and in their public relationships, and to perform the services indicated in the Law and the duties that chambers have been conferred by the relevant legislation.

### **Establishment of Chambers**

**ARTICLE 5.** – Chambers are established within the provinces with the decision of the Ministry upon affirmative opinion of the Union.

In order for a Chamber to be established in a province, it is necessary that at least one thousand merchants and/or industrialist or those dealing with maritime commerce that have registered to the trade registry and have the qualities indicated under the Law shall apply to the Union in writing.

In order for a separate chamber of industry to be established in a province, a written request of at least half of the industrialists operating in such province is required.

In case of industrialists departed from the current chamber of commerce and industry establishing an independent chamber of industry, the chamber of commerce and industry in that province shall be named as the chamber of commerce, provided that the legal procedures and principles have been conformed with.

Upon the establishment of the current chamber of commerce and industry as separate chambers, half of the annual and cumulative subscription fees that are paid to the chamber of commerce and industry in previous year by industrialists shall be transferred to the newly founded chamber of industry in three months following the finalization of the election of organs of such chamber of industry.

Geographical regional chambers shall be established by the decision of the Ministry after the affirmative opinion of the Union and upon the application of more than half of the total members in regional provinces to the Union in writing or with the decision of two third of total members of each province chamber councils separately.

In application of this Law, workplaces creating added value by producing a new product serially or in standard form, operating in order to change the characteristic, content, composition or figure of raw material, semi-finished and finished products in partly or in full by using moving power such as workbench, equipment, machine; operators running places where underground resources are disentrapping and processed; and producers of information technology and software, shall be deemed as industrialists, provided that at least ten employees are employed.

However,

a) Tailors who do not produce ready-wear in mass production, bakeries that do not operate as plants, restaurant operator, clothes cleaner and the like and enterprises selling their products not in wholesale but in retail directly to the consumers, such as shoemakers, confectioners, and sweetshops,

b) Sewage treatment, straining and distribution plants located in provinces, towns and villages,

c) Places that are allocated for the plant, animal or animal products to be processed and evaluated by the producers themselves via planting, sowing, maintaining and breeding in the land for processing, provided that no external raw material of the type of production is taken,

d) Places that are operated for training and education purposes such as workshops and laboratories of universities, vocational high schools and similar schools that make production, vocational courses and workshops in prisons,

e) Military industrial enterprises whose operations are affiliated directly to the organization of Ministry of National Defense,

Shall not be deemed as industrialists.

The following real persons or corporate bodies, who are registered to the trade registry, may apply in order to establish a chamber of maritime commerce:

a) Ship owners, freight owners, joint ship-ownership and ship operators,

b) Shipping agencies,

c) Brokers for purchase and sale of ships, freight brokers, forwarders;

d) Stevedore and tally companies,

e) Ship classification societies, maritime insurance institutions and agencies, and maritime expertise institutions and surveyors,

f) Companies dealing with purchase and sale of marine equipment, ship chandleries and marine industry equipment and companies dealing with supply and provision of fuel for ships,

g) Companies operating marinas and harbours,

h) Companies operating ships for fishing,

i) Companies dealing with yachts tourism, shipping for fishing, cage fishing, underwater services, journey boats, cruise tourism, depth sources and sea soils, cleaning of sea wastes and environment, ship and yacht building and related industry companies, and companies dealing with surface and underwater sports.

However, at least ten percent of the applicants should be ship owners.

### **Establishment and operation fields of chambers**

**ARTICLE 6.** – Establishment and operation fields of chambers are the territories of provinces. Another chamber with the same title within the fields of establishment and operation shall not be established.

The operation fields of chambers may be extended or broadened by the Board of Directors of the Union as comprising surrounding provinces, which extension shall be valid until the relevant chamber is established in those provinces.

### **Branches of chambers**

**ARTICLE 7.** – In case that the number of merchants and/or industrialists operating in a district exceed one thousand, a branch of a chamber of commerce and industry or a chamber of commerce, when the number of industrialists operating in a district exceed two hundred and fifty, a branch of a chamber of industry; when the number of marine merchants operating in a district exceed one hundred, a branch of a chamber of maritime commerce shall be established upon the proposal of the board of directors and the decision of the assembly of the relevant chamber, provided that these chambers are of the same nature of the chamber established in the province where the relevant district exists.

Regional chambers may establish branches in the provinces they comprise. Upon the establishment of a regional branch, the founder provincial chambers shall be transformed into branches. District chambers may be transformed into a branch of the provincial chamber upon the decision taken by their assemblies by two thirds of their total membership.



At least ten-member assembly shall be established in branches through election by a judicial supervision among the members of merchants or industrialists operating in the relevant district. The members of the Assembly shall elect a chairman, a deputy chairman and five-member board of directors among themselves. The same number of alternate members shall also be elected. The board shall appoint a branch chairman and a branch deputy chairman and also one accountant among themselves.

Upon the proposal of the board of directors and the approval of the assemblies, chambers may assign some of their authorities to the branch assembly.

Procedures and principles in terms of the establishment and the operation of branches, their budgets, duties of chambers which shall be executed by the branches and other issues shall be determined by a regulation enacted by the Union.

### **Representatives of chambers**

**ARTICLE 8.** – A representative office of the chamber in the districts, towns and industrial zones and organized industrial zones, which do not have a representative office, may be established upon the proposal of the board of directors of the chambers and the decision of the assembly of the chamber.

Chamber representation is carried out by a member or a chamber personnel appointed by the chamber's board of directors. Necessary personnel to assist the representative of the chamber shall be appointed by the chamber's board of directors by determining their authorities.

The duties and authorities that are granted to the representatives of the chambers shall be determined by a regulation enacted by the Union.

It is not permitted for the chambers to establish a branch, representation and likewise offices in the places out of their operation fields.

### **Compulsory registration to the chambers**

**ARTICLE 9.** – Merchants registered in the trade registry and all real persons and corporate bodies possessing the title of industrialist and maritime merchants in accordance with article 5 and all their branches and factories are obliged to register with the chamber in which they are located. Member registrations made in respect of the profession groups shall be kept up-to-date in a shared electronic database constituted within the Ministry and Union.

Although it is affiliated with a central office, places that have separate capital and separate accounting and/or although their accounts are kept in the central office and does not have a separate capital, places performing industrial activity and commercial transaction by themselves and sale stores, whether they are in the operation field of the chamber that the central office exists or of another chamber, shall be deemed to be a branch within the implementation of this Law.

Industrialists, who are located on the provinces that a chamber of industry is established, they also fulfill the obligation of registering to the chamber of commerce by registering to the chamber of industry. Commercial activities that industrial business owners engaged in due to their industrial characteristic businesses shall not abolish their industrialist character; they may also register to a chamber of commerce, if they wish so.

In case industrialists open more than one sales stores in order to sell their industrial products, they are obliged to register to a chamber of commerce and industry, or a chamber of commerce, where their sale stores are located, for the surplus; in case

they engage in different commercial activities besides the sale of their industrial products, they are obliged to register to a chamber of commerce and industry or a chamber of commerce.

Economic enterprises and their branches whose total capital belong to the State and special administrations or municipalities or their partnership, enterprises with legal entities that are affiliated to the State and special administrations or municipalities or their branches and factories, which are established by a special law or agreement, are obliged to register to the chambers in the city they are located in.

Maritime merchants mentioned in article 5 and those dealing with maritime commerce mentioned in paragraph 5 who are real persons and corporate bodies registered to trade registry are obliged to register to chamber of maritime commerce they are located in. By registering to the chamber of maritime commerce the foregoing persons are deemed to fulfill their obligation in respect of registering to other chambers. However, if the foregoing persons, engage in activities other than those that are obliged them to register to chamber of maritime commerce, they are also obliged to register to the relevant chamber.

Real persons and corporate bodies as well as their branches that are obliged to register to the chambers, cannot be forced to become members and pay subscription fees to the other professional organizations having legal entities, union and establishments.

Persons, who do not comply with the registration obligation stated in this article in one month, shall be registered by chambers *ex officio* and such situation shall be notified to them.

#### **Notification of amendments**

**ARTICLE 10.** – The persons, who are obliged to register to the chambers, are obliged to notify any changes in their status and the changes required to be registered and announced in accordance with the Turkish Commercial Code to the chamber they are registered, in one month upon the occurrence of change. If the relevant chamber is informed about a case which is obliged to be registered however is not registered in legal form and time limit, the chamber shall inform the relevant trade registry office about the situation in order for them to make the required record changes. The trade registry office is obliged to make necessary changes upon the notification of the chamber.

The member's names, whose addresses and statuses cannot be identified tracing back to last two years from the current year and who have not paid their subscription fees within that period, shall be struck off the profession groups and electoral lists and their subscription fees accrual shall be ceased with a decision taken by the board of directors of the chamber. The board of directors of the chamber is liable in respect of carrying out the provision of this paragraph in January of each year.

In case that the concerned person does not apply to the chamber, which he is registered, in order to inform it about the address and status of him in a period of two years following the beginning of the year of the resolution of the chamber's board of directors mentioned in the above paragraph, the trade registry office is notified for the struck off the trade register *ex officio* with the proposal of the board of directors of the chamber and the decision of the assembly, The chamber record shall be deemed struck off by the first date of the next month following the notification date. If the members inform the chamber about their status in that period, the accrual of their subscription fees shall be commenced. However, persons in this situation cannot be re-recorded to the electoral lists, until all subscription debts are paid.

Announcements regarding the striking off the records *ex officio* from the trade registry or upon the members own request in respect of quitting business shall be published in the Turkish Trade Registry Gazette free of charge.

The records of members of chamber of industry ascertained to have lost their industrial characteristics by an application or *ex officio* determining shall be removed from the chamber of industry. However, in case where the persons, who are not registered to the chamber of commerce, carry on their commercial activities, their situation shall be notified to the relevant chamber of commerce in order to make *ex officio* registration.

For members, who gained the title of industrialist while they are registered to a chamber of commerce, in case their merchant feature still exists, without being removed from the register; and if it does not, being removed *ex officio* from the register, the chamber of commerce shall notify the chamber of industry regarding the change of status and the registration of member within 30 days maximum.

### **Competence, representation and signature authority in chambers**

**ARTICLE 11.** – Chambers are authorized to sell, purchase, build, parcel, merge, pledge movable and immovable property, borrow money, expropriate, support and encourage social activities, donate and aid, to establish schools and classrooms, grant scholarship, institute charitable corporation or become partner of an already instituted charitable corporation in line with the provisions of this Law and make similar legal transactions.

The legal representative of the chamber is the chairman of board of directors.

A chamber is bound with the joint signature of the chairman together with either at least one member of the board of directors or the secretary general.

### **Duties of chambers**

**ARTICLE 12.** – The duties of chambers are as follows:

a) To protect and progress professional ethics, discipline and solidarity, to work for the progression of the commerce and industry in conformity with public interest.

b) To compile the information and news regarding commerce and industry and to give them to persons concerned, to provide information that is requested by official authorities in accordance with relevant laws and especially to provide any kind of information that may be needed by the members during the performance of their work upon their request or to make it easy for their members to acquire such information, to take initiatives to lead their members with regard to electronic commerce and internet network, and to establish and put into operation the required infrastructure for these activities.

c) To make all kinds of researches with regard to commerce and industry, to keep records of indexes and statistics concerning economical, commercial and industrial activities, to follow and record the market prices of main products and distribute them with proper instruments.

d) To issue and approve the documents set out in article 26.

e) To make offers, requests and applications to official authorities with regard to their professional activities, to bring a suit, by a decision from the assembly, on behalf of himself or members when all or some of the members have professional interest.

f) To determine commercial and industrial customs in their professional fields, to submit them to the Ministry for approval, and to announce them.

g) To take professional decisions that the members are obliged to comply with.

h) To participate in domestic and overseas fairs and expositions.

i) When deemed necessary, to determine and approve the maximum price tariffs for goods and services for their members listed in article 125 of Law No. 507 on the Craftsmen and Tradesmen in conformity with the regulation that will be enacted by the Ministry.

j) To work for improvement of maritime commerce in accordance with public interest, national transportation and maritime commerce policy.

k) To make examinations concerning national and international maritime commerce and provide information on this subject, to collect information concerning the freight, agency commissions and fees and port expenses etc. between the ports of Turkey and overseas ports and distribute them as rapidly as possible with appropriate instruments, to monitor current affairs in world maritime commerce, to keep the statistics and to announce them to relevant persons.

l) To determine and announce the customs and applications regarding maritime commerce, to prepare the standard forms of freight agreements, bill of lading and similar documents.

m) To give information to foreign ship owners, freight owners, and institutions related to maritime business concerning advantages, working types, tariffs, of the ports, and port expenses and to acquire the similar information from them.

n) To become member of international organizations relating to maritime commerce and have delegates in such organizations.

o) To act as an arbitrator over the disputes concerning maritime commerce, if requested by the relevant persons,

p) To prepare service price tariffs for maritime agency and to submit them to the Ministry for approval.

r) To perform the duties assigned by other legislations and the duties that will be assigned by the Ministry and the Union in accordance with the relevant laws.

s) To keep the members' record in accordance with the standards set out by the Union and to save the documents with regard to the membership dues and to submit them to the Union whenever it is requested.

t) In case where the works, which are given to the ministries and other public institutions by the legislation, are given to the chambers in the framework of their establishment purpose and working fields that are stated in this Law, these chambers shall carry out these works.

u) To give the documents needed by the members and to render the services regarding those documents.

v) To assess the applications for the fairs organized domestically and to make an offer to the Union in that regard.

y) To examine the consumer's complaints regarding their members and to do other activities in line with their establishment purposes.

z) To issue capacity reports for industrialists by the chambers of commerce and industry, and at the provinces where the commerce and industry chambers are separated, by the chamber of industry.

In addition, the chambers, within the framework of the provisions of legislation, perform other duties as follows:

a) To establish or to participate in laboratories oriented to determine the quality of the commercial goods, to establish or participate in international calibration, testing laboratories, to render certification services,

b) To open courses regarding commercial, maritime business and industry, to assist the courses that have already opened, to train students in abroad or domestically for required areas and to provide trainees under the permission and supervision of the Ministry of National Education; to work on improvement and orientation of the professional and technical education and training, to issue documents related to the

foregoing application of the profession branches that are not covered by the Law No. 3308 on Professional Education Law to the limits of the offices of their members,

c) To be an arbitrator in commercial and industrial disputes and to form arbitration boards, upon the request of the relevant persons,

d) To participate in exhibitions, fairs, public warehouses, storages, museums and libraries that are already opened or will be opened,

e) To establish and manage industrial sites, industrial zones, organized industrial zones technology improvement zones, techno-parks, technology centers in places where the Ministry finds appropriate; to be a founder and manager or just manager of free zones, operate warehouse and to establish and operate fair areas, congress centers and commercial centers or to participate to the already established ones in the framework of Law No. 3218 on Free Zones.

## CHAPTER TWO

### Organs of the Chamber, Establishment and Duties of Organs

#### **Organs of the chamber**

**ARTICLE 13.** – The organs of the chamber are as follows:

a) Profession Committees.

b) Assembly.

c) Board of Directors.

d) Board of Discipline.

#### **Profession committees of chambers**

**ARTICLE 14.** – Profession committees of chambers shall be composed of five or seven persons, and five, seven, nine or eleven persons for the chambers exceeding ten thousand members, to be elected by profession groups for a period of four years. Alternate members of the same number of principal members shall also be elected.

Committee elects a chairman and a deputy chairman among its members for a period of four years.

Real persons and real person representatives of legal entities elected for profession committee shall only perform duties in either the profession committee of chambers and commodity exchanges within the borders of the same field of activities, or in chambers established in accordance with the Law No. 507 of July 17, 1964.

Principles that are complied with in grouping of professions and the determination of the number of profession committee members and other issues shall be determined by a regulation to be prepared by the Union.

#### **Duties of profession committees of chambers**

**ARTICLE 15.** – The duties of profession committees of chambers are as follows:

a) To execute examinations regarding their professions, and to make proposals for discussion to the board of directors concerning measures that they consider beneficial and necessary for their field of activities.

b) To decide on the attendance of the chairman, the deputy chairman and the suitable members attend to the assembly meeting without voting about the issues on of the assembly's agenda in connection with profession committees.

c) To research and respond to the request of information on matters regarding their professions, upon request by the assembly or the board of directors.

d) To perform all other duties conferred by relevant legislation.

## **Chamber assembly**

**ARTICLE 16.** – The chamber assembly is composed of members to be elected by profession committees for a period of four years. In profession committees composing of five persons, two out of five, in committees composing of seven persons three out of seven, in committees composing of nine persons, four out of nine, in committees composing of eleven persons five out of eleven members shall be elected as assembly members. The same number of alternate members shall also be elected.

The assembly shall elect a chairman and one or two deputy chairmen among their members for a period of four years.

Real persons and real person representatives of legal entities elected for assembly membership may perform duties only in the assemblies of the chambers and commodity exchanges in the same field of activity and in the chambers established in accordance with the Law No. 507 dated July 17, 1964.

The chairman and the deputy chairmen of the assembly shall not be elected as chairman and member to the board of directors and to the board of discipline.

Those performed duty as chairman of assemblies for two years consecutively shall not be re-elected to perform the same duty unless two election periods have been passed by.

## **Duties of assembly of chamber**

**ARTICLE 17.** – The duties of the assembly of chamber are as follows:

a) To elect members of the board of directors and of the board of discipline of the chamber.

b) To elect delegates for the general assembly of the Union among their members.

c) To examine and decide upon the proposals made by the board of directors.

d) To take mandatory professional decisions.

e) To determine and announce commercial and industrial customs and practices within their working fields.

f) To review and approve monthly balances and transfer requests.

g) To establish arbitral institutions in order to settle the disputes arisen among their members or from the agreements contracted by members in the case where it is stated in the agreement, to approve the lists of arbitrators and experts to be requested by courts.

h) To grant decisions on the penalties proposed by the board of discipline regarding the members registered to the chamber.

i) To approve annual budgets and final accounts and to discharge the board of directors, to commence proceedings against those who prove to be liable.

j) Chambers are authorized to sell, purchase, build, parcel, unify, gage immovable property, to borrow money, to expropriate, to build school and courses, and in accordance with the provisions of this Law to constitute corporation and foundation or become partner of already instituted corporations.

k) To accept the internal directive of the chamber and submit it to the Union for approval.

l) To review the objections against the decisions of the board of directors regarding the obligation of registering to the chamber or the degrees of their members and to grant final decisions on them.

m) To establish specialized commissions and consultation boards according to the professions and problems.

n) To be a member to industrial, commercial and economical institutions within Turkey and abroad and to send delegate to their congresses.

o) To review and to decide the proposals of the board of directors, or transfer this authority to the board of directors where necessary for waiving prosecution of receivables that are impossible to be collected, or for exempting and/or re-structuring subscription fee debts and their overdue increases of their members who have deceased, ceased trading and are in difficulty to pay their subscription debts due to *force majeure* events occurred beyond their control such as fire, flood, earthquake and the similar natural disasters, and for suits to be brought against the chamber or its members.

p) To grant honorary membership to persons, who have given important services to the activities of chambers or to Turkish economic life, by a decision taken by the two thirds majority of total members of the assembly.

r) To perform other duties conferred by relevant legislation.

### **Board of directors of the chamber**

**ARTICLE 18.** – The board of directors of a chamber is composed of five persons for chambers having an assembly of less than twenty persons, seven persons for chambers having an assembly of between twenty and twenty-nine persons, nine persons for chambers having an assembly of between thirty and thirty-nine persons, eleven persons for chambers having an assembly of forty and more persons who are elected for a period of four years

The assembly shall elect the chairman, principal and alternate members of the board of directors among its members on a single list basis. The board of directors shall elect one or two deputy chairmen and an accountant member among its members for a period of four years.

Members who have been chairman of the board of directors for two consecutive periods shall not be re-elected to perform the same duty unless two election periods have been passed by.

The chairman and members of the board of directors of a chamber shall not perform duties at the assembly of another chamber or commodity exchange.

The agenda of the meeting shall be determined by the chairman or in his absence by the deputy chairman authorized by the chairman himself. New items shall be inserted in the agenda by the application of at least one third majority of the members of the board of directors until the commencement of the meeting.

### **Duties of the board of directors of the chamber**

**ARTICLE 19.** – The duties of the board of directors of a chamber are as follows:

a) To execute the works of chamber within the framework of the legislation and assembly decisions.

b) To submit the budget, final account and transfer proposals and the reports thereon to the assembly of chamber.

c) To submit the monthly account report to the assembly of the chamber for examination and approval.

d) To give decision regarding the employment, dismissal, promotion and transfer of the chamber staff.

e) To give decision regarding that the board of discipline may execute the inquiries and to ensure that the disciplinary and pecuniary penalties imposed in accordance with this Law are implemented.

f) To prepare lists of arbitrator and experts and submit them to the assembly for approval.

g) To certify the documents stated in this Law and relevant legislation.

h) To prepare and submit an annual report regarding the activity of the chamber in a year and the economical and industrial status of the chamber's region to the assembly.

i) To submit the prepared internal directive of chamber to the assembly.

j) To make all kind of examination with regard to commerce and industry, to keep the records of the indexes and statistics concerning commercial and industrial activities within in working field, to follow and to record the market prices of materials determined by the assembly and announce them with appropriate instruments.

k) To take decisions regarding the discipline process of chamber employees in accordance with the procedures and principles envisaged in this Law and relevant legislation.

l) To reward the members paying taxes, exporting and developing technology in high levels.

m) To support and encourage social activities, to make donations and aids, to grant scholarship, to establish schools and classrooms with the approval of the assembly, provided that the equivalent exists in the budget.

n) To elect arbitrator or arbitral tribunal.

o) To perform other duties conferred by this Law and the relevant legislation to chambers and not exclusively conferred to another organ.

### **Assignment of the authorities of chamber's board of directors**

**ARTICLE 20.** – The board of directors of chamber may assign some of its authorities to the chairman, one or more of its members, or secretary general, where necessary.

### **The board of discipline of the chamber**

**ARTICLE 21.** – The board of discipline of a chamber shall consist of six principal and six alternate members elected by the assembly among members registered to the chamber for a period of four years.

The board of discipline of the chamber shall elect a chairman at its first meeting following the election. In the absence of the chairman, the eldest board member shall preside to the board.

Qualifications required for being a discipline board member shall be determined by a regulation to be enacted by the Ministry upon having affirmative view of the Union.

### **Duties of the discipline board of chamber**

**MADDE 22.** – The duties of the board of discipline of the chamber are as follows:

a) To execute disciplinary inquires against members registered to the chamber in accordance with the procedures and principles envisaged in this Law and relevant legislation.

b) To make proposal to the assembly regarding imposing disciplinary and pecuniary penalties against members registered to the chamber.



## CHAPTER THREE

### Incomes of a Chamber and Budget

#### **Incomes of a chamber**

**ARTICLE 23.** – The Followings are the incomes of a chamber:

- a) Registration fees.
- b) Annual subscription fees.
- c) Cumulative fees.
- d) Fees collected in consideration of the services rendered.
- e) Documentation fees.
- f) Publication fees.
- g) Donations and aids.
- h) Penalties.
- i) Participation profits.
- j) Fees collected from vessels.
- k) Overdue increases.
- l) Movable and immovable capital revenues, company profits and foreign currency incomes.
- m) Tariff approval fees.
- n) Other incomes.

#### **Registration fees and annual subscription fees in chambers**

**ARTICLE 24.** – Members shall be obliged to pay a registration fee upon their registration to a chamber and an annual subscription fee for each year.

The registration fee and the annual subscription fee shall not be less than ten percent and more than half of the gross monthly minimum wage for employees older than 16 years old.

In the initial year of registration when the registration fee is paid, the new member shall not be required to pay further subscription fee. The registration fee and the annual subscription fee shall be determined in line with the tariffs and degrees that are determined in line with the procedures that are set out in the regulation to be enacted by the Union. The tariffs shall become effective upon the assembly's approval of the proposal made by the board of directors of the relevant chamber. The registration fees and annual subscription fees to be collected from the members who are obliged to be registered with more than one chamber shall be determined by the procedures set out in the regulation.

The persons who consider their degrees to be inconsistent with their status of a member, such member may raise an objection before the assembly of the chamber in ten days in accordance with the procedures set out in the regulation. Until the assembly renders its decision on such objection, disputed portion of registration fee and annual subscription fee shall not be collected.

Annual subscription fee shall be paid in two equal installments in June and October. The registration fee and the annual subscription fee for the persons who used to be validly registered from previous year and the registration fees of the persons who are registered during the year shall be paid in one month as of the date of notification.

Members who are registered with branches shall effect a payment in the amount corresponding to the half of the registration and subscription fee as stated in this article.

## **Cumulative subscription fee and freightage**

**MADDE 25.** – The chambers annually collect the cumulative subscription amount corresponding to 0,5% of the income stated in the balance sheet constituting basis for the income tax declarations due to commercial income of real person merchants and industrialists; and commercial budgetary profits constituting basis for corporate tax declarations of merchants and industries established as legal entities.

The payment for cumulative subscription fee of the members who are registered in more than one chambers shall be distributed equally between the relevant the chambers by such member.

Members that incurred losses shall not pay the cumulative subscription fee for such year.

The cumulative subscription fee of the members, who have more than one branch in their working field, shall be determined by taking into account the income made from all those branches or commercial income or trade balance profit that is subject to corporate taxation.

The cumulative subscription fee of factories and corporate branches having separate budgets shall be paid to the chamber located at the place where the branch or the factory is located.

In the case of a legal person keeping a single budget at its principle office and having principle office, branch, and factories at different locations, the cumulative subscription fee shall be paid to the local chamber by the principle office. This chamber shall equally share the cumulative subscription fee with the other relevant chambers in the first three months of the following calendar year.

The cumulative subscription fee of a corporation together with its branches and factories shall not exceed the amount corresponding to amount equaling to the twenty times of the annual subscription fee ceiling set out for that year.

The cumulative subscription fee shall be paid in two equal installments in June and October. The cumulative subscription fee for the members which should have been validly registered as of the previous year shall be paid until the end of the year in which their status has been notified to them.

Members are obliged to submit to chambers, upon their requests, information with regard to their commercial and industrial revenues and balance sheets to the chamber. In addition, chambers may request information from the Taxation Offices in accordance with article 5 of Law No. 213 on Taxation Procedural Law. In case the members fail to submit their budgets and if such budgets could not be obtained from the Tax Authorities, the cumulative subscription fee shall be accrued over the amount of previous year's fees, which shall not be less than three times of the annual subscription fee ceiling of the previous year.

Members registered with branches shall pay half of the cumulative subscription fee as set out in this article.

The amount that is calculated over the ratio determined upon the approval of the proposal of board of directors of a chamber by the assembly, which does not exceed 0,5% and the annual cumulative subscription fee ceiling shall be collected from all freightage fees that are acquired from loading and discharging in Turkish ports by the ships which are under foreign flag, loading and discharging goods at Turkish ports and which are not registered with any chamber in Turkey, and the ships under Turkish flag operated by legal or real merchants who reside abroad; for cruising and passenger ships as per their gross tonnage, by also taking into consideration the international

practice. Such amount shall be paid by themselves or their representatives or agents in fifteen days following the date of the ship's departure from the port to the chamber of maritime commerce located at the region of port or if that chamber is not yet founded, to the chamber of commerce or the chamber of commerce and industry.

#### **Documentation fees and other fees at chambers**

**ARTICLE 26.** – The amount and the ratio of the fees for services rendered by chambers for certified and prepared documents shall be determined by tariffs enacted upon an approval by the assemblies of a proposal of the board of directors. However, the fixed fees shall not exceed the ceiling determined for the annual subscription fee, and the prorate determined relative fees shall not exceed such ceiling and 0,5%. If the services rendered by the Chambers are purchased from third persons, the amount paid for such service shall be collected from the beneficiary of such service by being added to the fees; provided that the cumulative amount shall not exceed two times of the determined ceilings amounts.

The documents prepared or approved, and services rendered by chambers are as follows:

- a) Certification of invoice copies.
- b) Approval of market prices.
- c) Approval of the qualities of the samples of commercial and industrial goods.
- d) Expert reports and capacity reports.
- e) Approvals and annotations showing the registry record of signatories written in affirmative covenants and sureties.
- f) Documents concerning commercial and industrial issues.
- g) Certification of commercial surety.
- h) Documents for allocation and expenditures.
- i) Quality, appropriateness and sample documents.
- j) Domestic good documents.
- k) Approval of signature specimen of the registered members.
- l) Member identities, records and registry transcripts for the members of chamber.
- m) Responding to oral or written questions with regard to the non-confidential information concerning the registry records of its members, provided that they are not in the nature of trade reference certificate.
- n) Registration certificate issued for the heavy construction equipment as per article 22 of Law No. 2918 on Highway Traffic.
- o) TIR carnets, ATA, A.TR and EUR.1 free movement documents, certificate of origin, and EAN -UCC line code transactions, statements on goods and services in international commerce, and other statements or similar documents.
- p) *Force majeure* documents.
- r) Copies of Turkish Trade Registry Gazette.
- s) General and international sectoral services provided to vessels under Turkish or foreign flag.
- t) Trade registry services.
- u) All kind of documents, information and services having commercial and industrial nature.

The fees to be paid to the chamber of maritime commerce by the vessels under either Turkish or foreign flag for services rendered and approvals provided shall be paid in maximum 15 days as of the date related service or approval.

### **Budgets of chambers**

**ARTICLE 27.** – Budgets of chambers shall be prepared by the board of directors of chambers within the context of the type to be prepared and the accounting principles to be determined by the Union and shall be approved by the assembly.

Budgets are arranged on a calendar year basis.

Expenditures shall be made from the budget by an approval bearing joint signature of the chairman of the board of directors or its authorized deputy and the secretary general or accountant member. If the secretary general does not exist, the signature of the accountant member shall be required instead of the secretary general.

The expenditure up to a certain limit determined by the assembly upon the proposal of the board of directors shall be made *ex officio* by the secretary general, provided that expenditures shall be submitted for the approval of the board of directors.

## **SECTION THREE Commodity Exchanges**

### **CHAPTER ONE General Principles on Commodity Exchanges**

#### **Commodity exchanges**

**ARTICLE 28.** – Commodity exchanges are public legal entities established for engaging in purchase and sale of goods that fall under a commodity exchange and as well as determination, registration and announcement of the prices of such goods formed in the commodity exchange in accordance with the principles stated in this Law.

Foreign currency exchanges and exchanges for valuable mines are excluded from the scope of this Law.

#### **Establishment of commodity exchanges**

**ARTICLE 29.** – Commodity exchanges are established by the Ministry upon the affirmative decision of the Union in the provinces in line with the requirements of commercial necessities.

Commodity exchanges having a private nature may also be established to perform country-wide, regional and international activities.

A regional commodity exchange shall be established by the decision of the Ministry upon the application of more than half of the total members in regional provinces to the Union in writing or with the decision of two thirds of total members of commodity exchange assemblies individually and with the affirmative view of the Union. Founder commodity exchanges shall be transformed into a branch by the establishment of the regional commodity exchange.

Country-wide and regional commodity exchanges are also subject to the provisions on commodity exchanges.

Commodity exchanges are obliged to provide sufficient personnel, equipment, infrastructure, appropriate and sufficient organization for the service to be rendered in line with common criteria based on conditions of commodity exchange determined by a

regulation to be promulgated by the Ministry after the affirmative view of the Union is acquired.

The classification of commodity exchanges regarding their specialties shall be determined by a regulation to be promulgated by the Ministry after the affirmative view of the Union is acquired.

Persons residing abroad may perform transactions in commodity exchanges of international nature.

### **Working fields of commodity exchanges**

**ARTICLE 30.** – The working field of the commodity exchange is the province within the border of which it is situated. Such working field may be extended or broadened by the Board of Directors of the Union as comprising the surrounding provinces, which extension shall be valid until the establishment of commodity exchanges in such provinces.

### **Branches of commodity exchanges**

**ARTICLE 31.** – Regional commodity exchanges may establish branches within their working fields. Commodity exchanges may establish branches within their working fields upon decisions of the assembly of the commodity exchange.

An assembly is constituted with at least ten members by election under judicial supervision among the members of commodity exchange, operating at the province and district where the branches are located. Assembly members shall elect a chairman, a deputy and board of directors consisting of five members among themselves. Five alternate members are also elected. The board of directors shall appoint a branch chairman, a branch deputy and an accountant among themselves.

Commodity exchanges may assign some of their authorities to the branch assembly by the proposal of the board of directors and the approval of the assembly.

By the establishment of the regional commodity exchange, founder province commodity exchanges transforms into branches. District commodity exchanges may transform into a province commodity exchange branch by a decision taken two third of their members.

The principles and procedures regarding the establishment and operation of branches, their budgets, duties of commodity exchanges that shall be executed by the branches and other issues shall be determined by a regulation to be promulgated by the Union.

### **Compulsory registration to the commodity exchanges**

**ARTICLE 32.** –The persons engaged in the activity of sale and purchase of the goods that are included in the quotation of commodity exchange, are obliged to register to the commodity exchange they are located. The registration of the persons, who have not acted in accordance with this obligation, shall be done by the exchange *ex officio* and such registration shall be notified to them. The member registrations that shall be done as per the profession groups shall be kept in a common database which is kept up-to-date and which is constituted in the Ministry and Union in an electronic form.

The persons who are obliged to register to the commodity exchanges shall notify to the commodity exchanges where they are registered, any changes in their legal status that is required to be registered and announced according to the Turkish Commercial Code in one month following the change. If the relevant commodity exchange is informed of any changes that are compulsory to be registered but are not registered within the required formation and time limit, then such exchange shall notify

the relevant registry office in order to make the necessary change. The registry office is obliged to make necessary changes upon the mentioned notification.

The branches, liaison offices, factories, representatives, warehouses, purchase and sale places and similar units regardless of their registration at the trade or craftsman registry of the real and legal persons, whose center of business is out of the commodity exchange working field, and who performs activities in the commodity exchange working field are also required to register to the commodity exchange.

The persons whose address and legal status can not be identified for previous two years, and the persons who has not been engaged in the activity of purchase and sale upon commodity exchange goods for previous two years shall be struck off the profession groups and electorate list; accrual of their subscription fees shall be ceased, and they shall not receive the services rendered by the commodity exchange.

If the relevant person shall not apply to the commodity exchange that he is registered in order to inform about his address and legal status within two years from the new year's day following the foregoing decision of the assembly of commodity exchange, his registration shall be erased from the exchange by the proposal of board of directors and the decision of the assembly. The subscription accrual shall be commenced again if the relevant persons inform the commodity exchange about his status in this period. However, if the subscription debts shall not be paid, such persons shall not be recorded in the electorate lists again.

Producer or manufacturers that making sales directly to consumers without producing in bulk of the goods quoted to the commodity exchange shall sell their goods in the commodity exchange without being registered to it.

### **Competence, representation and signature authority in commodity exchange**

**ARTICLE 33.** – Commodity exchanges are authorized to sell, purchase, build, parcel, merge, pledge movable and immovable property, borrow money, expropriate, support and encourage social activities, donate and aid, to establish schools and classrooms, grant scholarship, institute charitable corporation or become partner of an already instituted charitable corporation in line with the provisions of this Law and make similar legal transactions.

The legal representative of the exchange is the chairman of board of directors.

The commodity exchange is bound with the joint signature of the chairman together with either at least one member of the board of directors or the secretary general.

### **Duties of the commodity exchange**

**ARTICLE 34.** – Duties of the commodity exchange are as follows:

- a) To arrange and register the purchase and sale of the goods quoted with the commodity exchange.
- b) To duly determine and announce the daily prices, which occurs in the commodity exchange of the goods quoted with the commodity exchange.
- c) To make general regulations that come into effect by the approval of the Union concerning obligations of seller and purchaser for delivery, acceptance and payment, conditions of liquidation terms of transactions, conditions that have effect upon prices, and arbitration rules for resolving disputes that may arise.

- d) To follow domestic and overseas commodity exchange and markets activities and to communicate the prices, to guide its members concerning electronic commerce and internet networks.
- e) To issue and approve the documents stated in article 51.
- f) To establish laboratories and technical offices or to participate in the ones that have already been established in order to determine types and specialties of the goods quoted with the commodity exchange.
- g) To determine the customs and practices regarding the commodity exchange in its regions, to submit them to the Ministry for its approval and to announce them.
- h) To make offers, wishes and applications to the relevant official authorities with regard to the subjects of activities of the commodity exchange; to bring a suit on behalf of him or members when all or some of the members have interest.
- i) To monitor the agreements, decisions and actions in a character of concerted practice that may have deteriorative effects over the competitiveness, and, in case of determination of any such agreements, decisions or concerted practices, to inform the relevant authorities.
- j) In case that the works, which are given to the ministries and other public institutions by the legislation, are given to the commodity exchanges in the framework of their establishment and working fields that are stated in this Law, these commodity exchanges shall carry out these works.
- k) To provide necessary documents to its members and render services in connection therewith.
- l) To assess the applications to be made on of domestic fairs and make proposals to the Union.
- m) To discharge the duties assigned by other relevant legislation and by the Union and the Ministry in accordance with the relevant Laws.

## CHAPTER TWO

### Organs of the Commodity Exchange, Establishment and Duties of Organs

#### **Organs of an Exchange**

**ARTICLE 35.** –The organs of an exchange are as follows:

- a) Profession committee.
- b) Assembly.
- c) Board of Directors.
- d) Board of Discipline.

#### **Profession committees of the commodity exchange**

**ARTICLE 36.** – Profession committees of the commodity exchange shall be composed of five or seven persons and five, seven, nine or eleven persons for commodity exchanges exceeding ten thousand members, to be elected by profession groups for a period of four years. Alternate members of the same number of principal members shall also be elected.

Committee elects a chairman and a deputy chairman among its members for a period of four years.

Real persons and real person representatives of legal entities elected for profession committee shall only perform duties in either the profession committee of chambers and commodity exchanges within the border of the same field of activity, or chambers established in accordance with the Law No. 507 of July 17, 1964.

Principles that are complied with in grouping of professions and the determination of the number of profession committee members and other issues shall be determined by a regulation to be prepared by the Union.

### **Duties of the profession committees of commodity exchange**

**ARTICLE 37.** – The duties of exchange occupational committees are as follows:

- a) To execute examinations regarding their subjects, and to offer the measures that are seem to be beneficial and necessary for their field of activities to the board of directors in order to be decided.
- b) To decide that the chairman, the deputy chairman and the suitable members attend to the assembly meeting without voting about the subjects of the assembly's agenda in connection with profession committees.
- c) To research and response on matters regarding their operation fields when an information is requested by the assembly or the board of directors.
- d) To perform all other duties conferred by relevant legislation.

### **Commodity exchange assembly**

**ARTICLE 38.** – The exchange assembly shall be composed of the members to be elected by profession groups for a period of four years. In profession committees of five persons two members, committees of seven persons three members, committees of nine persons four members, committees of eleven persons five members shall be elected as assembly members. The same number of alternate members shall also be elected. In exchange markets where at least seven occupational groups are not established, assemblies shall be established with fourteen members who will be elected from the persons registered to the commodity exchange. In addition, the same number of alternate members shall be elected. In this case, the duties of the profession committees shall be carried out by specialized commissions that will be elected by the assemblies.

The assembly shall elect a chairman and one or two deputy chairmen among its members for a period of four years.

Real persons and real person representatives of legal entities elected for assembly membership shall only perform duties in either the assemblies of chambers and commodity exchanges within the same field of activity, or chambers established in accordance with the Law No. 507 of July 17, 1964.

The chairman and the deputy chairmen of the assembly shall not be elected as a chairman and a member of board of directors and board of discipline.

Those performed duty as chairman of assemblies for two years consecutively shall not be re-elected to perform the same duty unless two election periods have been passed by.

### **Duties of assembly of commodity exchange**

**ARTICLE 39.** – The duties of the exchange assembly are as follows:

- a) To elect members of the board of directors and the board of discipline of the commodity exchange.
- b) To elect delegates for the general assembly of the Union among their members.
- c) To examine and decide upon the proposals made by the board of directors.
- d) To determine and announce the customary rules and practices within their working fields.
- e) To examine and approve monthly balance and transfer requests.
- f) To establish arbitral institutions in order to settle the disputes arisen from the transactions performed in the commodity exchange or the agreements contracted in the case where it is stated in the agreement,



g) To approve the list of experts that may be requested by the courts for the resolution of disputes that may occur from transactions made out of commodity exchange.

h) To grant decisions on the penalties proposed by the board of discipline regarding the members of the commodity exchange.

i) To approve the annual budget and final accounts and to discharge the board of directors, and to commence proceedings against those who prove to be liable.

j) To decide, purchase, sell, build, parcel, unify and pledge of immovable and to borrow money, to expropriate and in accordance with the provisions of this Law to become partner of corporations.

k) To accept the internal directive of commodity exchange and to submit it to the Union for approval.

l) To determine that which goods quoted with the commodity exchange may be purchased and sold out of the commodity exchange place provided they have been registered later and to determine the period, not exceeding thirty days, in connection with the registration of the goods that may be purchased and sold in this way.

m) To review the objections against the decisions of the board of directors regarding the obligation of registering to the commodity exchange or the degrees of the members and to grant final decision on them.

n) To establish specialized commissions according to the professions and problems.

o) To be a member to the industrial, commercial and economical institutions within Turkey and abroad and to send delegate to their congresses.

p) To review and to decide the proposals of the board of directors, or transfer this authority to the board of directors where necessary for waiving prosecution of receivables that are impossible to be collected, or for exempting and/or re-structuring subscription fee debts and their overdue increases of their members who have deceased, ceased trading and are in difficulty to pay their subscription debts due to *force majeure* events occurred beyond their control such as fire, flood, earthquake and the similar natural disasters, and for suits to be brought against the commodity exchange or its members

r) To grant an honorary membership to the persons who have given important services to the commodity exchange or to the Turkish economic life by a decision taken by the two thirds majority of all members of the assembly.

s) To perform other duties conferred by the relevant legislation.

### **Board of directors of the commodity exchange**

**ARTICLE 40.** – The board of directors of an exchange shall be composed of, five persons for commodity exchanges having an assembly of less than twenty members; seven persons for commodity exchanges having an assembly of between twenty and twenty-nine persons; nine persons for commodity exchanges having an assembly of between thirty and thirty-nine persons; eleven persons for commodity exchanges having an assembly of forty and more persons who are elected for a period of four years.

The assembly shall elect the chairman, principal and alternate members of the board of directors among its members on a single list basis. The board of directors shall elect one or two deputy chairmen and an accountant member among its members for a period of four years.

Members who have been chairman of the board of directors for two consecutive periods shall not be re-elected to perform the same duty unless two election periods have been passed by.

The chairman or the members of the board of directors of a commodity exchange shall not perform duties at the assembly of another commodity exchange or chamber.

The agenda of the meeting shall be determined by the chairman or the deputy chairman authorized by the chairman in his absence. New articles shall be inserted in

the agenda by the application of at least one third majority of the members of the board of directors, until the commencement of the meeting.

### **Duties of the board of directors of the commodity exchange**

**ARTICLE 41.** – The duties of the board of directors of an exchange are as follows:

- a) To execute the works of commodity exchange within the framework of the legislation and assembly decisions.
- b) To submit the budget, final accounts and transfer requests and the reports thereon to the assembly of commodity exchange.
- c) To submit the monthly account report to the assembly of the commodity exchange for examination and approval.
- d) To decide, in accordance with the relevant procedure, the employment, dismissal, promotion and transfer of the commodity exchange personnel.
- e) To make a decision about the disciplinary actions of the commodity exchange personnel pursuant to the principles and procedures set out in this Law and the relevant legislation.
- f) To give decision regarding that the board of discipline may execute inquiries.
- g) To ensure that the disciplinary and pecuniary penalties imposed in accordance with this Law are implemented.
- h) To determine an arbitration board charged with the settlement of disputes in connection with the transactions performed in the commodity exchange.
- l) To prepare list of arbitrators and experts where requested by the courts for the settlement of disputes that may arise from transactions made out of the commodity exchange and to submit them to the assembly for the approval.
- j) To certify the documents set out in this Law and the relevant legislation.
- k) To prepare an annual report regarding the activity of the commodity exchange in one year and economic conditions of its region and to submit this report to the assembly.
- l) To submit the prepared internal directive to the assembly.
- m) To make all kinds of examinations relevant to the commodity exchange, to keep indexes and statistics and to determine prices of the main materials in commodity exchange and to announce them with appropriate instruments.
- n) To reward the members paying high taxes and registration fees, exporting and developing technology.
- o) To support and encourage social activities, to make donations and aids, to grant scholarships, to establish schools and classrooms with the approval of the assembly, provided that the equivalent exists in the budget.
- p) To perform other duties conferred by this Law and the relevant legislation to the commodity exchanges and not exclusively conferred to another organ.

### **Assignment of the authorities of the commodity exchange's board of directors**

**ARTICLE 42.** – The board of directors of the commodity exchange may assign some of its authorities to the chairman, one or more of its members, or the secretary general where necessary.

### **The board of discipline of the commodity exchange**

**ARTICLE 43.** – The board of discipline of a commodity exchange shall consist of six principal and six alternate members elected by the assembly among members registered to the commodity exchange for a period of four years.

The board of discipline of the commodity exchange shall elect a chairman at its first meeting following the election. In the absence of the chairman, the eldest board member shall preside to the board.

Qualifications required for being a discipline board member shall be determined by a regulation to be enacted by the Ministry upon the affirmative view of the Union.

#### **Duties of the commodity exchange board of discipline**

**ARTICLE 44.** – The duties of the board of discipline of a commodity exchange are as follows:

a) To execute disciplinary inquiries against members of the commodity exchange in accordance with the procedures and principles envisaged in this Law and relevant legislation.

b) To make proposal to the assembly regarding imposing of disciplinary and pecuniary penalties against members of commodity exchange.

### **CHAPTER THREE**

#### **Commodity Exchange Transactions**

#### **The goods quoted to the commodity exchange and their purchase and sale**

**ARTICLE 45.** – Fungible goods that are durable, storable and have sufficient supply and demands in commodity exchanges shall, as wholesale, be purchased and sold as a sample or type basis. Goods whose type is not determined and similar goods that meet the domestic necessities and animals that are alive or been slaughtered may also be considered as goods quoted to the commodity exchange.

Foreign exchange and precious metals are exempted from the scope of this Law.

In places where a commodity exchange is established, the Ministry shall determine which goods are compulsory to purchase and sell in the commodity exchange and the minimum amount of such goods in such purchase and sale upon the proposal of the assembly of the commodity exchange and the affirmative opinion of the Union and shall be announced by the relevant commodity exchange at the relevant place. The Ministry may remove the goods which have not enough supply and demands in the commodity exchange or which are not subject to purchase and sell in market conditions in accordance with commercial practices out of the goods quoted to the commodity exchanges either generally or by the relevant commodity exchange. It may re-determine the goods that may or not be on the quotation of commodity exchanges, regional commodity exchanges and product specialized exchange markets and the minimum purchase and sale amounts of the goods quoted to the exchange. The decisions of the Ministry regarding the above issue shall also be announced by the commodity exchanges at the relevant place.

The purchase and sale for the amounts that exceed the minimum amount of the goods quoted to the commodity exchange within the working field of commodity exchange out of the specified commodity exchange is forbidden. It may be decided that these materials may be purchased and sold out of the commodity exchange place by the assembly beforehand provided that it shall be registered to the commodity exchange within thirty days following the latest transaction day. However, the Union may revoke such exceptional decisions given by the commodity exchanges partly or completely, temporarily and permanently.

#### **Registration of commodity exchange transactions**

**ARTICLE 46.** – The purchase and sale transactions, which are made upon the minimum amount of the goods quoted to commodity exchange, are required to be registered to the commodity exchanges. The sales made by electronic commerce shall also be within the scope of this article.

The transactions made in the places designated by the commodity exchanges shall be registered on the same day; the transactions in connection with the goods permitted to the purchase and sale out of the commodity exchange shall be registered within thirty days at the latest. In case the obligation to register may not be performed

within the specified period without a valid reason, the registration fee in excess of fifty percent shall be collected.

The purchase and sale transactions of fungible agricultural products which have enough supply and demands and which are not quoted to the commodity exchange may be registered to the commodity exchange by the request of the buyer or the seller. Standard contracts in connection with the future and forward transactions relevant to the goods trade of which is subjected to the exchange market shall be prepared by the commodity exchanges. The standard contracts related to futures and forwards regarding the goods quoted to commodity exchange that shall be prepared and registered by the commodity exchange. The contract, product deed and similar documents prepared in accordance with the provisions of this Law shall not be considered as the futures and options contracts made in accordance with the Law No. 2499 on the Capital Markets. The principles regarding the implementation of this paragraph shall be determined by a regulation to be enacted by the Union.

The obligation of registering shall be executed in the following manner:

a) In case the buyer and seller are in the working field of the same commodity exchange, the transaction shall be registered to that commodity exchange by the party selected according to the customs of the commodity exchange and the registration fee shall be paid. In case the party obliged to register is absent, the other party shall be obliged to make the registry and pay the registration fee.

b) In case where one of the buyers or the sellers is within the working field of the commodity exchange and the other is out of the working field of the same;

1) If the commodity exchange exists in the place where both parties are located and the transaction is made via correspondence, telegraph, telex or realized in electronic form, registration shall be made by the party in the place the contract is accepted and finalized to the commodity exchange located in that place and its fee shall be paid. In the event that the place of acceptance and finalization cannot be determined, the transaction shall be registered by the seller to the commodity exchange located at the principle office of the seller and the fee shall be paid by the seller.

2) If the commodity exchange does not exist in the place one of the parties are located or although the commodity exchange exists the goods is not quoted to that commodity exchange or one of the parties is abroad, the transaction shall be registered by the other party to the commodity exchange which is located at the place of his own principle of business and the fee shall be paid by this party.

c) The members registered to the commodity exchange shall register the purchase and sales that they made out of the working field of the commodity exchange and registration transactions out of those stated in this article to the commodity exchanges that they are registered to and shall pay their fees.

d) If one of the parties that purchase and sell out of the working field of the commodity exchange is the producer that has the capacity of neither merchant nor industrialist, the burden of compulsory registration and paying the registration fee in on the other party having the capacity of merchant and industrialist. If both parties dealing with purchasing and selling are producers that have the capacity of neither merchant not industrialist, compulsory registration shall not be implemented.

The rate of the registration fee is maximum 0,2% of the purchase and sale value of the goods and this rate shall be determined by the assembly of commodity exchange. The maximum amount of total registration fee ceiling for each transaction may not be less than ten percent of annual subscription fee ceiling and may not be more than total amount of annual subscription fee. The registration fee rate of product deed is maximum 0,05% of the purchase and sale value.

Registration of export is not subject to any charge.

Commodity exchanges are entitled to supervise whether their members are registering their whole purchase and sale. For this purpose, they may examine the relevant book and documents of their members upon obtaining a decree from judge.

The procedures and principles regarding the implementation of this article shall be determined by a regulation enacted by the Union.

### **The persons dealing with purchase and sale in commodity exchange**

**ARTICLE 47.** – The persons dealing with purchase and sale in commodity exchange on his own name but on another's account are called commodity exchange commission agents; the persons dealing with purchase and sale in commodity exchange on another's name and account with a capacity of representative are called commodity exchange agents; the persons dealing with only intervening in purchasing and selling in commodity exchange are called commodity exchange brokers. They may transact out of the commodity exchange on materials that are not quoted to commodity exchange.

No one other than the persons registered to the commodity exchange, the producers and manufacturers that are not registered to the commodity exchange, and the intermediaries stated in the first paragraph are allowed to transact and display activity in the commodity exchange on the spot market transactions relating to the goods quoted to the commodity exchange. Persons, although not registered as commission agent, agent or broker, deal with transactions that can be carried out only by those counted on the goods quoted to commodity exchange; the registration fee on this transaction shall be collected for five times more from those persons performing such transaction.

The intermediaries display activity in the spot market of commodity exchange as being real or legal persons, the establishment, duties and authorities of those being legal persons and the qualities required in legal person intermediaries, the working procedures and principles, rights, rules that are required to be complied with and the disciplinary and pecuniary penalties envisaged by this Law and will be implemented on the intermediaries who are ascertained that acting contrary to those rules and other issues regarding the determination of intermediary activities shall be determined with a regulation enacted by the Union.

The fees that the commission agent, agent and brokers of commodity exchange shall collect from the transactions they are mediating shall be determined by the assembly of commodity exchange and approved by the Union provided that they shall not exceed take from the transactions that they mediate, shall be determined by the exchange assembly to be approved by the Union provided that the amount of such fees shall not exceed 0,5 % of the purchase and sale amount and the annual subscription ceiling fee.

### **Regulations regarding the commodity exchange transactions**

**ARTICLE 48.** – The procedures demonstrating how the purchase and sale transactions in commodity exchanges can be made shall be shown in the regulations that are determined by the board of directors and approved by the assemblies.

The procedures that the commodity exchanges, where futures and forward transactions are made, implement are determined by a regulation prepared by the Union.

## **CHAPTER FOUR**

### **Incomes of the Commodity Exchanges and the Budget**

#### **Commodity exchange incomes**

**ARTICLE 49.** – Commodity exchange incomes are as follows:

- a) Registration fee.
- b) Annual subscription fee.
- c) Transaction registration fee.
- d) Fees that are collected for services rendered.
- e) Certificate costs.

- f) Publication incomes.
- g) Contribution and aids.
- h) Administrative fines.
- i) Overdue increases.
- j) Movable, immovable capital revenues, company profits and foreign currency incomes.
- k) Other incomes.

### **Commodity exchange registration fee and annual subscription fee**

**ARTICLE 50.** – Members are obliged to pay registration fee in the course of registration and to pay annual subscription fee for every year.

Registration fee and annual subscription fee shall not be less than ten percent and more than half of the gross amount of monthly minimum wage applied persons older than sixteen year-old.

Annual subscription fee shall not be collected in the year that the registration fee is collected. The amounts of registration and annual subscription fee shall be determined upon the degrees designated in accordance with the procedures mentioned in the regulation enacted by the Union and according to the tariffs. The tariffs shall enter into force upon the proposal of the board of directors of the commodity exchange and the approval of the assembly.

The persons, who disapprove their degrees to their positions, may object to the assembly of commodity exchange within ten days in accordance with the procedures stated in the regulation. The registration fee and disputed part of the annual subscription fee shall not be collected until the assembly renders its final decision on the objections.

The annual subscription fee shall be paid in June and October for every year in two equal installments. The registration fees of the ones registered within the year and registration and annual subscription fees of the ones required to be registered from the preceding year shall be paid within one month as of they are notified of the situation.

The members registered to the branches shall pay half of the registration and subscription fees stated in this article.

### **Fees and documentation costs**

**ARTICLE 51.** – The amount and the ratio of the fees for services rendered by commodity exchanges for certified and prepared documents shall be determined by tariffs enacted upon an approval by the assemblies and a proposal of the board of directors of commodity exchange. However, the fixed fees shall not exceed the ceiling determined for the annual subscription fee, and the prorate determined relative fees shall not exceed such ceiling and 0,5%. If the services rendered by the commodity exchanges are purchased from third persons, the amount paid for such service shall be collected from the beneficiary of such service by being added to the fees; provided that the cumulative amount shall not exceed two times of the determined ceilings amounts.

The documents prepared or approved, and services rendered by commodity exchanges are follows:

- a) Expert's reports.
- b) Analysis reports.
- c) Documents in connection with the prices of materials including to commodity exchange.
- d) Warehouse receipt, warrant and other deeds representing the goods.
- e) Documents requested in relation to the precedents.
- f) Invoice approvals.
- g) Approval of the specimen signatures of registered members to commodity exchange.
- h) Approval of the signatures in forward sales and future contracts.

- i) Copies of record and register belonging to the ones registered to commodity exchange.
- j) Other documents requested for the goods belonging to commodity exchange and for the commodity exchange proceedings.
- k) Services rendered by the commodity exchanges having the necessary installation for the measurement and weighing of the materials belonging to commodity exchange.
- l) Storage and protection services rendered by the commodity exchanges which have necessary installation.
- m) Inland product document.
- n) Other services.

### **The budget of the commodity exchange**

**ARTICLE 52.** – The budgets of commodity exchange shall be prepared by the board of directors of commodity exchange within the context of the type to be prepared and the accounting principles to be determined by the Union and shall be approved by the assembly.

Budgets are arranged on a calendar year basis.

Expenditures shall be made from the budget by an approval bearing joint signature of the chairman of the board of directors or its authorized deputy and the secretary general or accountant member.

The expenditure up to a certain limit determined by the assembly upon the proposal of the board of directors shall be made *ex officio* by the secretary general, provided that expenditures shall be submitted for the approval of the board of directors

## **CHAPTER FIVE**

### **Product Specific Commodity Exchanges**

#### **Product specific commodity exchanges**

**ARTICLE 53.** – The product specific commodity exchanges shall be established in the form of corporation that gathers the supply and demand of one or more products in its quotation within confidence, free competition and stability by considering the economical necessities; mediates the purchase and sale of products classified in accordance with the applicable product standards in physical or electronic places organized by themselves; executes both commerce of psychical products and of product deeds and future contracts that issued by the licensed storage operators as representing the product; having reliable restriction and dissimulation opportunities relating to the transactions; having institutional and financial infrastructure, technical and electronic hardware and data processing that shall follow and announce the occurred prices, generated information, and other similar and alternative markets that their working fields shall be regional, national or international.

The operation permission shall be given to the company that holds the establishment permission; in the case that it is demonstrated that the company has the conditions prescribed by this Law and by the regulations issued pursuant to this Law. The company obtained the operational permission shall operate with the name of product specific commodity exchange corporation.

Commodity exchanges shall become a partner of the product specific commodity exchanges that are established or to be established or shall operate as an agent of the product specific commodity exchanges due to the agreement between each other.

The Ministry shall make appointment for one membership of the board of directors of the product specific commodity exchanges.

Commodity exchanges and the product specific commodity exchanges may establish or become a partner of the companies operating as a licensed storage operators.

Matters regarding the registration of the sale and purchase, payment with the transfer, protecting the rights of the seller, purchaser and the third parties and other issues concerning purchase and sale in relation with the product deeds, shall be in responsibility of the commodity exchange, and damages arisen from these transactions shall be compensated by the commodity exchange.

The future contracts shall be endorsed like other endorsable bills determined in article 743 of the Turkish Commercial Code. The conditions sought in these contracts and the procedures and principles sought in futures, shall be determined by a regulation prepared by the relevant commodity exchange and approved by the Ministry upon having the opinion of the Union.

The future contracts and the product deeds equivalent to the securities determined by the licensed storages and the transactions such as the purchase and sale and pledge of similar bills representing the product are obliged to be controlled and registered to the product specific commodity exchanges. However, if a product specific commodity exchange does not exist in which the relevant product deed and future contracts are sold and purchased by quoting, these shall be traded in commodity exchanges that have the adequacy of technical, institutional and financial infrastructure and have the permission of the Ministry. The product's property shall not be transferred to another person until the registration is realized in the commodity exchange.

A contract, product deed and similar documents prepared in accordance with the terms of this Law shall not be considered as the forward and option contracts regulated in accordance with the Capital Market Law No. 2499.

The product specific commodity exchanges' the adequate infrastructure, the structure of capital and partnership, membership, technical hardware, expert personnel, organization, service units, registration system, relations with other chambers and commodity exchanges and the Union, appointment of delegates and representatives, representation in organs, the principles and procedures regarding their establishment, operation and supervision shall be determined by a regulation enacted by the Ministry upon obtaining the Union's opinion.

The Ministry is entitled to provide the product specific commodity exchanges that perform duties and functions prescribed in this article to display activity with confidence, clarity and stability, to make arrangements with regard to the fees and commissions collected for their services, to warn, to give instructions, to take any measures, to cease their one or more activities, to suspend or cancel their operation permit, to seize their management and assets with via court decision, to ask for their liquidation in cases of contradiction to legislation or protection of the public interest or in extraordinary negative cases.

## **SECTION FOUR**

### **The Union**

#### **CHAPTER ONE**

##### **General Principles**

### **The Union of Chambers and Commodity Exchanges of Turkey**

**ARTICLE 54.** – The Union of Chambers and Commodity Exchanges of Turkey is a public entity having the nature of superior professional organization that has a legal entity, established in order to provide the unity and the solidarity between chambers and commodity exchanges, to provide the profession to be developed in accordance with the general interests of the profession, to facilitate the professional activities of the members of the chambers and commodity exchanges, to protect the professional disciplinary and moral in order to provide the honesty and confidence in relation with the members of chambers and commodity exchanges and the public, to make necessary



studies so as to the development of the country, improvement of the economy and to perform the services envisaged by this Law.

The brief name of the Union is TOBB and the center of the Union is in Ankara.

### **Competence, representation and signature authority in the Union**

**ARTICLE 55.** – The Union is authorized to sale, purchase, build, parcel, merge and pledge movable and immovable property, expropriate, borrow money, make social contributions, build schools and classrooms, grant scholarships, donate and aid, support and encourage social activities, establish company and charity or participate in to the already established corporations, become a member of associations and cooperatives and make similar legal transactions in accordance with the provisions of this Law.

The legal representative of the Union is the Chairman of the Union.

The Chairman of the Union and the Secretary-General are individually entitled within the limits granted to themselves by the general assembly or the board of directors; and in transactions that exceed the limits the Chairman of the Union and the Secretary-General are jointly entitled to sign the legal transactions that are legally binding the Union and prepared on behalf of the Union such as covenants, contracts, power of attorney. Besides, a member authorized by the board of directors and the secretary-general are also entitled to sign these transactions jointly.

### **Duties of the Union**

**ARTICLE 56.** – The duties of the Union are as follows:

- a) To take relevant decisions and measures, and establish necessary organization that empowers the chambers and commodity exchanges and provides collaboration, coordination and development opportunities between them; to constitute superior advisory boards under name of sector-specific assembly; to provide intellectual assistance in order to ensure the chambers and commodity exchanges to perform their statutory aims and duties; to make necessary investigation and suggestions upon the request of the relevant chamber or commodity exchange in order them to execute their works and transactions in accordance with the legislation in case of necessity.
- b) To provide the establishment of the necessary electronic infrastructure in order to provide the standardization of the activities and services rendered by the chambers and commodity exchanges, to keep the accounts with joint procedures and to collect the information related to the members of chambers and commodity exchanges in the center of the Union, and to ensure the operation of this system while considering the protection of the trade secrets; to request information and documentation related to the membership registries and subscription fees from the chambers and commodity exchanges, to provide the fulfillment of these requests and to do necessary supervision.
- c) To formulate the regulations stated in this Law to be enacted by the Union and to approve the internal directives of chambers and commodity exchanges.
- d) To prepare reports on financial aspects of the country, to analyze and make assessments on reports prepared by chambers and commodity exchanges related with this matter, to represent the trade and industry sector in Economic and Social Council and in similar organs, boards, commissions and institutions.
- e) To examine the reports prepared by chambers, commodity exchanges and similar related organizations in the foreign countries and to compile and publish the parts related to Turkey; to make studies oriented to the development of the international trade, industry and service sectors at

- the developing world conditions; to protect the rights of these sectors during the relationships between European Union and international organizations; to make studies on European Union legislation and inform the chambers and commodity exchanges on these matters.
- f) To establish the Turkish National Committee of International Chamber of Commerce and to execute the Committee's activities.
  - g) To organize and attend national and international meetings and congresses; to examine and decide the domestic fair applications made to the chambers and commodity exchanges, which are forwarded to the Union; to issue authority certificate to the fair companies in order to organize domestic fairs; to accept and execute the representation, agency and correspondent of the foreign chambers of commerce and industry; to be member of the national and international organizations related to the activity of the Union or to establish similar organizations, business councils and economic cooperation committees and to attend to international meetings; to establish domestic or foreign trade centers and to participate in those already established; to participate in the activities concerning economic and social problems; to promote such activities in case of necessity and to provide financial support for those; to establish collaboration committees with the foreign chambers and unions, and to make comprehensive and effective collaboration with them.
  - h) To assist the Turkish or Turkish-foreign chambers of commerce, industry and maritime commerce in Turkey and abroad in case of necessity; to establish representative and contact offices in Turkey and abroad with the permission of the Ministry when necessary.
  - i) To take necessary measures for the protection of consumers and the constitution of the sound competition environment, to execute other duties given by the Ministry and Ministries in accordance with the legislation on this and similar matters and to establish the necessary organization.
  - j) To establish the supreme arbitration tribunal in order to settle the disputes among the members of the chambers and commodity exchanges as an arbitrator upon their requests.
  - k) To determine the economic policies of the private sector; to give opinion in case of necessity to the relevant public authorities and institutions in the course of forming the necessary foreign economic relations in terms of ensuring integration with the world economy and to assist to maintain these relations.
  - l) To submit opinions and to make suggestions to the official authorities with respect to capital markets, promotion and orientation of the investments, decisions of the import-export regime, prevention of the unfair competition in import and tax issues and to participate meetings related to those subjects; to promote small and medium size enterprises in the aspects of marketing, financing, research and development.
  - m) To issue the Turkish Trade Registry Gazette envisaged in article 37 of the Turkish Commercial Code under the supervision and inspection of the Ministry.
  - n) To execute the duties prescribed by this Law on subjects of the establishment of new chambers and commodity exchanges, expanding or restricting the fields of activities of the current chambers and commodity exchanges, dissolving the current chambers and commodity exchanges and registration and subscription fees and the fees to be collected.

- o) To work and take necessary measures in order to strengthen technically the commodity exchanges, who have large amount of transaction volume on the basis of specific goods and works with a procedure of public auction, and in order to provide the communication between the domestic and foreign commodity exchanges via benefiting from the opportunities that developing technology offers.
- p) To provide technical information to the requesting institution when a dispute arises in terms of the prices of the imported goods.
- q) To examine and approve the capacity reports and similar documents prepared by the chambers.
- r) To assist the establishment of organized industrial zones, industrial regions, technological development zones, technology centers, techno-parks and to participate in those already established or to be established in accordance with the relevant legislation.
- s) To formulate arbitration institutions that shall serve in national and international commercial dispute settlements and arbitration rules to be implemented, to support the works of chambers regarding arbitration.
- t) To work on removing the bureaucratic obstacles in connection with the trade and industry sector and their activities, accelerating the privatization, determination of the place and subject of the investment regarding the promotions of the investment, arranging inventories regarding the sectors of the industry, trade, agriculture, tourism and service; to compile and publish the statistical information with respect to the structure of the trade and industry and size of the enterprises and numbers of the employees; to work for the development of the electronic trade, to establish the necessary research units, to make suggestions on the granting of the digital certificate and assignment of internet domain name.
- u) To execute the duties given by the Ministry in accordance with the legislation, to submit opinions and make suggestions to the official authorities in order to develop and direct the economy of the country.
- v) to execute the affairs on services concerning the edition, distribution and the implementation TIR and ATA carnets including electronic form, certificates of origin, movement documents and certificates and line code system of EAN-UCC in accordance with the international agreements.
- w) to establish universities, colleges of higher education, vocational and technical education institutions, to participate in and collaborate with those already established in order to provide the growth of the qualified labor force that the industry needs; to arrange work schedules by collaborating with the relevant institutions, to promote the preparation and application of the education program in accordance with these work schedules; to guide to the implementations for the purpose of execution of apprenticeship and vocational education services rendered by the chambers to be harmonic; to prepare and execute in-service training program for the administrators and personnel of the chambers and commodity exchanges, to ensure the establishment of a vocational education centre in case of necessity.

The Union shall also execute the duties originally granted to the ministries or public institutions, but assigned to itself within the framework of the establishment purposes and working field stated in this Law.

### **Sector assemblies**

**ARTICLE 57.** – The Board of Directors of the Union shall constitute the sector assembly of Turkey for the sectors considered necessary such as tourism,

transportation, contracting, industrial zones, technology zones, free zones in order to be consultative nature, promote the sector development, examine the problems and to ascertain the measures.

These assemblies shall be composed of maximum forty persons elected by the Board of Directors of the Union among the members of the chambers and commodity exchanges, who have reputation and experience in their professions and are specialists. The members of assembly shall nominate one chairman and one deputy chairman among themselves.

The principles and procedures regarding the establishment, operation and activities of the sector assemblies shall be determined by a regulation prepared by the Union and approved by the Ministry.

**(This subsection has been added with article 38 of the 5684 numbered Law)**

The provisions of Insurance Law related to the assembly of the insurance sector constituted for the Insurance agencies are reserved.

### **Turkish-Foreign or Foreign-Turkish Chambers and Foreign Economic Relations Board**

**ARTICLE 58.** – The permission of the Union shall be required for the associations to be established under the name of foreign-Turkish or Turkish-foreign unilateral or multilateral trade, industry and maritime commerce chambers by taking the opinion of the Ministry of Foreign Affairs in order to assist the development of the economic and commercial relations between Turkey and other countries. The principles of monitoring and supervision of the joint chambers shall be determined by the Regulation enacted by the Ministry upon (with) the proposal of the Board of Directors of the Union. The monitoring of the activities of chambers established in abroad, and the monitoring and the supervision of the works of the chambers established in the country shall be made by the Union. The associations established in this way shall be subject to the general provisions, except the provisions laid down in this article.

The legal entities cannot use the names of the chambers of commerce, industry and maritime commerce, except the associations established pursuant to the first paragraph.

The Foreign Economic Relations Board shall be consisted of the private sector institutions determined by the Union and have common establishment and activity purposes, and subject to the private law provisions and have legal personality, in order to execute the foreign economic relations of the private sector under the supervision and audit of the Union. The short name of the Board is DEIK. The Board shall perform the bilateral economic relations through business councils in accordance with the decisions of the board of directors.

The principles regarding the duties and authorities, the establishment and operations, organs, budgets, the administration and supervision, and membership of the Board and business councils shall be determined by a regulation enacted by the Union.

The budget of the Board shall be composed of the annual subscription fee determined by the board of directors of the Board for the founder institutions, subscription fee of business councils, and the contributions to be paid by the Union and other incomes. The Union shall audit the budget of the Board.

### **Supreme Consultation Committee**

**ARTICLE 59.** – Supreme Consultation Committee is a consultative committee composed of the Chairman of the Union, the deputy chairmen, and chairmen of the Council and honor members.

The previous chairmen of the Union shall be deemed as natural members of the Committee. Besides, the Board of Directors of the Union may determine the honor members among those who render eminent services for the national economy.

The chairman of the Union shall also be the chairman of the Committee. The members of Committee shall nominate two deputy chairmen among its own members. The duties and working principles of the Committee shall be determined by the Board of Directors of the Union.

## CHAPTER TWO

### The Organs of the Union and their Establishment and Duties

#### **Organs of the Union**

**ARTICLE 60.** – The organs of the Union are as follows:

- a) General Assembly
- b) Councils of the Chamber and Commodity Exchange
- c) Board of Directors
- d) Supreme Disciplinary Board

#### **General Assembly**

**ARTICLE 61.** – General Assembly shall be consisted of the delegates elected for a period of four years among the own members of assemblies of chamber and commodity exchange.

Each chamber and commodity exchange shall be represented in General Assembly at least by one delegate. This delegate is the chairman of the board of directors of the chamber and commodity exchange. In order to determine the additional delegates, the number of the members placed in the electoral list and the actual subscription fees paid to the Union by the chambers and commodity exchanges shall be taken into consideration.

Chambers and commodity exchanges having members from two thousand to five thousand shall nominate one; from five thousand to ten thousand shall nominate two; from ten thousand to thirty thousand shall nominate three; from thirty thousand to fifty thousand shall nominate four; and the ones having more than fifty thousand shall nominate five additional delegates. Chambers and commodity exchanges, whose number of members exceeds fifty thousands, shall nominate one additional delegate further to five delegates for each fifty thousand delegates exceeding the main fifty thousand.

In addition, the chambers and commodity exchanges shall elect an additional delegate for each twenty five times of the amount of the gross minimum wage, which have been effective the previous year of the year, in which the elections for the persons older than sixteen years have been made, taking into consideration the average of the subscription fees, which actually have been deposited to the Union within the last four years, except the year in which elections have been made. However, the number of additional delegate to be determined such way shall not exceed twenty.

Alternate delegates as many as elected (nominate) delegates shall also be elected.

In case that the delegates have quitted, discharged, resigned from the chambers and commodity exchanges, deceased, or have left the membership of the assembly, the alternate delegates shall participate to the General Assembly instead of the delegates according to the number of votes that they have obtained.

Expenses of the delegates regarding the participation to the General Assembly shall be paid by the chamber of the commodity exchange they represent.

The General Assembly shall convene every year in May.

In case of the assemblies of the chamber and commodity exchange are discharged and a new election is performed, the delegates to be directed to the General Assembly shall be re-elected.

#### **Duties of the General Assembly**

**ARTICLE 62.** – Duties of the General Assembly are as follows:

- a) To elect the Chairman of the Union, the members and alternate members of the Board of Directors and the Supreme Disciplinary Board.
- b) To elect the members of the councils of chambers and commodity exchanges by the relevant delegates among themselves.
- c) To approve the regulations demonstrating the procedures and principles regarding the determination of the lists of arbitrators and experts prepared by chambers and commodity exchanges, and the regulations of accounting and booking.
- d) To examine and approve the reports prepared by the board of directors about the economical situation of the country.
- e) To approve the regulations related to the working principles of the General Secretariat of the Union and the General Assembly.
- f) To establish collaboration between the chambers and commodity exchanges and to take necessary steps and decisions in order to maintain their development.
- g) To approve the general arrangements performed by the commodity exchanges.
- h) To determine the types and procedures for the arrangement of the budgets of the chambers and commodity exchanges.
- i) To establish commissions when necessary and audit the accounts of the Union through the commission it selects.
- j) To examine and decide the budget of the Union.
- k) To select the persons rendered eminent services to the economy of the country and to the Union as honorable members upon the proposal of the board of directors.
- l) To perform other duties granted by legislation.

### **Councils of chambers and commodity exchanges**

**ARTICLE 63.** – Five different councils, namely council of chamber of commerce and industry, council of chamber of commerce, council of chamber of industry, council of chamber of maritime commerce and council of commodity exchange each having thirty members, shall be elected by the relevant delegates among themselves in General Assembly for a period of four years. Besides, alternate members as of the same number with principal members for each council shall be elected. However the number of the members of council shall not exceed the half of the number of the relevant delegates represented in General Assembly.

Each council shall elect a chairman and a deputy chairman among their own members for a period of four years.

The chairmen of the councils shall elect the Chairman of the General Assembly among themselves for the first one year. For the following years the chairmen of the councils shall become Chairman of General Assembly in line with the order to be started from the eldest one. Other chairmen of councils shall constitute the Board of General Assembly as deputy chairmen of the General Assembly.

The councils shall convene not less than twice in a year in the center of Union upon the proposal of the chairman of the council and the approval of the Chairman of the Union. Besides, the councils shall jointly meet in order to discuss the proposed agenda upon the request of the Chairman of the Union and the invitation of the Chairman of the General Assembly.

Expenses of the Chairman and members of the Councils regarding the participation to the meetings shall be paid by the Union.

Persons, who have preceded the Council consecutively for two terms, shall not be elected for the same duty unless two election terms have been passed by.

### **Duties of the Councils of Chambers and Commodity Exchanges**

**ARTICLE 64.** – Duties of the councils of chambers and commodity exchanges are as follows:

- a) To elect chairman and deputy chairmen of the councils.

- b) To discuss the subjects derived from chambers and commodity exchanges and to submit them to the board of directors, as proposal and opinion.
- c) To revise the economical reports and the decisions related to the legislation amendments, to examine the economical problems of the sector they represent.
- d) To consider the coordination and developments of the chambers and commodity exchanges.
- e) To represent the council in relevant protocols and meetings with the chairman or deputy chairman.
- f) To perform other duties granted by legislation.

### **Board of Directors of the Union**

**ARTICLE 65.** – The Board of Directors shall be consisted of fifteen members including the chairman to be nominated for a period of four years.

The Chairman of the Union elected among the delegates by the General Assembly, shall also be the Chairman of the Board of Directors.

The fourteen actual and at the same number of alternate members of the Board of Directors shall be elected by the General Assembly among delegates. At least one representative of every chamber and commodity exchange group shall take place in the Board of Directors.

The Board of Directors shall elect five deputy chairmen and one accountant for a period of four years among its members as a representative of each chamber group and commodity exchanges.

The Board of Directors shall convene, not less than once a month, upon the invitation of the Chairman of the Union and in the case of his absence upon the invitation of the deputy chairman authorized by the Chairman of the Union. The assembly agenda shall be determined by the Chairman of the Union or by the deputy chairman authorized by the Chairman of the Union. Furthermore, a new title shall be added to the agenda upon the request of at least one-third of the members of the Board of Directors until the commencement of the assembly. The deputy chairman authorized by the Chairman of the Union shall be officiated as the deputy chairman in the case of the absence of the chairman.

The Chairman of the Union, at the same time, shall not serve as the chairman or the member of the board of directors or the chairman of the assembly of the chamber or commodity exchange of which the Chairman is a member.

The ones, who have served consecutively for two terms as the Chairman of the Union, shall not be elected for the same position unless two election terms have been passed by.

### **Duties of the Board of Directors of the Union**

**ARTICLE 66.** – The duties of the board of directors of the Union are as follows:

- a) To settle the disputes arisen between chambers and commodity exchanges.
- b) To prepare regulations so as to provide the unity and the cooperation in accounting and transaction and to submit them to the General Assembly.
- c) To prepare reports on the financial position of the country and to submit them to the General Assembly.
- d) To follow the publications issued by the chambers of commerce and industry and commodity exchanges in foreign countries and to notify the members and public authorities when deemed necessary about the parts related to Turkey.
- e) To attend to the international exhibition, fairs and congresses, to accept and execute the representation, agency or correspondent of the foreign chambers and commodity exchanges, to establish national and international vocational organizations, to elect the members to attend to the international vocational meetings.
- f) To expend within the budget.
- g) To ensure the chambers and commodity exchanges to pay their Union subscription fees on time and to make necessary audits on this issue.

h) To prepare the regulation of the Secretariat General of the Union and to submit it to the General Assembly.

i) To prepare the regulations to be issued by the Union as prescribed by this Law and to submit them for the approval of the Ministry.

j) To grant information requested by ministries in accordance with relevant laws.

k) To grant report relating to the annual activities.

l) To arrange congresses and similar meetings on financial issues.

m) To prepare the annual budget and submit it to the General Assembly.

n) To establish the supreme arbitration council in order to settle the disputes between members of the chambers and commodity exchanges as an arbitrator upon their requests.

o) To execute other duties granted to the Union and especially not granted to any other organs by this Law and other legislation.

### **Assignment of the Authorities of the Board of Directors of the Union**

**ARTICLE 67.** – In necessary circumstances, The Board of Directors may assign some of its authority to the Chairman of the Union, or to one or some of the members of the Board of Directors, or to the Secretary-General.

### **Supreme Disciplinary Board**

**ARTICLE 68.** – Supreme Disciplinary Board shall be consisted of six members elected among the delegates by the General Assembly for a period of four years. The alternate members with the same number shall be elected.

The Supreme Disciplinary Board shall elect a chairman amongst its members at the first meeting after the election. In the absence of the chairman, the eldest member shall preside at the Board.

One of the members shall be appointed as the reporter. The reporter member shall not attend to the voting of the decision.

Supreme Disciplinary Board shall convene upon the invitation of the Chairman of the Union.

### **Duties of the Supreme Disciplinary Board**

**ARTICLE 69.** – The duties of the supreme disciplinary board are as follows:

a) To settle the objections made contrary to the decisions of the assemblies of the chambers and commodity exchanges relating to the disciplinary penalties and to the decisions of the board of the directors of the chambers and commodity exchanges relating not to commence the inquiry.

b) To execute other duties granted by the legislation.

## **CHAPTER THREE** **Incomes of the Union**

### **Subscription Fee of the Union**

**ARTICLE 70.** – Chambers and commodity exchanges are obliged to deposit 8% of their annually received income as subscription fee in the name of Union to the one of the banks determined by the Board of Directors.

The subscription fees of the Union shall be calculated over the previous year's real income, and deposited in two equal installments in July and December, on the following year.

Real income comprises all incomes stated under articles 23 and 49, movable and immovable securities' income, company profits and currency proceeds.

### **Fees to be collected by the Union**

**ARTICLE 71.** – The ratio and amount of fees collected by the Union for the certification of documents and providing services, with an exception of arbitration



expenses, cannot exceed the triple of the gross amount of the minimum wage that is applied to the persons over the age of 16 in fixed allowances, and 0,5% in relative fees provided that this ceiling shall not be exceeded. Those amounts and ratios shall be determined by the tariffs decided by the Board of Directors.

The documents and services to be granted and certified by the Union are as follows:

- a) Capacity reports.
- b) Invoices, certificates of origin, A.TR and EUR. 1 movement documents and certificates.
- c) Services regarding the Turkish Trade Registry Gazette.
- d) Quality documents.
- e) Services regarding TIR and ATA carnets and EAN-UCC line code system.
- f) Arbitration services.
- g) Fair organization authority certificates.
- h) Any other sorts of documents, information and services in commercial and industrial nature.

The announcement fees relating to the Turkish Trade Registry Gazette shall be determined pursuant to a tariff that shall become effective upon the proposal of the Turkish Trade Registry Gazette Committee and the approval of the Ministry.

A Committee consisting of the relevant deputy undersecretary, the General Manager of Interior Trade or any assistant nominated by him, the Secretary-General of the Union, the relevant deputy secretary-general and the manager of the gazette headed by the Undersecretary of the Ministry shall be established in order to determine the principles regarding the issuance of the Turkish Trade Registry Gazette, and to manage and direct the announcement issues, and to coordinate the works between the Ministry and the Union.

The working principles and procedures of the Committee, attendance fee of the members of the Committee paid from the income of the gazette, the expenses related to the Committee meetings, and the other aspects on this subject shall be determined by a regulation enacted by the Ministry upon the affirmative opinion of the Union. The net monthly amount of the attendance fees cannot exceed gross amount of minimum wage.

### **Incomes and budget**

**ARTICLE 72.** – Incomes of the Union consist of subscription fees, fees for services, donations and aids, announcement incomes and other incomes.

The budget of the Union shall be prepared on an annual basis by the Board of Directors and determined by the General Assembly.

Expenditure from the budget shall be made by the joint signature of the Chairman of the Union or of a vice chairman authorized by him and the Secretary-General or the accounting member.

To the extent of the amount of expenditure determined by the General Assembly upon the proposal of the Board of Directors may be spent *ex-officio* by the Chairman of the Union, provided that such amount shall later be submitted to the approval of the Board of Directors.

Furthermore, the amount of expenditure determined by the Board of Directors not more than the amount determined for the Chairman of the Union, may be *ex-officio* spent by the Secretary-General, provided that such amount shall later be submitted to the approval of the Board of Directors.

## **SECTION FIVE Joint Provisions**

### **CHAPTER ONE Personnel**

## **The personnel of the chamber, commodity exchange and the Union**

**ARTICLE 73.** – The persons employed within the chambers, the commodity exchanges, the Union and enterprises established by these entities are, other than the provisions existing in this Law, subject to the 4857 numbered Labor Act.

### **Secretary-general of the chamber and commodity exchange**

**ARTICLE 74.** – A secretary-general shall be appointed in order to execute the affairs of the chambers and commodity exchanges. The secretary-general shall have the following qualifications:

a) To be a Turkish citizen.

**b) (Revoked with article 578 of the 5728 numbered Law)**

c) Not to have any connection with the military service.

**d)(Amended with article 2 of the 5795 numbered Law)** Not to have been sentenced to imprisonment for 5 years or more because of intentionally committing a crime(s) or crimes against the security of the State, crimes against the Constitutional System and the operation of this system, crimes against the national defense, crimes against the state secrets, and espionage, embezzlement, corruption, bribery, theft, fraudulency, forgery, abuse of trust, fraudulent bankruptcy, rig an official bidding, rig of execution of performance, clearance of the value of the assets acquired illegally, smuggling, tax fraud or unjustly goods obtainment, even if the periods stated within article 53 of the Turkish Criminal Code has expired.

d) Not to have a physical or mental illness, or physical disability that shall prevent him performing his duties continuously.

e) To be graduated from a university, lasting at least four years, in the fields of engineering, economy, business, finance, law and public administration.

f) To have at least five years business experience in the public or private sector.

The secretary-general and his deputies shall be appointed by the decision of the board of directors. The qualifications required for the secretary-general shall also be required for the deputy secretary-generals.

The secretary-general may assign some of his duties and authorizations, including expenditure authorization, to his deputies to be re-determined at the beginning of each calendar year upon the permission of the board of directors.

The secretary-general is the disciplinary and record principal of the personnel of the chamber and commodity exchange. The secretary-general shall prepare the minutes of board of directors meetings, regulate and manage the interior and editing works of the chamber and commodity exchange, give necessary orders and instructions to personnel of the chamber and commodity exchange and supervise their work and perform other duties entrusted to him by the board of directors or its Chairman.

### **Secretary-General of the Union**

**ARTICLE 75.** –A Secretary-General having the qualifications required for the secretary-generals of chamber and commodity exchange and having been able to speak at least one foreign language fluently shall be appointed by the Board of Directors in order to execute the affairs of the Union. The board of directors may appoint one or more deputy secretary-generals in case of necessity. The qualifications required for the secretary-general shall also be required for the deputy secretary-generals.

The secretary-general may assign some of his duties and authorizations, including expenditure authorization, to his deputies to be re-determined at the beginning of each calendar year upon the permission of the board of directors.

The secretary-general is the disciplinary and record principal of the personnel of the Union. The secretary-general shall prepare the minutes of Board of Directors meetings, shall regulate and manage the interior and editing works of the Union, shall give necessary orders and instructions to personnel of the Union and supervise their work and perform other duties entrusted to him by the Board of Directors and Chairman of the Union.

## **Criminal proceeding**

**ARTICLE 76. – (Amended with article 539 of the 5728 numbered Law)** The members of the organs and personnel of the chambers, commodity exchanges and the Union shall be prosecuted as Public Servants if their work related acts and conducts while performing their duties cause a crime to be committed, and when they commit a crime with regard to those establishments' funds, documents equivalent to funds, credit bill, relevant assets, and any kind of paper and book related to the balance sheet and minute book.

## **CHAPTER TWO Financial Provisions**

### **Collection**

**ARTICLE 77-** A daily fine for default shall be accrued to over-due registration fees, annual subscription fee, cumulative subscription fee, chamber shares taken from the freight proceeds, commodity exchange registration fee and the Union's subscription fee pursuant to the 6183 numbered Procedures of Collecting of Public Credits Law.

The decisions of the Board of Directors of the chamber, commodity exchange and the Union regarding the registration fees, annual subscription fee, cumulative subscription fee, chamber shares taken from the freight proceeds and subscription fee of the Union and commodity exchange registration fee and the definite fine for default of those counted and collection of pecuniary penalties are equivalent to final court decision and shall be executed by the execution offices.

Lapse of time for collection of registration fees, annual subscription fee, cumulative subscription fee, chamber shares taken from the freight proceeds and subscription fee of the Union and commodity exchange registration fee and definite fine for default of those counted and pecuniary penalties is five years.

### **Shares reserved from budgets**

**ARTICLE 78. –** A share shall be reserved from the budgets prepared by the chambers, commodity exchanges and the Union according to the below conditions:

a) A ratio of 1%, with the decision of the General Assembly, to be paid to The Union of Chambers, Commodity Exchanges of Turkey Personnel Insurance and Pension Fund Foundation.

b) A ratio not exceeding 1% each year in order to improve the internal trade services of the Ministry

The usage principles and implementation of the shares reserved as indicated above shall be determined by a regulation.

The share reserved for the expenses such as representation, excursion, accommodation, travel, daily wage, attendance fee in the budgets of the Union, chambers and commodity exchanges shall not exceed 20% of their budgets and the share reserved for the expenses of the personnel shall not exceed 40% of their budgets.

### **Bidding affairs and service procurement**

**ARTICLE 79. –** The procedures and principles with regard to the purchase of assets and services, construction works and sales of the chambers, commodity exchanges and the Union shall be determined by a regulation to be enacted by the Union by considering the clearance, transparency and free competition principles.

Chambers, commodity exchanges and the Union may procure services via freelance and representation contract.

## **Expropriation, establishment of company and foundation**

**ARTICLE 80.** – Chambers, commodity exchanges and the Union may make expropriation upon the permission of the Ministry and the decision of their authorized organs in order to achieve their objectives, provided that the expropriation is limited with their fields of activity. The public interest decision shall be granted by the Ministry.

Chambers, commodity exchanges and the Union may participate in the existing companies or to the companies will be established with the permission of the Ministry, limited with the purposes of performing the economic duties envisaged in this Law, meeting the common needs of the members of profession, facilitating those members professional activities and ensuring the development of the profession in conformity with the general interests. Chambers, commodity exchanges and the Union may establish foundations in order to establish education institutions in conformity with their objectives.

## **CHAPTER THREE**

### **Electoral Procedure of Organs of Chambers, Commodity Exchanges and the Union**

#### **General principles on elections**

**ARTICLE 81.** – The elections of organs and branches of chamber, commodity exchange and the Union shall be made under the judicial supervision, via the updated member lists taken from the database of chamber, commodity exchange and the Union and demonstrating the members having qualifications of eligibility according to the profession groups of chamber and commodity exchange affiliated to the Union, in the common database created within the Ministry and the Union in electronic form.

In case there is more than one district election board in a place, then the competent judge shall be determined by the provincial election board. The competent judge in the elections of the organs of the Union is the chairman of the central district election board.

The chairman of the district election board shall determine the place and number of the voting polls, the date and period of the voting, format of the voting card, and other issues regarding election pursuant to the number of members of chamber and commodity exchange and profession groups and to the necessities of the elections of the organs of the Union. The equipments to be used at the elections shall be provided by the district election board.

Voting processes shall be made on the basis of secret voting and open classification. Voters, who are waiting in front of the voting poll in order to vote, shall exercise voting, although the election period is expired. The members and delegates, whose names are not written on the voters' list, shall not vote. Voting shall be exercised upon the identity of the voter is proved by a document given by the chamber or commodity exchange or an official entity, and upon the place across the person's name is signed.

The real persons representing legal entities shall present a certificate at the time of voting that has been approved by the relevant trade registry office and issued within the last one month demonstrating that they are authorized to represent and make binding transactions pursuant to the registered articles of association of the legal entity that they are representing.

Voting shall be exercised through placing the voting cards issued in any way, in special envelopes that contain the seal of district election board and is provided by chairman of the election poll board in the course of voting. The votes, which are not placed within the envelopes that do not contain the seal of the district election board thereon, shall be invalid.

After the expiry of the election period, the results of election are determined by a record and signed by the chairman and members of the election poll board. The temporary election results are announced for one full working day by way of hanging one copy of the records at the place of election.

The exercised votes and other documents shall be presented to the presidency of the district election board to be kept for a period of three-months along with one copy of the record.

Objections raised against the transactions made during the election and election results within the announcement period, shall be examined and settled by the authorized judge on the same day. The decisions regarding the objections and given by the district election board shall be announced by hanging in the place of election for one full working day. Objections against those decisions can be raised to the provincial election board within the announcement period. Decision of the provincial election board to be granted in one day, shall be final. Upon the expiry of the objection period and settlement of the objections, the judge shall announce the final results pursuant to the above provisions and shall notify the relevant chamber or commodity exchange and the Union and the Ministry.

In case the judge terminates the election for any reason or annul the elections due to an unlawfulness or unlawful practices, which may affect the results of the election, the judge shall determine the date, on which the election shall be renewed provided that the period shall not be less than one month and more than two months, and shall notify the date to the relevant chamber or commodity exchange and the Union and the Ministry.

In case the entire elections are cancelled, a board consisting of three or five members shall be appointed by the Union in order to render the duties of the assembly and board of directors of the chamber and commodity exchange until the renewal of the elections.

In cases where there are no provisions under this Law, the provisions related to crimes and penalties stated in the Seventh Chapter of the 298 numbered Law on Main Provisions of Elections and Register of Electors shall be applied.

**(Amended with article 540 of the 5728 numbered Law)** Political parties, trade unions and trade union`s high level institutions cannot nominate any candidates, and engage in any activities and make propaganda in favor of or against certain candidates in the elections of the organs of chambers, commodity exchanges and the Union. Whoever acts contrary to this provision shall be sentenced to imprisonment for up to a period of six months or judicial fine.

The election dates of the organs of the Union, chamber and commodity exchange may be postponed for a maximum of one year by the Cabinet.

**(Amended with the 5290 numbered Law)**The duties of the persons in the organs of chamber, commodity exchange and the Union shall be per se terminated, if those persons are elected as members of Parliament or mayors.

### **Election poll board**

**ARTICLE 82.** – The chairman of the district election board shall examine the lists indicating the qualifications of eligibility provided by the common database created within the Ministry and the Union in electronic form, shall establish an election poll board consisting of one chairman and two members among public officers or members that are not candidates in order to make the elections, and shall determine three alternate members in the same way. In the course of election of the organs of the Union, one chairman and four members and five alternate members for the board of election poll shall be determined by the chairman of central district election board among public officers or delegates who are not candidates.

In the absence of the chairman of the election poll board, the eldest member shall preside to the board. Election poll board shall be responsible for the execution and management of elections in accordance with the procedures stated in this Law and classification of the votes. Duties of election poll board shall continue without any interruption until the finalization of the election and classification procedures.

Wage shall be paid to the judge, who is the chairman of the district election board, and to the chairman and members of the election poll board in accordance with the principles stated in the 298 numbered Law on Main Provisions of Elections and Register of Electors. These wages and other election expenses shall be met by the chamber, commodity exchange or the Union, which conducts the election.

The crimes committed against the chairman and members of the election poll board in the course of elections shall be punished as if they were committed against public officers.

**Qualifications regarding the participation to the elections of the organs of chamber, commodity exchange and the Union**

**ARTICLE 83.** – Real persons over the age of 18, and real person representatives, who are authorized to make representation and binding transactions under the registered articles of association of a legal entity, may exercise voting in the course of elections of the organs of chamber, commodity exchange and the Union in accordance with the provisions of this Law.

In order to be elected to the organs of a chamber, commodity exchange and the Union, the candidates shall have the following conditions:

- a) To be registered to the chamber and commodity exchange for a minimum of two years, except for the newly established chambers and commodity exchanges,
- b) To have completed the age of 25 at the time of election,
- c) Not to have gone bankrupt or gained his reputation back even if he went bankrupt,
- d) **(Amended with article 541 of the 5728 numbered Law)**

Not to have been sentenced to imprisonment for 5 years or more because of intentionally committing a crime(s) or crimes against the security of the State, crimes against the Constitutional System and the operation of this system, crimes against the national defence, crimes against the state secrets, and espionage, embezzlement, corruption, bribery, theft, fraudulency, forgery, abuse of trust, fraudulent bankruptcy, rig an official bidding, rig of execution of performance, clearance of the value of the assets acquired illegally, smuggling, tax fraud or unjustly goods obtainment, even if the periods stated within article 53 of the Turkish Criminal Code has expired.

- e) **(Revoked with article 578 of the 5728 numbered Law)**

f) Being an income or corporate tax payer due to his commercial and industrial revenues.

- g) Being a literate.

The real person representatives of national or foreign legal entities who are authorized to make representation and binding transactions under their registered articles of association and have the above qualifications shall be elected to the organs of chamber, commodity exchange and the Union in accordance with the provisions of this Law.

When persons lose their eligibility to be elected, their duties in the chamber, commodity exchange and the Union shall be terminated.

Other issues regarding the qualifications of participation to the elections of organs shall be determined by a regulation to be prepared by the Union.

**(Amended with article 3 of the 5795 numbered Law)** In order for the members of the chamber and commodity exchange to exercise their rights to elect and to be elected, it is compulsory for them to be the owners, partners, members of the board of directors, general managers, managing directors, and authorized to represent and make collections on behalf of their companies. It is also required that this situation shall cover a period of at least six months before the election.

In case the member company is defunct, or transfers the registration of its office and headquarter to the working territory of another chamber, his duty in the chamber,

commodity exchange and the Union, which he was elected along with his membership to the chamber, shall be terminated.

### **Elections of the organs of chambers and commodity exchanges**

**ARTICLE 84.** – Elections of the organs of chambers and commodity exchanges shall be commenced in October and finished in November pursuant to the provisions of this Law and in accordance with the following procedures and principles:

a) Grouping transactions and the election of the profession committees:

1) The lists prepared by the board of directors of chambers and commodity exchanges minimum twenty days before the election of profession committees on the basis of profession groups existing in the database regulated in the Ministry and the Union in electronic form and demonstrating the persons having the right to vote and to be elected, shall be submitted in three copies to the chairman of district election board where the institution is located.

2) The judge shall have the lists examined by the election poll committee, order the relevant records and documents if necessary, and approves them in five days at the latest upon having completed the deficiencies, if any. Approved lists, the date and place of the election and other issues shall be announced for three full working days by hanging on the announcement places of the chamber or commodity exchange. The samples of those lists shall, upon request, be given to the members of the chamber and commodity exchange provided that the charge of samples shall be paid. The issues deemed necessary by the chairman of the district election board shall be promulgated to the relevant persons via local press organs.

3) The objections rose against the lists by the members of the chamber and commodity exchange within the announcement period shall be examined by the chairman of the district election board and be settled within two days at the latest. An objection against such decisions shall be raised to the province election board within three days from the date of notification. The decision of the province election board to be granted within three days shall be final.

4) The lists finalized in this way, the date and duration of the election and other issues related to the election shall be approved and delivered to the relevant chamber or commodity exchange. Finalized lists and other issues related to the election shall be announced for three full working days on the announcement places of the chamber or commodity exchange before the election.

5) The lists belonged to the profession groups of the newly established chambers and commodity exchanges shall be prepared in accordance with the regulation by a grouping board consisting of five or seven members to be elected by the chairman of the district election board or any authorized officer nominated by him and submitted to the competent judge for the election of profession committee.

6) Elections of the profession committee shall be made by the relevant elector member via placing the votes in special envelopes to be separately granted for each profession group.

b) Profession groups elect the principle and alternate members for the assemblies of the chamber and commodity exchange together with the members of the profession committee, under judicial supervision.

c) The assembly shall elect the chairman and the members of the board of directors of the chambers and commodity exchanges within the same list in maximum two days following the finalization of the elections under the judicial supervision.

d) The election of the delegates of General Assembly of the Union and the principal and alternate members of the disciplinary board shall be made by the assembly along with the election of the members of the Board of Directors.

The procedures and principles regarding grouping transactions and election of the profession committees shall be applied to the elections of the assembly, board of

directors and disciplinary board of the chambers and commodity exchanges and election of delegates of the General Assembly of the Union.

The procedures and principles of the election of the branches of chamber and commodity exchange shall be determined by a regulation prepared by the Union in accordance with the provisions stated in this article.

The objection period is one day following the announcement of the election results of the organs of chamber and commodity exchange and delegates of the Union.

#### **Election of the organs of the Union**

**ARTICLE 85.** – Election of the organs of the Union other than the General Assembly delegates is made in May in accordance with the procedures and principles determined in this Law and under the judicial supervision.

The Chairman of the Union shall be elected primarily among the delegates by the General Assembly of the Union.

Principal and alternate members of the Board of Directors of the Union and assemblies of the chamber and commodity exchange are elected in the General Assembly of the Union by the relevant delegates among themselves, on the same day of the election of the Chairman of the Union. The elections of the Board of Directors of the Union and assembly cannot start until the election result of the Chairman of the Union is announced. In case the election of the Chairman of the Union is cancelled upon an objection, the elections of the Board of Directors of the Union and assembly are deemed *per se* invalid.

The principal and alternate members of the Supreme Disciplinary Board are elected by the Union General Assembly among delegates.

Elections of the Board of Directors of the Union and the assemblies of the chamber and commodity exchange are made together with the election of Supreme Disciplinary Board.

The objections shall be made on the day of election and settled on the same day.

### **CHAPTER FOUR** **Disciplinary and Pecuniary Penalties**

#### **The circumstances that disciplinary penalties applied**

**ARTICLE 86.** – Disciplinary penalties stated in this Law shall be applied to the members of the chamber and commodity exchange who act and behave contrary to the honor of the profession or the necessities of professional order and customs, and fail to perform their professional duties towards their customers or act contrary to the honesty that their duty requires.

#### **Disciplinary sanctions and penalties**

**ARTICLE 87.** – Disciplinary penalties and the acts and circumstances that require disciplinary penalties to be applied respectively are as follows:

a) Warning: Warning is a written declaration delivered to the relevant member in order to notify him to pay more attention while performing his duties and in his behaviors. The acts and circumstances that require warning are as follows:

1) To perform acts and actions that are contrary to professional honor and dignity.

2) The failure in the performance of invitation and request made by the relevant board of directors regarding the membership duties and liabilities, without any excuse.

3) To make statements that injure the reputation of the chamber, commodity exchange or the Union that he is a member of.

4) To act contrary to the disciplinary manners and courtesy during the course of his relationships with the customers or the business owners.



b) **Condemnation:** Condemnation is a written declaration delivered to the relevant member in order to notify him of the fact that the member is deemed to be at fault in his professional acts and behaviors. The acts and circumstances that require condemnation are as follows:

1) To make unsubstantial publications that injure the reputation of the chamber, commodity exchange or the Union that he is a member of.

2) The failure perform his undertakings towards the customers or the business owners.

3) To make unfair accusations towards the persons that have professional relationship with him.

4) To make misrepresentations regarding the qualification or the quantity of the goods to be sold.

5) To use illegal measurement and weight apparatus on purpose.

6) To perform an act that require more than one condemnation penalty in two years.

7) The failure to obey the measures taken by the judge or the election poll committee in order to perform the elections of the organs regularly and properly.

c) **Provisional exclusion from membership;** is the exclusion of the member from membership of the chamber or the commodity exchange for a minimum of two and a maximum of twelve months. In case where any member, who is imposed of a penalty of condemnation, performs any actions that require the same type of penalty within a term of five years, he shall be provisionally excluded from membership.

d) **Long-term exclusion from membership;** is the member's expulsion of the registration of the membership from the chamber or the commodity exchange and from the trade registry for a five years period of time. In case that the member, who was imposed of a provisional exclusion from the membership, necessitates the imposition of a penalty of condemnation with in three years from the exclusion shall be imposed of a long-term exclusion from membership.

The penalties stated in this article shall be imposed by the assembly upon the proposal of the disciplinary board. The principles on disciplinary offence and remedies shall be set out in a regulation enacted by the Ministry.

### **Conducting a disciplinary inquiry**

**ARTICLE 88.** – The disciplinary inquiry related with the members of the chamber and commodity exchange shall be conducted by the disciplinary board of a chamber or commodity exchange.

The disciplinary boards shall appoint one of their members as an inquirer and propose a penalty upon the report submitted by the inquirer. The member conducted the inquiry shall not attend to the meeting at which the penalty proposal is discussed.

### **Commencement of the disciplinary inquiry**

**ARTICLE 89.** – The boards of directors, upon the denunciation or the complaint or in the case of learning the behavior directly *ex officio*, are obliged to decide, in ten days, whether to initiate a disciplinary inquiry or not.

Upon the transmission of the decision of the board of director to initiate an inquiry, if the disciplinary boards decide on the formation of the crime, they either have to propose a penalty or, if they decide that **no crime is committed**, therefore there is no need for a penalty, at most in two months period of time. This period of time can be extended by the decision of the board of directors, if necessary. The disciplinary inquiry shall be concluded in one year at the latest.

Disciplinary inquiry proceedings, in any case, have to be commenced in one year from the date of the act or behavior. If a disciplinary inquiry is commenced due to the acts constituting a case to criminal action, the inquiry shall be commenced within one year from the date of the finalization of the criminal court decision.

### **Right of defense**

**ARTICLE 90.** – In disciplinary inquiries and pecuniary penalties that shall be given, it is compulsory to transmit the accusation to the relevant member in a written form of notification, ask for his defense and grant a period of minimum ten days for the preparation of his defense.

### **The impact of criminal inquiries**

**ARTICLE 91.** – In case that a member, whose act gives rise to a subject of disciplinary action and decision, is claimed at criminal court for the same act, this situation does not prevent the inquiry to be commenced and a disciplinary penalty to be given.

With the exception of the case of acquittal regarding that the action is not performed or not performed by the accused, the commencement of a disciplinary inquiry about actions subject to the criminal case which resulted in acquittal shall depend upon the character of the act which may necessitate a disciplinary inquiry independently and separately from provisions of criminal legislation.

### **Notification of decisions**

**ARTICLE 92.** – Disciplinary penalties shall be notified in a reasoned form in ten days to the relevant persons. The relevant person may object to the Supreme Disciplinary Board for the disciplinary penalties and decisions regarding not imposing penalties, with the exemption of warning, within fifteen days from the date of notification.

It is possible to apply for administrative procedures for the decisions given directly or upon objection against the decisions regarding disciplinary penalties.

### **Pecuniary penalties**

**ARTICLE 93.** – The members of the chambers and commodity exchanges may be imposed of administrative fines in the following manners:

a) The members, who do not duly perform the registration and recording transactions or not notify the amendments required to be recorded and announced in accordance with the legislation, shall be issued with an administrative fine twice as high as their annual subscriptions fees.

b) **(Amended with article 38 of the 5684 numbered Law)** The members, who do not comply with the decisions taken by the competent organs, and the Insurance Agents Executive Committee and the Insurance Experts Executive Committee, shall be issued with an administrative fine five times higher than their annual subscription fees.

c) The members, who do not comply with the health regulations in the process of manufacturing and supply of goods and services, who use the measuring and weight apparatus fraudulently, who produce and sell fraudulent, complex, out of standards and poor quality goods, shall be issued with an administrative fine ten times as much as their annual subscription fees.

The administrative fines regarding those acts and behaviors shall be issued by the decision of the assembly upon the proposal of the disciplinary board. The administrative fines stated in this article shall be applied twice for the amount that is set out in each repetition of the same act or behavior within one year.

The administrative fines issued in accordance with this Law shall be recorded as revenue by the chambers and commodity exchanges. An objection shall be made to the competent administrative court against these penalties within thirty days from the date of notification. The objection shall not cease the execution of the imposed administrative fine. The limitation period regarding the administrative fines envisaged in this Law is sixty days from the date that the competent institution became aware of the violation and in any case two years from the date that the violation has occurred.

Imposition of pecuniary penalties shall not prevent the imposition of a disciplinary penalty.

## CHAPTER FIVE Termination of Activities

### **Termination of the duties of organs and prohibition of their activities**

**ARTICLE 94.** – The decision on the termination of the duties of the organs of chamber, commodity exchange and the Union, which do not fulfill the principal duties prescribed by this Law or do not realize the purposes of their establishment in spite of written notice of the Ministry, and the election of the new ones instead of those shall be made by the court of first instance upon the request of the Ministry or the public prosecutor located in the province. The proceeding is subject to simple trial procedure and finalized within two months at the latest.

The new organs shall be nominated for the places of organs, whose duties are terminated, within one month at the latest in accordance with the principles and procedures set out in this Law. The newly nominated persons shall complete predecessors' terms of office.

The disposal of these organs that caused the termination of these organs' duties and which is stated by the decision of the court shall be void.

The Union shall determine for the chamber and commodity exchanges and the Ministry shall determine for the Union how to execute the routine works and transactions until the new organ's elections are made.

The governor for chambers and commodity exchanges and the Cabinet for Union may decide to prohibit the organs to display activities and inform the Ministry about this prohibition in cases where national security and public order, the prevention of the criminal offences and of their continuation and seizure require so, and if the delay cause inconveniences.

The decision on prohibition from activities shall be submitted to the competent judge for its approval within twenty-four hours; the judge shall declare his decisions within forty-eight hours. Otherwise, this administrative decision shall *per se* become abolished.

*The decision on prohibition from activities shall remain valid until the decision regarding the request for the termination of the duties of the organs is definitely made.*

Apart from the *foregoing cases or those cases* laid down in this Law, the duties of the organs of chamber, commodity exchange, or the Union shall not be terminated and the staff on duty in these organs shall not be dismissed.

### **Abolition and liquidation of the chambers and commodity exchanges**

**ARTICLE 95.** – *The chambers and commodity exchanges, which decide with the two-third majority of their assemblies not to be able to fulfill their activities and establishment purposes prescribed by the Law, shall be abolished by the Ministry upon their request and affirmative opinion of the Union.*

The commodity exchanges may be abolished by the Ministry upon the request of the Union in case where their activities are not required.

The criterion of quality, infrastructure, budget and number of members required to be abided by the chambers and commodity exchanges and the procedures and principles regarding the abolition and liquidation of the chambers and commodity exchanges, which have lost the conformation to such criterions, shall be determined by a regulation enacted by the Ministry by taking the opinion of the Union.

The assets of the chambers and commodity exchanges transformed into branches shall be transferred to the chamber and commodity exchange to which they are affiliated and the assets of the closed chambers and commodity exchanges shall be transferred to the Union.

## CHAPTER SIX Sundry Provisions

### Meeting and Decision Making Quorum

**ARTICLE 96.** – Organs of chamber, commodity exchange and the Union shall convene with the majority of the total number of their members. The decisions shall be taken by the majority of those who attended to the meeting. Quorum for disciplinary boards and the supreme disciplinary boards are the majority of the total number of their members.

The organs of the chamber, commodity exchange and the Union cannot abstain from voting at the meetings.

The boards of directors of the chambers and commodity exchanges shall convene once in a week and the assembly and profession committees shall convene once in a month upon the invitation of the disciplinary boards, the chairman of the board or the board of directors. When it is necessary, the board of directors, assembly and profession committees of the chambers and commodity exchanges may be called to an extraordinary meeting by their chairmen.

All profession committees of the chambers and commodity exchanges shall make a common meeting in every six months. The board of directors shall also attend to this meeting.

The members, except for the elections of organs, cannot attend and vote at the meetings regarding the affairs related to themselves, their spouses, their blood relatives up to the third degree, including the second degree their affinities up to the second degree, and their adoptees. In this circumstance, if the quorum is not met, the alternate members shall be invited.

The members working in the organs of chambers, commodity exchanges and the Union shall be assumed to be withdrawn from the membership, if they do not attend to absolute majority of the meetings held in six months with or without any reason. This provision shall not apply to the members entrusted with a task in another place by their own organs.

In case where the ordinary meetings cannot be held in three consecutive times due to non-obtainment of the quorum, the membership of those who have not attended to such three meetings shall be *per se* terminated and alternate members shall be called to replace them.

The membership in the organs of chamber, commodity exchange and the Union of the persons, whose membership in the chamber and commodity exchange is terminated for any reason, are *per se* terminated and alternate members are called to replace them.

In cases where the duties of the persons working in the organs of chamber, commodity exchange and the Union are terminated due to death, resignation and a court decision, alternate members are called to replace them.

The number of votes given to the relevant alternate member shall be taken into consideration while calling the alternate members. Furthermore while calling the alternate members for the Union, the principles of representation laid down in this Law shall be taken into account.

In case where the duty of the chairman of the board of directors of chambers and commodity exchanges and the Chairman of the Union is terminated for any reason, one of the members of the board of directors shall be nominated by the board of directors of the chamber, commodity exchange or the Union within one month as the chairman of the board of directors and the Chairman of the Union in order to complete the remaining time. The eldest deputy chairman shall be on duty on a temporary basis up to the elections.

## **Representation**

**ARTICLE 97.** – In case of absence of the chairman of the profession committees of the chambers and commodity exchanges, the assembly and the board of directors, and the chairman of the General Assembly of the Union, the chairman of the Union, and the chairmen of the council, the deputy chairmen nominated by them shall represent the relevant duties.

In case of absence of the secretary general of chamber, commodity exchange and Union, the deputy chairmen nominated by them shall represent their places.

## **Attendance fee**

**ARTICLE 98.** – The members of the profession committees, board of directors and assembly of the chamber and commodity exchange may be paid an attendance fee for the meetings they have attended.

The sum of money to be paid to the members of the profession committees and board of directors of the chamber and commodity exchange shall be determined by the assemblies, the sum of money to be paid to the members of the assemblies shall be determined by the General Assembly upon proposal of the Board of Directors of the Union.

## **Relation between the chambers and commodity exchanges**

**ARTICLE 99.** – The board of directors of the chambers established in the same province shall request an opinion as a consultation from other chambers while taking professional decisions. The chamber whose opinion was requested shall express its opinion within seven days at latest.

The board of directors of chamber and commodity exchange may object to the decisions of the other chambers and commodity exchanges in the same province. Upon application of the objecting chamber or commodity exchange and under the invitation and presidency of the eldest chairman of the assembly, the boards of directors shall settle the dispute by convening collectively. In case of dispute, the Union shall be the arbitrator.

Furthermore, the board of directors located in the same province, shall convene once every four months in order to form an opinion on the professional matters.

The procedures of the meeting and discussion shall be determined by a regulation that shall be prepared by the Union.

## **Auditing**

**ARTICLE 100.** – Chambers, commodity exchanges, the Union and the institutions related to and in connection therewith, are subject to the audit of the Ministry.

## **Regulations**

**ARTICLE 101.** – The regulations referred to in this Law that are to be issued by the Union, shall enter into force by publishing in the Official Gazette, upon the approval of the Ministry.

## **Provisions not to be implemented**

**ARTICLE 102.** – The certificate of proficiency which is set out in Law No. 3308 on Professional Education shall not be requested from those who are registered to the trade registry.

## **Abolished provisions**

**ARTICLE 103.** – Law No. 5590 of March 8, 1950 on “Chambers of Commerce and Industry”, “Chambers of Commerce”, “Chambers of Industry”, “Chamber of Maritime Commerce”, “Commodity Exchanges” and “The Union of Chambers of Commerce,

Industry, Maritime Commerce and Commodity Exchanges of Turkey”, have been abolished.

The references made to Law No. 5590 of March 8, 1950 in the other legislation shall be deemed as have been made to this Law.

**TEMPORARY ARTICLE 1.** – The staff positions that have been listed on the attached list numbered (1), have been established and attached to section of Ministry of Trade and Industry of the schedule numbered (I) attached to the Decree Law No. 190 on General Staff and Procedure the staff positions that have been listed on the attached list numbered (2) have been cancelled and removed from the section of Ministry of Trade and Industry of the foregoing Decree Law. The staff that has been engaged in the staff nominated as commissary of commodity exchange, which has been cancelled on the date of enforcement of this Law shall be appointed, within two months, with their same staff position degrees to the expert staff positions established under this Law.

Such staff shall be entitled to get their wages, additional indicator and all other wage increase and indemnities and other financial rights concerning to their previous positions until they are appointed to a new staff position. In case that the net amount of the sum of salary, additional indicator, every kind of increase and indemnities and other financial rights of the new staff position that the commissary of commodity exchange have been appointed is less than the net amount of the sum of salary, additional indicator, every kind of increase and indemnities and other financial rights that they used to earn in the last month according to their previous staff position, the amount of difference shall be paid as indemnity without any deduction as long as they stay in the staff position that they have appointed.

**TEMPORARY ARTICLE 2.** – The common databases envisaged in this Law to be established within the body of the Ministry and the Union in electronic form, the lists of the members who have the right to elect and to be elected in accordance with their profession groups of chambers and commodity exchanges shall be formed within six months in accordance with the principles to be determined by the Ministry.

**TEMPORARY ARTICLE 3.** – The regulations referred herein shall be put into force within six months as of the date of enforcement of this Law. Until these regulations put into force, the provisions of currently applicable regulations and directives which are not contrary to this Law shall continued to be applied.

**TEMPORARY ARTICLE 4.** – In the chambers and commodity exchanges, which have converted into branches affiliated to the chamber or commodity exchange of province within one year as of the date of enforcement of this Law, the subscription debts and overdue increases of members to this chamber of commodity exchange, of chambers and commodity exchanges to the Union shall be deleted and the members shall not pay any subscription for five years.

**TEMPORARY ARTICLE 5.** – In case that the total late subscription debts of members to the chambers and commodity exchanges, of chambers and commodity exchanges to the Union shall be paid in six months as of the date of the enforcement of this Law, the overdue increases regarding these debts shall be deleted.

**TEMPORARY ARTICLE 6.** – Agencies that have been established before this Law came into force shall be transformed into the branches or representative office affiliated to the relevant chamber.

**TEMPORARY ARTICLE 7.** – The amounts of subscription and fees set out in articles 24, 25, 50, 51 and 71 of this Law shall be implemented as, minimum twenty millions and maximum one hundred thirty millions Turkish Liras, for the year 2004.

**TEMPORARY ARTICLE 8.** – The qualifications and conditions set out in articles 74 and 75 of this Law shall not be requested from the ones who have been already appointed as secretary general and assistant secretary general before this Law came into force.

**TEMPORARY ARTICLE 9.** – The elections of organs of the chambers and commodity exchanges, which required to be done in the year of 2004, shall be done in March in the year of 2005.

The duration of duty of the members who have been elected to chamber and commodity exchange organs before the enforcement date of this Law shall last until the elections of organs of chamber and commodity exchange organs to be made in March 2005 and the duration of duty of the members who have been elected to organs of the Union shall last until the election to be made in May 2005. The Chairman of the Board of Directors of the Union shall continue to do his duty with title of the Chairman of the Union as of the enforcement date of this Law until the elections. The first elections of the disciplinary board shall be made on the foregoing dates.

The last paragraph of article 81 of this Law shall not be implemented in relation to those persons who are still on duty in the organs of chambers and commodity exchanges, until the first organs elections of chambers and commodity exchanges.

**TEMPORARY ARTICLE 10.** – As of the first elections to be made after the enforcement of this Law, persons who have been charged consecutively two times with duties of chairman of assembly, chairman of board of directors, chairman of council and chairman of the Union cannot be elected for the same duties unless two election terms have been passed by.

**TEMPORARY ARTICLE 11.** – Chambers and commodity exchanges of districts that have been established before the of enforcement date of this Law shall continue their activities within the scope of their working fields.

**TEMPORARY ARTICLE 12.** – The employers who were being employed in chambers, commodity exchanges, the Union and in institutions established by them on the enforcement date of this Law shall continue to be employed in accordance with their existing statutes.

**TEMPORARY ARTICLE 13.** – During six years as of the enforcement date of this Law, five percent of the annual income of the Union and, during fifteen years subsequent to such period, two percent of the annual income of the Union shall be allocated to Educational and Cultural Foundation of Chambers and Commodity Exchanges of Turkey and the University of Economy and Technology of the UCCET in order to be used exclusively for their needs. The principles on sharing the amounts to be granted shall be determined by the Board of Directors of the Union.

**TEMPORARY ARTICLE 14.** – (Added with 5290 numbered law) Subsection 6 of article 83 of this law shall not be applied to the elections stated within the temporary article 9 of this law.

**TEMPORARY ARTICLE 15.** – (Added with article 38 of 5684 numbered law) The election of the Insurance Experts Executive Committee shall be completed within 60 days from the elections of chambers` organs. The Undersecretariat of Treasury shall ascertain the temporary Insurance Expert Executive Committee within one month from the publication of Insurance Law until the Insurance Expert Executive Committee is established.

The election of the Insurance Agents Sector Assembly shall be completed within 60 days from the elections of chambers' organs. The election of the Insurance Agents Executive Committee shall be completed within 15 days from the establishment of the Insurance Agents Sector Assembly. The temporary Insurance Agents Executive Committee shall be ascertained with the decision of the Board of the Directors of the Union of Chambers and Commodity Exchanges of Turkey and the approval of The Undersecretariat of Treasury within one month from the publication of Insurance Law until the Insurance Agents Sector Assembly is established.

**TEMPORARY ARTICLE 16. – (Added with article 31 of 5838 numbered law)**

The complete additional interest charges for the late payment of membership fee debts of the members to the chambers and commodity exchanges, and chambers and commodity exchanges to the Union, and also if the members of the chambers and commodity exchanges, and the chambers and commodity exchanges pay their membership fee debts to the chambers and commodity exchanges and the Union within 6 months from the date of this article is enacted the complete additional interest charges shall be written off.

**Enforcement**

**ARTICLE 104.** – This Law shall enter into force on the date of its publication.

**Execution**

**ARTICLE 105.** – The provisions of this Law shall be executed by the Council of Ministers.



LIST NUMBER (1)

Institution : The Ministry of Industry and Trade  
 Organization : Province

STAFF POSITIONS THAT ARE CREATED

<u>Class</u>	<u>Title</u>	<u>Degree</u>	<u>Free Staff</u>	<u>Occupied Staff</u>	<u>Total</u>
GIH	Expert	1	35		35
GIH	Expert	2	6		6
GIH	Expert	3	6		6
GIH	Expert	5	1		1
GIH	Data Control	5	24		24
GIH	Data Control	8	20		20
		<b>Total</b>	<b>92</b>		<b>92</b>

LIST NUMBER (2)

Institution : The Ministry of Industry and Trade  
 Organization : Province

STAFF POSITIONS THAT ARE TERMINATED

<u>Class</u>	<u>Title</u>	<u>Degree No</u>	<u>Free Staff</u>	<u>Occupied Staff</u>	<u>Total</u>
GIH	Exchange Commissioner	1	41		41
GIH	Exchange Commissioner	2	9		9
GIH	Exchange Commissioner	3	14		14
GIH	Exchange Commissioner	4	3		3
GIH	Exchange Commissioner	5	16		16
GIH	Exchange Commissioner	6	3		3
GIH	Exchange Commissioner	7	4		4
GIH	Exchange Commissioner	8	2		2
		<b>Total:</b>	<b>92</b>		<b>92</b>

## اطلاعات عمومی

برقراری موازات در اجرای مقررات حقوق بین المللی و حقوق کشوری؛ از جهت جلوگیری از نقض حقوق بشر و ایجاد یک سیستم شایسته انسانها دارای اهمیت می باشد. در این راستا اتباع خارجی که در کشور ما حضور دارند دارای حقوق و مسئولیت های گوناگون می باشند. اجازه های اقامت در چارچوب این حق و مسئولیت ها زمینه قانونی اقامت اتباع خارجی در کشور ما را ایجاد می نماید.

بر اساس قانون اتباع خارجی و حفاظت بین المللی (YUKK) به شماره 6458، اجازه اقامت عبارت از مدرکی می باشد که به اقامت فرد در ترکیه اجازه می دهد. این مجوز که از سوی مقامات دارای صلاحیت تنظیم گردیده است، به فرد خارجی حق اقامت در کشور را برای مدت معین و در جای معین می دهد. اجازه اقامت که از جهت حفظ نظم عمومی اهمیت بسیاری دارد؛ در صورت مراجعه فرد خارجی، مراجعه با مدارک خواسته شده و دارا بودن شرایط لازمه برای نوع اقامتی که طلب نموده، صادر خواهد گردید.

### مراجعه جهت اجازه اقامت

اتباع خارجی که قصد اقامت در کشور ما را بیش از مهلت تعیین شده در ویزا و یا معافیت ویزا و یا بیش از نود روز را دارند، باید اجازه اقامت دریافت نمایند. امکان دریافت اجازه اقامت به شکلی که در قانون پیش بینی شده است از کنسولگری کشوری که مراجعه کننده تبعه آن می باشند و یا به صورت قانونی در آن اقامت دارد، در آینده نزدیک فراهم خواهد گردید، که به صورت جداگانه در این خصوص اطلاع رسانی خواهد گردید. تا زمانی که این مرحله تحقق یابد، مراجعات اتباع خارجی برای اخذ اجازه اقامت از طریق استانداری استانی که قصد اقامت در آن را دارند انجام می گیرد.

با قانون مذکور در مراجعات جهت اجازه اقامت، گزینه همراه برداشته شده است و هر فرد خارجی مراجعه و کارت اقامت وی به صورت جداگانه تنظیم می گردد. همانگونه مراجعه جهت اجازه اقامت می تواند از سوی شخص راسا انجام گیرد، به واسطه نماینده قانونی و یا وکیل فرد خارجی نیز انجام پذیرد. اما در این خصوص اگر اداره لازم ببیند، می تواند حضور شخص مراجعه کننده اصلی در حین مراجعه را طلب نماید. به ماده 21 قانون شماره 6458 و قانون شماره 6735 این حکم نیز افزوده شده است که مراجعات جهت اجازه اقامت می تواند از سوی نهاد واسطه دارای صلاحیت نیز انجام پذیرد. منظور از نهاد واسطه دارای صلاحیت، نهاد و یا سازمانی می باشد که از سوی اداره کل به آن صلاحیت اعطاء گردیده است و چارچوب وظایف و ماهیت آن بر اساس آئین نامه تعیین خواهد گردید.

### سیستم اقامت الکترونیک

در ماده 30 قانون اتباع خارجی و حفاظت بین المللی به شماره 6458، شش نوع اجازه اقامت تنظیم گردیده است که مراجعه اول، تمدید و مراجعات انتقال از طریق (<https://e-ikamet.goc.gov.tr>) به صورت آنلاین انجام می پذیرد.

### مراجعات اول و انتقال

برای مراجعات اول و انتقال، فرد خارجی می بایست از طریق سیستم اقامت الکترونیک جهت اجازه اقامت مراجعه نموده و در تاریخ و ساعت ملاقات تعیین شده برای وی در اداره مهاجرت استان همراه با مدارک خواسته شده مراجعه ( <https://e-ikamet.goc.gov.tr/Ikamet/IsteneBelgeler> ) نماید. همچنین در مراجعات اول و انتقال، ارائه اصل گذرنامه الزامی می باشد. در مراجعاتی که جهت تمدید انجام می گیرد، فتوکپی ترجمه تایید شده گذرنامه از سوی دفتر اسناد رسمی (نوتر) خواسته خواهد شد.

### مراجعه جهت تمدید

مراجعات جهت تمدید، از شصت روز مانده به پایان تاریخ اجازه اقامت و در هر شرایطی پیش از پایان تاریخ اجازه اقامت انجام می پذیرد.

برای مراجعه جهت تمدید، فرد خارجی می بایست از طریق سیستم اقامت الکترونیک مراجعه نموده و مدارک خواسته شده را

تکمیل نموده و به اداره مهاجرت استان محل اقامت خود از طریق پست ظرف 5 (پنج) روز ارسال نماید.

همچنین در جریان مراجعه جهت تمدید، لازم است اطلاعاتی که قبلاً داده شده است را کنترل نماید و به وارد نمودن اطلاعات بدون خطا و اشتباه دقت نماید. در غیر این صورت سیستم اقامت الکترونیک به مراجعه وی جهت تمدید، اجازه نخواهد داد و وی را به سیستم تعیین وقت ملاقات هدایت خواهد نمود.

### اجازه کار معادل اجازه اقامت می باشد

در چارچوب قانون مذکور، اجازه کار معادل اجازه اقامت معتبر می باشد، یعنی تبعه خارجی دارای اجازه کار، در طول مدت اعتبار اجازه کار، بدون نیاز به دریافت اجازه اقامت حق اقامت در کشور را دارا می باشد.

### الزام بیمه بهداشت و درمان

بیمه بهداشت و درمان معتبر، می بایست مدت اجازه اقامت درخواست شده را شامل گردد. یکی از بیمه های سلامتی ذکر شده در زیر کافی خواهد بود:

1- سندی که در چارچوب تفاهمنامه های دوجانبه از اداره بیمه شهر محل سکونت گرفته شده و نشان دهنده استفاده فرد از خدمات بیمه ای در ترکیه می باشد. این برگه باید دارای مهر و امضای اداره بیمه شهر محل سکونت باشد.

2- گواهی دارا بودن بیمه نامه تامین اجتماعی (provizyon belgesi) که از اداره تامین اجتماعی اخذ گردیده و دارای مهر و امضای اداره تامین اجتماعی می باشد. (در ثبت نام برای دریافت اجازه اقامت خانوادگی، گواهی دارا بودن بیمه نامه تامین اجتماعی که از اداره تامین اجتماعی اخذ گردیده باید کلیه افراد خانواده را تحت پوشش قرار دهد).

3- برگه ای که نشان دهنده ثبت نام برای دریافت بیمه نامه تامین اجتماعی بوده و دارای مهر و امضای اداره تامین اجتماعی باشد.

4- بیمه نامه درمانی خصوصی.

### هزینه اجازه اقامت

هزینه اجازه اقامت در قانون هزینه ها به شماره 492 تنظیم گردیده و از اتباع خارجی بر اساس این قانون هزینه دریافت خواهد گردید. پس از پایان اعتبار اجازه اقامت، در صورتی که جهت تمدید، مراجعه صورت نپذیرد، برای مدتی که بدون اجازه اقامت در ترکیه سپری گردیده است بر اساس ماده 83 قانون هزینه ها به شماره 492 دو برابر هزینه اجازه اقامت دریافت خواهد گردید.

### آدرس محل اقامت در ترکیه

اتباع خارجی موظف به اعلام آدرس محل اقامت خود در ترکیه می باشند، اتباع خارجی می توانند یکی از آدرس های ثابت و یا آدرس تاسیسات اقامتی که در ترکیه در آن اقامت دارند را اعلام نمایند. اما به هر ترتیبی که باشد، فرد خارجی موظف به اعلام آدرس خود به صورت صحیح و بدون خطا می باشد. همچنین به جهت آنکه کارت اجازه اقامت به آدرس برسد، می بایست اطلاعات آدرس، شماره تلفن و پست الکترونیک به روز باشد.

در صورتی که در طول مدت اعتبار اجازه اقامت، آدرس تغییر نماید، لازم است ظرف 20 (بیست) روز کاری به اداره مهاجرت استانی و اداره ثبت احوال و امور شهروندی استان مراجعه و مدارک لازم را ارائه نماید.

### حق ورود و خروج 15 روزه

-گواهی مراجعه برای اجازه اقامت، هنگامی که تبعه خارجی اولین مراجعه خود را از طریق سیستم اقامت الکترونیک انجام

داد و در تاریخ و ساعت تعیین شده برای ملاقات حاضر گردید و مراجعه وی در اداره مهاجرت استانی تکمیل گردید، تنظیم خواهد گردید.

-گواهی مراجعه برای اجازه اقامت، در صورتی که فرد خارجی مراجعه کننده برای تمدید اجازه اقامت، مراجعه خود را از طریق سیستم اقامت الکترونیک تکمیل نمود، از سوی سیستم داده خواهد شد.

فرد خارجی با در دست داشتن "گواهی مراجعه برای اجازه اقامت" که از سوی اداره تائید گردیده است، همراه با قبض پرداخت هزینه ها، به شرط بازگشت ظرف 15 روز، می تواند از کشور خارج شود. اما در صورتی که بیش از 15 روز در خارج از کشور اقامت نماید، برای فرد خارجی در ورود مجدد وی مقررات ویزا اعمال خواهد گردید.

### نتیجه مراجعه جهت اجازه اقامت

بر اساس ماده 21 قانون مذکور، مراجعات برای اجازه اقامت حداکثر ظرف نود روز به نتیجه خواهد رسید.

همچنین بر اساس ماده 22 آیین نامه اجرائی قانون اتباع خارجی و حفاظت بین المللی، مدت زمان نود روز، از تاریخ تحویل مدارک و اطلاعات بدون کم و کسر به مقام صلاحیت دار آغاز می گردد. در صورت تمدید این مدت، به فرد خارجی اطلاع رسانی خواهد گردید.

### هشدار در خصوص مدارک جعلی

در امور مربوط به اتباع خارجی، اداره کل مهاجرت با اشخاص ثالث و / و یا اشخاص حقوقی کار نمی کند. تثبیت گردیده است که اشخاص و یا شرکت هایی که در قبال دریافت مبلغ به جای فرد مربوطه اقدام به مراجعه جهت اجازه اقامت می نمایند، از اسناد جعلی استفاده می نمایند. در این راستا، مراجعات جهت اجازه اقامت باید شخصا صورت پذیرد و نباید به اشخاص حقیقی و حقوقی ثالث اعتماد نمود.

### مرکز ارتباطات اتباع خارجی (YIMER):

اتباع خارجی در رابطه با سوالات و مشکلات خود در رابطه با اجازه اقامت می توانند از طریق مرکز ارتباطات اتباع خارجی (YIMER) در داخل کشور با شماره 157 و در خارج از کشور با شماره +90 312 157 11 22 به صورت 24 ساعته اطلاعات کامل کسب نمایند.

پنجشنبه 2013/04/11

روزنامه رسمی

شماره 28615

## قانون

### قانون حمایت بین المللی و اتباع خارجی

شماره قانون: 6458

تاریخ تصویب 04/04/2013

#### قسمت اول

هدف، محتوا، تعاریف و منع استرداد

#### بخش اول

هدف، محتوا و تعاریف

هدف :

ماده 1

1- هدف از این قانون این است که ورود اتباع خارجی به کشور ترکیه و نیز اقامت آنها در این کشور و خروج آنها از این کشور و همچنین اصول و مبانی مربوط به نحوه اجرا و حوزه شمول حمایت مقدره در خصوص آن دسته از اتباع خارجی که از کشور ترکیه تقاضای حمایت دارند و در عین حال مسولیتها، صلاحیت ها، وظایف و ساختار اداره کل مهاجرت وابسته به وزارت داخله تنظیم شود.

محتوا :

ماده 2

1- این قانون امورات مربوط به اتباع خارجی ، حمایت بین المللی مبتنی بر تقاضای فردی اتباع خارجی در مرزها، مبادی مرزی و یا در داخل ترکیه تامین حمایت بر موقعیت اضطراری برای آن دسته از اتباع خارجی که امکان بازگشت به کشوری که مجبور به ترک آن شده اند را ندارد و نیز برای آن دسته از اتباع خارجی که به صورت دسته جمعی وارد ترکیه شده اند ، مسولیت ها ، صلاحیت ها، وظایف و ساختار اداره کل مهاجرت را در بر می گیرد.

2- با اجرای این قانون ، احکام معاهدات بین المللی که کشور ترکیه آنها را پذیرفته با احکام قوانین خاص این کشور حفظ می شود.

ماده 3 - 1-

با اجرای این قانون :

الف) اعضای خانواده : زن ، کودک غیر رشید وابسته به و فرزند رشید ولی محجور ارباب رجوع و یا کسی که واجد شرایط حمایت بین المللی می باشد .

ب) با کشورهای اروپایی: کشورهای عضو هیئت اتحادیه اروپا و کشورهای دیگری که عضویت آنها در شورای وزرا مشخص خواهد شد.

پ) وزیر: وزیر کشور داخله

ت) وزارت کشور داخله

ث) ارباب رجوع: فردی که تقاضای برخورداری از حمایت بین المللی دارد ولی هنوز تصمیم قطعی در خصوص تقاضای وی اتخاذ نشده است.

ج) کودک: فردی که هنوز به سن هجده سالگی تمام نرسیده و رشید (بالغ) نشده است.

ح) حامی: هر یک از شهر و ندان ترکیه یا اتباع خارجی که به صورت قانونی تامین نیازمندیهای اتباع خارجی که با هدف حفظ بنیان خانواده وارد ترکیه شده اند را تعهد می نماید و از ارباب رجوعی که در پی تحصیل مجوز اقامت می باشد حمایت می کنند.

خ) مدیر کل اداره مهاجرت

چ) اداره کل: اداره کل مهاجرت

د) کنترل ورود و خروج: امورات کنترل در گذرگاههای مرزی

1 - مهاجرت: قانونی که بیانگر ورود، اقامت و خروج اتباع خارجی از طریق مبادی قانونی می باشد و مهاجرت غیر قانونی که بیانگر ورود، اقامت و خروج اتباع خارجی از طریق مبادی غیر قانونی و کار کردن غیر قانونی آنها در کشور می باشد و حمایت بین المللی

ذ) آدرس محل اقامت: محلی که در سیستم ثبت آدرس در ترکیه به ثبت رسیده است

ر) مجوز اقامت: مجوز صادره در خصوص اقامت در ترکیه

ز) کنسول گری: سر کنسول گری های جمهوری ترکیه، کنسول گری های جمهوری ترکیه و یا شعبات کنسولی سفارت کبرای جمهوری ترکیه

ژ) مستحق رسیدگی ویژه: از میان ارباب رجوع ها افرادی که دارای شرایط حمایت بین المللی می باشند، کودکان بی سرپرست، افراد معذور، سالخوردگان افراد حامله، پدر و مادر تنهایی که فرزند به همراه دارند، و یا افرادی که تحت شکنجه، تجاوز جنسی یا سایر تجاوزات جسمی، جنسی یا روحی واقع شده اند<sup>1</sup>

<sup>1</sup>باماده 1 قانون شماره 6462 به تاریخ 2013/04/25، اصطلاح "از کار افتاده" در این بند به صورت "معلول" تغییر یافته است.

س) کودکان بی سرپرست: کسی که فردی سرپرستی موثر از او به عمل نمی آورد کودکی که بی سرپرستی عرقی یا قانونی یک فرد رشید وارد ترکیه شده یا پس از ورود به ترکیه سرپرست خود را از دست داده

ش) برگه سفیر: برگه ای که به جای پاسپورت صادر می شود.

ص) مبادی مرزی: نقطه ای مرزی که بنا با تصمیم هیئت وزرا به عنوان مبادی ورودی و خروجی کشور تعیین شده است.

ض) آخرین تصمیم: از تصمیماتی که در خصوص مراجعه ارباب رجوع یا در خصوص وضعیت فردی که واجد شرایط حمایت بین المللی می باشد، اتخاذ می گردد، تصمیمات متخذه از سوی اداره کل که موجب اعتراض اداری و قضایی واقع نشود و یا تصمیمی که نتوان با مراجعه به محاکم قضایی آن را بی اثر ساخت

ط) معاهده: پروتکل 1967 در خصوص وضعیت حقوقی پناهندگان و معاهده 1951/07/28 در خصوص وضعیت حقوقی پناهندگان

ظ) حمایت بین المللی: پناهنده، پناهنده مشروط و یا وضعیت حمایت ثانویه

ع) کشور متبوع: کشور متبوع اتباع خارجی و یا در صورتی که اتباع مزبور تابعیت مضاعف داشته باشند هر یک از کشور هایی که وی تابعیت آن را دارد.

غ) فاقد تابعیت: فردی که تابعیت هیچ کشوری را ندارد و بیگانه شمرده می شود.

ق) لغو روادید (ویزا): مقررات مربوط به لغو روادید

ک) تبعه خارجی (بیگانه): فردی که تبعن حکومت جمهوری ترکیه نباشد.

گ) شماره هویتی اتباع خارجی: شماره هویتی که بر مبنای قانون خدمات نفوس (سر شماری) به به شماره 54900 و به تاریخ 2006/04/25 به اتباع خارجی تعلق می گیرد.

ی) (ضمیمه: ماده 27/6735-28/7/2016) سازمان واسطه دارای صلاحیت: سازمان و یا نهادی که از سوی اداره کل اعطاء صلاحیت گردیده و ماهیت و مسئولیت های آن با آئین نامه تعیین خواهد گردید.

## بخش دوم

### منع استرداد

#### ماده 4

1- هیچ یک از افرادی که مشمول این قانون می باشند هیچگاه به کشوری که در آن مورد شکنجه، مجازات غیر انسانی و غیر حیثیتی قرار گرفته و یا احتمال وی به خاطر اقداماتی که انجام داده و یا

بخاطر وابستگی های نژادی، دینی، تابعیتی یا وابستگی به یک گروه اجتماعی خاص و یا افرادی که به خاطر افکار سیاسی شان زندگی و آزادی آنها مورد تهدید قرار گرفته، مسترد نخواهد گردید

## قسمت دوم

### اتباع خارجی

#### بخش اول

#### ورود به ترکیه وروادید (ویزا)

#### ورود به ترکیه وخروج از ترکیه

#### ماده 5

1- ورود به ترکیه وخروج از ترکیه از طریق مبادی مرزی وبا در دست داشتن گذرنامه معتبر یا برگه های معتبری که به جای گذرنامه صادر می شوند امکان پذیر می باشد .

#### کنترل برگه

#### ماده 6

1 تبعه خارجی بایستی حین ورود به ترکیه یا هنگام خروج از آن گذرنامه و یا برگه های معتبری که به جای گذرنامه صادر شده اند را به مامورین مرزی ارائه نماید .

2- کنترل برگه های گذر مرزی در داخل وسایط نقلیه در حال حرکت نیزمی توان امکان پذیر بود .

3- کنترل اتباع خارجی در سالن های ترانزیت فرودگاهها نیز می توان امکان پذیر است .

4- هنگام ورود اتباع خارجی به کشور ، شمول یا عدم شمول ماده هفت در خصوص آنها مورد بررسی قرار میگردد .

5- در اجرای این ماده ، حداکثر می توان به مدت 4 ساعت افرادی که نیازمند بررسی جامع تری می باشند را معطل کرد . تبعه خارجی در عرض این چهار ساعت میتواند هر لحظه به کشور خود برگردد یا منتظر انجام امورات مربوط به پذیرش خویش به کشور ترکیه شود . اصول و مقررات مربوط به امورات کنترل جامع باید مورد تنظیم و تدوین قرار گیرد .

#### اتباع خارجی ممنوع الورود به ترکیه



ماده 7-1- اتباع خارجی ذیل حق ورود به ترکیه را نداشته و برگشت داده می شوند .

الف ) افرادی که فاقد گذرنامه یا برگه معتبر جایگزین گذرنامه یا ویزا یا مجوز اقامت می باشند یا این مجوزها را با تقلب تهیه کرده یا آنها را جعل کرده باشند .

ب ) افرادی که پس از انقضای اعتبار روادید ، معافیت روادید یا مجوز اقامت حداقل در مدت شصت روز گذرنامه یا برگه معتبر جایگزین گذرنامه را تهیه نکرده باشند

پ ) آن دسته از اتباع خارجی که مشمول فقره اول ماده 15 می باشند حتی اگر مشمول لغو روادید هم باشند و حتی اگر بر اساس فقره دوم ماده 15 حق اقامت داشته باشند .

2- اموراتی که بر مبنای این ماده صورت می پذیرند به اتباع خارجی عودت داده شده اعلام می شود . در این اعلامیه ، نحوه برخورداری موثر از حق اعتراض اتباع خارجی به این تصمیم و سایر حقوق و مسئولیت های قانونی نیز به آنها ابلاغ می شود .

**نحوه اعمال حمایت بین المللی از فردی که متقاضی آن است .**

ماده 8

1 شروطی که در مواد 5، 6، 7 مطرح شد است چنانچه مانع حمایت بین المللی از متقاضی شود کان لم یکن تلقی نمی توان شد .

**ممنوعیت ورود به ترکیه**

ماده 9

1- اداره کل می تواند در صورت ضرورت با کسب نظر از نهادها و سازمان های مردمی مرتبط داخل و خارج از ترکیه ، از منظر نظم عمومی ، بهداشت عمومی و با امنیت عمومی از روی احتیاط و دور اندیشی مانع ورود اتباع خارجی به کشور شود .

2- ورود آن دسته از اتباع خارجی که قبلاً از ترکیه طرد گردیده اند به این کشور ، از سوی اداره کل یا استانداری ها ممنوع اعلام می گردد .

3- مدت ممنوعیت ورود به ترکیه حداکثر پنج سال است . ولی در حال بیم تهدید جدی از منظر نظم عمومی و امنیت عمومی موجود باشد اداره کل می تواند حداکثر به مدت ده سال دیگر به آن بیفزاید .

4- آندسته از اتباع خارجی که پس از انقضای مهلت اقامت یا اعتبار روادید و قبل از ثبت چنین وضعیتی از سوی مقامات صالح جهت خروج از کشور به استانداری ها مراجعه نمایند بیش از یکسال ممنوع ورود نخواهند شد .

5- امکان عدم ممنوعیت ورود برای آندسته از اتباع خارجی که بر مبنای ماده 56 از آنها خواسته شده ترکیه را ترک نمایند و آنها نیز ظرف مهلت قانونی این کشور را ترک می نمایند وجود دارد .

6- اداره کل می تواند ممنوعیت ورود را رفع نماید و یا با حفظ شرط ممنوعیت ورود تبعه خارجی مجوز ورودی به ترکیه را برای مدت معمولی صادر نماید .

7- اداره کل میتواند به خاطر نظم عمومی و یا امنیت عمومی اجازه ورود برخی از اتباع خارجی به این کشور را منوط به کسب مجوز قبلی نماید .

### اعلام ممنوعیت ورود به ترکیه

#### ماده 10

1- ابلاغ ممنوعیت ورود ، در خصوص افرادی که مشمول فقره اول ماده 9 می باشند هنگام مراجعه آن افراد جهت ورود به کشور ترکیه در مبادی ورودی این کشور از طریق مقامات صالح و در خصوص افرادی که مشمول فقره دوم ماده 9 می باشند از طریق استانداری ها صورت می پذیرد . در این ابلاغیه نحوه برخورداری از حق اعتراض موثر و دیگر حقوق و مسئولیت های قانونی ذکر می شود .

### بایستی روادید ، متقاضی روادید و مقامات صالح

#### ماده 11

1- آن دسته از اتباع خارجی که میتوانند به مدت نود روز در ترکیه اقامت داشته باشند می توانند با اخذ روادید از کنسولگری های واقع در کشور متبوع خویش یا کشوری که به طور قانونی در آن اقامت دارند وارد ترکیه شوند . مهلت اقامت در ترکیه بر اساس روادید یا لغو روادید بایستی مناسب با وضعیت ارباب رجوع ، با ارزیابی وی صورت پذیرد .

2 - برای اینکه در خواست روادید افزون باشد روا به اصول و قانون کرده باشد.

3- روادیدها ، حق مطلق برای ورود به کشور ترکیه ایجاد نمی کنند .

4- روادیدها در کنسولگری ها و در موارد استثنایی در استانداری هایی که مبادی ورودی به آنها متعلق می باشد صادر می گردد . به تقاضاهایی که به کنسولگری ها ارائه می شود ظرف مدت نود روز پاسخ داده می شود .

5- دیپلماتهای کشورهای خارجی می توان ، راساً از سوی سفارت کبرای جمهوری ترکیه ویزا صادر شد . این ویزاها ، هماهنگ با روش کلی صدور ویزا ، در همان لحظه به وزارت مربوطه و وزارت خارجه اعلام می شود . برای صدور چنین روادیدهایی هیچگونه هزینه های دریافت نمی شود .

6- با در نظر گرفتن منافع ملی می توان در خصوص صدور ویزا برای آن دسته از اتباع خارجی که صدور ویزا برای آنها تامین کننده منافع ملی می باشد به طور استثنایی راساً از طریق سفارت کبرای جمهوری ترکیه اقدام نمود . این ویزاها ، هماهنگ با روش کلی صدور ویزا در همان لحظه به وزارت مربوطه و وزارت امور خارجه اعلام می شود . برای صدور چنین ویزاهایی هیچگونه هزینه ای دریافت نمی شود .

7- اصول و مقررات مربوط به نوع و نحوه صدور ویزا بر اساس آئین نامه تدوین و تنظیم میشود

### لغو روادید ( معافیت از ویزا )

ماده 12

1- اتباع خارجی ذیل جهت ورود به ترکیه نیاز به روادید ندارند .

الف ) اتباع آن دسته از کشورهایایی که بنا به معاهدات دو جانبه با جمهوری ترکیه و یا مصوبه هیات وزیران از دریافت روادید معاف هستند .

ب ) آن دسته از اتباع خارجی که هنگام ورود به ترکیه دارای مجوز اقامت یا مجوز کار معتبر می باشند .

پ ) آندسته از اتباع خارجی که به استناد ماده 18 قانون گذرنامه به شماره 5682 مورخه 1950/11/15 گذرنامه دارای مهر مخصوص دریافت داشته اند و اعتبار آن منقضی نشده است .

ت ) آن دسته از اتباع خارجی که ماده 9 قانون تبع به ترک شماره 5901 وتاریخ 29/05/2009 شامل باشد.

2- از اتباع خارجی ذیل می توانند بدون روادید وارد ترکیه شوند .

الف ) آن دسته از اتباع خارجی که از وسایط نقلیه ای استفاده مینمایند که ناگزیر از ورود به فرودگاهها و بنادر ترکیه می باشند میتوانند در صورت ضروری وارد شهرهای بندری یا فرودگاهی شوند .

ب ) افرادی که وارد بنادر دریایی شده اند می توانند حداکثر به مدت 72 ساعت در شهر بندری و یا حومه مجاور آن با هدف توریستی گردش نمایند .

روادید هایی که در مبادی مرزی صادر می شوند .

ماده 12

1- برای آن دسته از اتباع خارجی که بدون اخذ روادید وارد مبادی مرزی ترکیه می شوند با اخذ تعهد نسبت به ترک کشور در موعد مقرر به شرط استثناء روادید صادر می گردد .

2- روادید مرزی در استانداری هایی که مبادی مرزی به آنها تعلق دارند صادر می شود . استانداری می تواند این حق را به یکی از کارکنان مرزی خود واگذار نماید . بنا به تصویب هیات وزیران در صورتی که مهلت متفاوتی برای چنین ویزاهایی ذکر نشود ، این ویزاها حداکثر تا مهلت 15 روز اعتبار خواهند داشت .

3- در صدور روادید مرزی بنا به دلایل انسانی می توان از شرط بیمه سلامتی صرفنظر نمود .

### روادیدهای عبور ( ترانزیت ) فرودگاهی

ماده 13

1- برای آن دسته از اتباع خارجی که قصد عبور ترانزیت از ترکیه دارند می توان شرط اخذ روادید ترانزیت فرودگاهی را قرار داد .

این روادید از طریق کنسولگری ها صادر می شود و حداکثر ظرف مدت شش ماه مورد استفاده قرار گیرد .

2- مشخصات افرادی که نیازمند روادید ترانزیت فرودگاهی می باشند به طور مشترک به وزارت و وزارت امور خارجه اعلام می گردد . آن دسته از اتباع خارجی که برای آنها روادید صادر نمی گردد .

## ماده 15

1- برای اتباع خارجی ذیل روادید صادر نمی گردد .

الف ) آن دسته از اتباع خارجی که مهلت اعتبار گذرنامه یا برگه معتبر جایگزین آن حداقل شصت روز بیشتر از مهلت انقضای روادید درخواستی نباشد .

ب) افرادی که ممنوع الورد هستند .

پ ) افرادی که از منظر نظم عمومی و یا امنیت عمومی قابل اعتماد نباشند .

ت ) افرادی که مبتلا به یکی از بیماریهای تهدید کننده بهداشت عمومی باشند.

ث ) افرادی که مرتکب جرائمی شده باشند که کشور ترکیه بر اساس معاهدات دو جانبه استرداد آن مجرمین را تعهد نموده و نیز افرادی که مظنون یا محکوم به چنین جرائمی باشند .

ج ) افرادی که فاقد بیمه سلامت معتبر به مدت اقامت در ترکیه باشند .

چ ) افرادی که دلایل معقول برای ورود به ترکیه ، عبور از ترکیه یا اقامت در ترکیه ارائه ننمایند .

خ ) افرادی که فاقد امکانات مادی وافی و کافی برای مدت اقامت در ترکیه باشند .

ح ) افرادی که حاضر نیستند هزینه های اهمال در حفظ روادید یا هزینه های ناشی از مجوز اقامت قبلی را بپذیرند و یا افرادی که به موجب قانون دریافت هزینه های عمومی تحت تعقیب بوده و حاضر نیستند هزینه های لازم الوصول را بپذیرند و یا افرادی که به موجب قانون کیفری ترکیه به شماره 5237 مورخه 2004/9/29 تحت تعقیب بوده ولی حاضر نیستند بدهی و جرائم خود را بپردازند .

2 ) افرادی که مشمول این ماده هستند ، چنانچه صدور روادید برای آنها به نفع کشور باشد ، با تصویب وزیر می توانند روادید دریافت دارند .

**ابطال روادید :**

## ماده 16

1- روادیدها

الف) اثبات جعلی بودن روادید

ب) اثبات مخدوش بودن روادید

پ) ممنوعیت ورود به ترکیه صاحب روادید

ت) به وجود آمدن ظن قوی در خصوص احتمال ارتکاب جرائم توسط تبعه خارجی

ث) جعلی بودن گذرنامه و یا برگه جایگزین گذرنامه و یا انقضای مهلت اعتبار آن ها

ج) در صورتی که فرد از روادید صادر یا لغو روادید در جهت مغایر با هدف صدور آن استفاده نماید

چ) در صورتی که اثبات شود شروط و اسنادی که روادید به موجب صادر گردیده نامعتبر بوده اند، مقاماتی که روادید را صادر کرده اند و یا استانداری ها نسبت به ابطال روادید صادره اقدام می نمایند

2- چنانچه ظرف مهلت باقی مانده از اعتبار ویزا، در خصوص تبعه خارجی دارنده آن، حکم طرد صادر شود، روادید (ویزا) باطل می شود.

ابلاغ امورات مربوط به روادید:

ماده 17

1- رد درخواست صدور روادید و یا امورات مربوط به ابطال روادید باید به فرد مربوطه ابلاغ شود

صلاحیت هیات وزیران در خصوص روادید گذرنامه

ماده 18

1- هیات وزیران

الف) انعقاد معاهدات مربوط به امورات روادید و گذرنامه و لغو روادید یک جانبه در خصوص اتباع برخی از کشورها در صورت لزوم، معافیت هزینه های صدور ویزا، تسهیل روادید برای ورود به کشور و تعیین مهلت برای روادید.

ب) اعمال شروط و مقررات گذرنامه ای در برخی از نقاط کشور و یا کل آن در وضعیت جنگی و یا بحرانی.

پ) صلاحیت اعمال و یا رفع شروط معین جهت ورود اتباع خارجی به ترکیه

## بخش دوم

### اقامت

#### مجوز اقامت

##### ماده 19

1- آن دسته از اتباع خارجی که می خواهند بیش از مهلت اعتبار روادید یا لغو روادید و یا بیش از نود روز در ترکیه اقامت داشته باشند بایستی نسبت به اخذ مجوز اقامت اقدام نمایند. چنانچه ظرف مدت شش ماه از تاریخ صدور مجوز اقامت، مجوز مزبور مورد استفاده قرار نگیرد اعتبار آن از بین می رود.

لغو مجوز اقامت ( معاف از اجازه اقامت)

##### ماده 20

1- اتباع خارجی ذیل از کسب مجوز اقامت معاف می باشند :

(الف) افرادی که با روادید یا لغو روادید حداکثر نود روزه وارد کشور می شوند تا انقضای مهلت مزبور از کسب مجوز اقامت معاف می باشند.

(ب) افرادی که دارای مدرک هویتی افراد فاقد تابعیت می باشند.

(پ) دیپلمات ها و مامورین کنسولگری هایی که در ترکیه انجام وظیفه می نمایند. خوانوادگان آن که از وزارت امور خارجه علام می شود.

(ت) افرادی که در نمایندگی های نهادهای بین المللی در ترکیه فعالیت می نمایند و وضعیت آنها براساس معاهدات مشخص گردیده،

(ث) کسانی که بنابه معاهداتی که جمهوری ترکیه آنها را پذیرفته از اخذ مجوز اقامت معاف هستند.

(ج) افرادی که مشمول ماده 28 قانون شماره 5901 می باشند.

(چ) افرادی که مشمول فقره اول مواد 79 و 83 و فقره هفتم ماده 69 می باشند.

2- مشخصات و عکس اتباع خارجی مشمول بندهای (پ و ت و ث و ج) به استناداری ها مراجعه نمایند.

#### تقاضای مجوز اقامت

##### ماده 21

1- متقاضای مجوز اقامت به کنسولگری های واقع در کشور متبوع تبعه خارجی یا کشوری که وی به صورت قانونی در آن حضور دارد ارائه می گردد.

2- آن دسته از اتباع خارجی که تقاضای صدور مجوز اقامت دارند .

دارای گذرنامه یا برگه معتبر جایگزینی باشند که اعتبار آن شصت روز بیشتر از مدت زمان اقامت در خواستی باشد .

3- در صورتی که اسناد و اطلاعات مورد نیاز در خواستی از متقاضی ناقص باشد ارزیابی وی می تواند تا مدت تکمیل نواقص به طول بکشد . اسناد و اطلاعات ناقص به فرد مربوطه اعلام خواهد شد .

4- کنسولگری ها تقاضای مجوز اقامت را همراه با دیدگاه های خویش به اداره کل می فرستند . اداره کل در صورت احساس نیاز دیدگاه های سایر نهادهای مرتبط را اخذ نموده و پس از رسیدگی به تقاضاها در خصوص صدور مجوز اقامت یا رد تقاضا اطلاعات لازم را به کنسولگری ها می فرستد .

5- نتیجه تقاضاها حداکثر ظرف مدت نود روز مشخص می شود .

6- امورات مربوط به رد تقاضای مجوز اقامت به فرد مربوطه ابلاغ می شود .

7- (ضمیمه: ماده 27/6735-28/7/2016) مراجعات جهت اجازه اقامت، می تواند از سوی سازمان واسطه دارای صلاحیت نیز انجام گیرد .

**تقاضای صدور مجوز اقامت که می توان در داخل ترکیه قابل اقدام باشد .**

ماده 22

1- تقاضای صدور مجوز اقامت ، در مواقع ذیل استثنائاً می توان در استانداری ها هم قابل ارائه باشد .

الف) در صورت درخواست و یا تصویب مقامات اداری و قضای

ب) در صورتی که جدایی تبعه خارجی از ترکیه معقول یا ممکن نباشد .

پ) مجوز های اقامت طنپولانی مدت

ت) مجوز های اقامت دانشجویی

ث) مجوز های اقامت با اهداف انسان دوستانه

ج) مجوز های اقامت برای قربانیان تجارت انسان

چ) در صورت تقاضای تغییر مجوز اقامت خانوادگی به مجوز اقامت کوتاه مدت

خ) تقاضاهایی که جهت کسب مجوز اقامت برای کودکانی که پدر و مادر آنها در ترکیه مقیم هستند صورت می گیرد .

ح) چنانچه شرایط لازم برای صدور مجوز اقامت معتبر منتفی باشد و یا به خاطر تغییر آن شرایط نیاز به تقاضای صدور مجوز اقامت مناسب با شرایط جدید اقامتی باشد .

د) در صورت تقاضای صدور مجوز اقامت بر مبنای فقره دوم ماده 20.

ز) تقاضای صدور مجوز اقامت کوتاه مدت از سوی کسانی که دورا تحصیلات عالی را در ترکیه به پایان رسانده اند.

### تنظیم و شکل ظاهری مجوز های اقامت

#### ماده 23

1- مدت مجوز اقامت شصت روزه کمتر از مهلت اعتبار گذرنامه یا برگه جایگزینی آن بوده و صدور آن بستگی به هدف از اقامت داشته و برای هر فرد خارجی به طور جداگانه صادر می گردد.

2- شکل و محتوای مجوز اقامت از سوی وزارت مشخص می شود و در ضمن شکل و محتوای مجوز کار که می تواند جایگزین مجوز اقامت هم بشود از سوی وزارت و نهادهای مرتبط تعیین می شود .

### تمدید مجوز های اقامت

#### ماده 24

1- مجوز های اقامت می توان از سوی استانداری ها مورد تمدید قرار بگیرد

2- تقاضای تمدید مهلت اقامت شصت روزه مانده به انقضای آن و در حالت قبل از انقضای آن به استانداری ها ارائه می شود . برای متقاضیان تمدید مجوز اقامت سندی ارائه می شود که هیچ گونه هزینه ای از بابت آن دریافت نمی شود این افراد حتی در صورت انقضای مهلت مجوز اقامت تا موقعی که تصمیم جدیدی در خصوص وضعیت اقامتی آنها اتخاذ نگردیده می توانند به اعتبار همان سند در ترکیه اقامت کنند.

3- مهلت مجوز اقامت تمدید شده ، پس از انقضای مهلت مجوز قبلی آغاز می شود .

4- رسیدگی به تقاضاهای تمدید اقامت در اختیار استانداری هاست .

رد ، ابطال و یا عدم تمدید تقاضای مجوز اقامت در داخل ترکیه

#### ماده 25

1- رد تقاضای مجوز اقامت ، عدم تمدید مجوز اقامت و یا ابطال آن و نیز ابلاغ این گونه امور به فرد ذینفع در داخل ترکیه از طریق استانداری ها صورت می پذیرد در این خصوص وابستگی های خانوادگی اتباع خارجی در ترکیه . مدت اقامت آنها در ترکیه وضعیت آنها در کشور ومبدا ومنافع عالی کودک مدنظر قرار گرفته و تصمیم نهایی در این باب می توان اتخاذ شود .

2- رد تقاضای صدور مجوز اقامت ، عدم تمدید مجوز اقامت و یا ابطال ان به خود تبعه خارجی یا نماینده قانونی و یا وکیل وی ابلاغ می شود در این ابلاغیه نحوه اعتراض موثر به ایتن تصمیم و دیگر حقوق ومسئولیت های قانونی به وی اعلام می شود .

سایر احکام مرتبط با مجوز های اقامت



## ماده 26

1- ایامی که تبعه خارجی به عنوان متهم یا محکوم در زندان یا بازداشتگاه های اداری سپری می کند ، محل مهلت مجوز اقامت محسوب نمی شود مجوز اقامت چنین افرادی می تواند ابطال شود اگر این افراد فاقد شماره هویت اتباع خارجی نباشد می تواند بدون درخواست مجوز اقامت شماره هویتی اتباع خارجی را دریافت دارند.

2- آن دسته از اتباع خارجی که پس از اخذ مجوز اقامت و کار از طریق کنسولگری ها ، وارد ترکیه می شوند از تاریخ ورود به ترکیه حداکثر به مدت بیست روز کاری فرصت دارند تا مشخصات خود را در سیستم ثبت آدرس به ثبت برسانند .

### مجوز کار در حکم مجوز اقامت

## ماده 27

1- سند تایید معافیت مجوز کار که با استناد ماده 10 قانون مجوز کار اتباع خارجی به شماره 4817 مورخه 2003/2/27 صادر گردیده به همراه مجوز کارز معتبر در حکم مجوز اقامت نیز می باشد.

(جمله دوم لغو گردیده است: ماده 28/7/2016-6735/27)

2- باید صدور مجوز کار و یا تمدید مجوز اتباع خارجی منوط به عدم شمول ماده 7 باشد .

### وقفه در اقامت

## ماده 28

1- در اجرای احکام این قانون چنانچه فردی به دلایلی به غیر از خدمت وظیفه عمومی ، دلایل آموزشی و بهداشتی ، در عرض یکسال به مدت شش ماه و یا در عرض پنج سال متوالی جمعاً به مدت بیش از یک سال در خارج از ترکیه حضور داشته باشد این امر ، وقفه در اقامت ترقی خواهد شد . در صورت تقاضای صدور اقامت یا تغییر مجوز اقامت از سوی افرادی که دچار وقفه در مهلت اقامت شده اند مدت قبلی ( مدت اقامت قبل از ایجادوقفه ) به عنوان مدت اقامت در ترکیه محسوب نخواهد شد.

2- در احتساب مدت اقامت بی وقفه ، مدت اقامت دانشجویی به صورت نصف و در خصوص سایر مجوز های اقامتی مدت اقامت به صورت کامل محاسبه می شود.

### تغییر مجوز اقامت

## ماده 29

1- اتباع خارجی می توانند در صورت از بین رفتن اخذ مجوز اقامت مطرح کرده بودن و یا در صورت بروز دلیل دیگری در این خصوص تقاضای مجوز اقامت مناسب با وضعیت جدید بنمایند .

2- اصول و مقررات مربوط به تغییر مجوز اقامت براساس این نامه تنظیم می شود

## انواع مجوز اقامت

ماده 30

1- انواع مجوز های اقامت از این قرار است :

الف) مجوز اقامت کوتاه مدت

ب) مجوز اقامت خانوادگی

پ) مجوز اقامت دانشجویی

ت) مجوز اقامت بلند مدت

ث) مجوز اقامت با هدف انسان دوستانه

ج) مجوز اقامت برای قربانیان تجارت انسان

**مجوز اقامت کوتاه مدت**

ماده 31

1- اتباع خارجی ذیل می توانند مجوز اقامتی کوتاه مدت دریافت دارند :

الف) افرادی که قصد پژوهش علمی دارند

ب) افرادی که دارای اموال غیر منقول در ترکیه می باشند

پ) افرادی که به دنبال ایجاد رابطه تجاری یا کاری هستند

ت) افرادی که به برنامه های آموزشی ضمن خدمت می پیوندند .

ث) افرادی که قصد دارند بر اساس معاهدات دوجانبه ای که کشور ترکیه با کشور آنها به عمل آورده یا در چارچوب تبادل دانشجویی با اهداف آموزش مشابه در ترکیه اقامت نمایند .

ج) افرادی که با هدف گردشگری قصد اقامت دارند

چ) افرادی که به قصد درمان وارد کشور می شوند و به شرطی که به یکی از بیماری هایی که تهدید بهداشت عمومی محسوب می شود مبتلا نباشند .

خ) افرادی که به نا به در خواست مقامات اداری یا قضای باید در ترکیه اقامت داشته باشند . (ح) افرادی که مجوز اقامت خانوادگی خود را به مجوز اقامت کوتاه مدت تغییر می دهند.

د) افرادی که در دوره های آموزش زبان ترکی شرکت می نمایند .

ذ) افرادی که به واسطه نهادهای عمومی در دوره ها، پژوهش ها و امور آموزش در ترکیه شرکت می نمایند.

ر) افرادی که ظرف مدت شش ماه از تاریخ فارغ التحصیلی در دوره های آموزش عالی در ترکیه جهت اقامت مراجعه می نمایند.

ز) (ضمیمه: ماده 27/28-6735/2016/7) افرادی که در ترکیه کار نمی کنند اما به میزان و نحوه ای که از سوی هیئت وزیران تعیین گردیده سرمایه گذاری می نمایند، همچنین همسر خارجی ایشان و فرزند خارجی ایشان و یا فرزند خارجی همسر ایشان که به سن بلوغ نرسیده باشند و یا وابسته به آنها باشند،

ک) (ضمیمه: ماده 27/28-6735/2016/7) شهروندان جمهوری ترک قبرس شمالی

2- (تغییر: ماده 27/28-6735/2016/7) اجازه اقامت کوتاه مدت، به غیر از بند های (ز) و (ک) پارگراف اول، در هر مرتبه می تواند حداکثر برای دو سال داده شود.

3- افرادی که مشمول بند (د) فقره اول می باشند حداکثر برای دو بار می توانند مجوز اقامت دریافت دارند.

4- افرادی که مشمول بند (ر) فقره اول می باشند حداکثر برای یک بار آن هم به مدت یکسال می توانند مجوز اقامت دریافت دارند.

5- (ضمیمه: ماده 27/28-6735/2016/7) اجازه اقامت که در قالب بند های (ز) و (ک) پارگراف اول داده می شود، می تواند حداکثر برای پنج سال داده شود.

### شرایط مجوز اقامت کوتاه مدت :

#### ماده 32

1- برای صدور مجوز اقامت کوتاه مدت شرایط ذیل لازم است

الف) ارائه تقاضا به استناد یک یا چند مورد از دلایل مطرح شده در فقره اول ماده 31 و ارائه اسناد و اطلاعات مربوط با موضوع تقاضا .

ب) عدم شدن شمول ماده 7

پ) برخورداری از شرایط کلی در خصوص استاندارد های سلامت و امنیت

ت) ارائه سند سجل کیفری که از سوی مقامات ذیصلاح کشور متبوع متقاضی یا کشوری که وی در آن کشور به صورت قامونی اقامت دارد در صورت نیاز

ث) ارائه اطلاعات لازم در خصوص آدرس محل اقامت در ترکیه

رد، ابطال و یا عدم تمدید مجوز اقامت کوتاه

#### ماده 33

1- در مواقع ذیل مجوز اقامت کوتاه مدت صادر نمی شود ، در صورت صدور باطل می شود و در صورت انقضای مهلت تمدید نمی شود.

الف) در صورت عدم احراز یک یا چند مورد از شرطی که در ماده 32 مطرح شده و یا در صورت از بین رفتن آن شرایط

ب) در صورتی که مشخص شود اقامت صادره در راستای هدفی مغایر با هدف صدور آن مورد استفاده قرار گرفته است .

ت) در صورتی که حکم به طرد وی و یا حکم ممنوعیت ورود به وی صادر شود .

2- (ضمیمه: ماده 28/7/2016-6735/27) اساس و اصول مربوط به باطل نمودن اجازه اقامت از جهت مدت اقامت در خارج از کشور بر اساس آئین نامه تعیین می گردد.

### مجوز اقامت خانوادگی

ماده 34

1- اتباع ترکیه ، افرادی که مشمول ماده 28 قانون به شماره 5901 هستند .

یا آن دسته از اتباع خارجی که داری یکی از انواع مجوز های اقامتی می باشند و افرادی که دارای وضعیت حمایتی ثنویه می باشند :

الف) برای همسران خارجی

ب) برای فرزند غیررشدید خارجی آنها یا همسران آنها

پ) برای فرزندان خارجی مهجور آنها یا همسران آنها

مجوز اقامت خانوادگی صادر می شود به نحوی که هر بار مدت آن بیش از سه سال نخواهد بود . در هر حال ، مهلت مجوز اقامت خانوادگی هرگز نمی تواند بیش از مهلت مجوز اقامت فردی باشد . که متقاضی (حامی)<sup>2</sup>

2 - اگر فردی بنابه قوانین حقوقی کشور متبوع خود بیش از یک همسر داشته باشد تمامی تنها می تواند برای یکی از همسران خود مجوز اقامت بگیرد . ولی برای فرزندان که از دیگر همسرانش متولد شده اند نیز می توانند مجوز اقامت بگیرند .

3- هنگام صدور مجوز اقامت برای کودکان چنانکه یکی از اولیای آنها در خارج از کشور ترکیه اقامت داشته باشد ، کسب موافقت ولی مزبور لازم است .

4- دارنده مجوز اقامت خانوادگی ؛ تا سن هیجده سالگی بدون نیاز به اخذ مجوز اقامت دانش آموزی می تواند در مدارس ترکیه تحصیل نماید .

<sup>2</sup>با ماده 27 قانون شماره 6735 به تاریخ 2016/07/28 ، عبارت "در سال" در این پاراگراف به صورت "سه سال" تغییر یافته است .

5- افرادی که حداقل سه سال با مجوز اقامت خانوادگی در ترکیه اقامت گزیده اندمی توانند پس از هیجده سالگی تقاضای مجوز اقامت کوتاه مدت بنمایند.

6- در صورت طلاق ، برای تبعه خارجی که با یکی از اتباع ترکیه ازدواج کرده بوده است به شرطی که حداقل دارای سه سال سابقه اقامت در ترکیه با مجوز اقامت خانواده بوده باشد ، مجوز اقامت کوتاه مدت قابل صدور باشد ولی چنانکه از طریق محاکم قضای اثبات شود که طلاق همسر خارجی به علت خشونت خانوادگی بوده ، سه سال سابقه اقامت ، ضروری نخواهد بود .

7- در صورت فوت حامی ، افرادی که به خاطر وابستگی به وی مجوز اقامت خانوادگی اخذ کرده بودند، بدون شرط مدت اقامت می توانند مجوز اقامت کوتاه مدت دریافت دارند .

### شرایط مجوز اقامت خانوادگی

#### ماده 35

1- در صورت تقاضای مجوز اقامت خانوادگی ، فرد حامی بایستی واجد شرایط ذیل باشد:

الف ) چنانچه مجموع درآمد وی از حداقل حقوق ، کمتر باشد ، باید مشخص شود که هر یک از افراد خانواده مزبور ماهانه کمتر از یک سوم حداقل حقوق ، دریافت نمی دارند .

ب ) تمامی افراد خانواده بایستی دارای بیمه سلامتی باشند و همگی بایستی از استانداردهای لازم برای امنیت و بهداشت عمومی برخوردار باشند .

پ ) استعلام سجل کیفری به مدت پنج سال از تاریخ تقاضای مجوز اقامت در خصوص جرائمی که منافای ثبات نظام خانواده می باشد .

ت ) فرد متقاضی ( حامی ) بایستی حداقل به مدت یکسال در ترکیه اقامت داشته باشد .

ث ) بایستی مشخصات وی در سیستم ثبت آدرس به ثبت رسیده باشد .

2- در خصوص افرادی که با هدف پژوهش علمی مجوز اقامت اخذ نموده اند ، افرادی مشمول ماده 28 قانون به شماره 5901 می باشند و نیز افرادی که با اتباع کشور ترکیه ازدواج نموده اند ، بند (ت) فقره اول ضروری نمی باشد .

3- افرادی که با هدف اقامت به همراه فرد حامی تقاضای مجوز اقامت خانوادگی در ترکیه دارند بایستی واجد شرایط باشند :

الف ) بایستی اسناد و اطلاعات کافی در خصوص شمول فقره اول ماده 34 ارائه نمایند .

ب ) بایستی اثبات نمایند که با یکی از افرادی که در فقره اول ماده 34 ذکر شده زندگی می نماید یا قصد زندگی دارد .

پ ) بایستی اثبات نماید که با هدف کسب مجوز اقامت خانوادگی اقدام به ازدواج ننموده است.

ت ) هر کدام از همسران بایستی هیجده سال تمام داشته باشد .

ج) در خصوص مهاجران و افراد دارای وضعیت حمایتی ثانویه، شرایط ذکر شده در فقره اول این ماده مصداق ندارند.

### رد ابطال و یا عدم تمدید مجوز اقامت خانوادگی

ماده 6

1- در مواقع ذیل مجوز اقامت خانوادگی صادر نمی شود، در صورت صدور ابطال می شود و در صورت اتمام مهلت مقرر تمدید نمی گردد:

الف) چنانچه شروط ذکر شده در فقره های اول و سوم ماده 35 رعایت نشود یا از بین برود.

ب) در صورتی که پس از منقفی شدن شرایط اخذ مجوز اقامت خانوادگی، مجوز اقامت کوتاه مدت صادر نشود.

پ) چنانچه حکم طرد یا حکم ممنوعیت ورود برای کسی صادر شود

ت) در صورتی که مشخص شود دارنده مجوز اقامت خانوادگی، از این مجوز در راستای هدفی مغایر با هدف از صدور آن استفاده نموده است.

2- (ضمیمه: ماده 28/7/2016-6735/27) اساس و اصول مربوط به باطل نمودن اجازه اقامت از جهت مدت اقامت در خارج از کشور بر اساس آئین نامه تعیین می گردد.

### درخواست صدور مجوز اقامت خانوادگی از طریق ازدواج صوری

ماده 37

1- چنانچه قبل از صدور یا تمدید اقامت خانوادگی ظن معقولی وجود داشته باشد، استانداری ها بررسی خواهند کرد که آیا ازدواج مزبور به خاطر کسب مجوز اقامت صادر شده یا نه؟ پس از این بررسی چنانچه اثبات شود که ازدواج با این قصد صورت گرفته، از صدور مجوز اقامت خانوادگی اجتناب شده و اگر قبلاً صادر شده مجوز صادره ابطال می گردد.

2- استانداری های می توانند حتی پس از صدور مجوز اقامت خانوادگی نیز در خصوص صوری بودن یا صوری نمودن ازدواج بررسی به عمل آورند.

3- مجوزهای اقامتی که بر اساس ازدواج صوری تحصیل شده و سپس مورد ابطال قرار گرفته اند در محاسبه ایام اقامتی برای کسب مجوز اقامتی که در این قانون پیش بینی شده اند به حساب نمی آید.

### مجوز اقامت دانشجویی

ماده 38

1- برای آندسته از اتباع خارجی که می خواهند در یکی از نهادهای آموزش عالی در ترکیه مدارج کاردانی، کارشناسی، کارشناسی ارشد و یا دکترا را طی کنند.

## مجوز اقامت دانشجویی صادر می شود .

2- آن دسته از اتباع خارجی که بخواهند در مدارس ابتدایی و راهنمایی تحصیل نمایند ، چنانچه یک شخصیت حقیقی یا حقوقی مسئولیت و هزینه های او را برعهده بگیرد پس از کسب رضایت از اولیای قانونی یا نماینده قانونی آنها برای مدت تحصیل بصورت یکساله مجوز اقامت دانش آموزی صادر و تمدید می گردد.

3- مجوز اقامت دانشجویی ، هیچ گونه حقی برای پدر و مادر و دیگر بستگان دانشجو در خصوص اخذ مجوز اقامت ایجاد نمی کند.

4- چنانچه طول مدت تحصیل کم تر از یک سال باشد ، مدت مجوز اقامت دانشجو نمی تواند طولانی تر از آن باشد.

5- (ضمیمه: ماده 28/7/2016-6735/27) به تباع خارجی که به واسطه سازمان ها و نهادهای دولتی به ترکیه آمده و به تحصیل خود ادامه خواهند داد، می توان به اندازه مدت تحصیل به وی اجازه اقامت داده شود.

## شرایط مجوز اقامت دانشجویی

### ماده 39

1- هنگام صدور مجوز اقامت دانشجویی شروط ذیل مورد بررسی قرار می گیرد

الف ) ارائه اسناد و اطلاعات مطرح شده در ماده 38

ب) عدم شدن شمول ماده 7

پ) ارائه آدرس محل اقامت در ترکیه

رد ، ابطال و یا عدم تمدید مجوز اقامت دانشجویی

### ماده 40

1- در مواقع ذیل مجوز اقامت دانشجویی صادر نمی شود ، در صورت صدور ابطال می شود و در صورت اتمام مهلت ، تمدید نمی گردد.

الف) چنانچه شرایط مذکور در ماده 39 احراز نشود و یا از بین برود .

ب) چنانچه دلایلی مبنی بر عدم امکان ادامه تحصیل بروز نماید.

پ) چنانکه مشخص شود دارنده مجوز اقامت دانشجویی ، از مجوز صادره در راستای هدفی مغایر با هدف صدور آن استفاده کرده است .

ت) چنانچه حکم طرد یا حکم ممنوعیت ورود دارنده مجوز صادر شود .

### حق کار دانشجویان<sup>3</sup>

#### ماده 41

1- دانشجویان می توان دوره های کاردانی، کارشناسی، کارشناسی ارشد و دکتری می توانند با اخذ مجوز کار در این کشور مشغول کار شوند.

اما شروع تحصیل، آغاز می شود و آنها نمی توانند در هر هفته بیش از 24 ساعت کار کنند.

2- اصول و مقررات مربوط به حق کار دانشجویان دوره های کاردانی و کارشناسی، در چارچوب سیاست های اداره مهاجرت و با همکاری مشترک وزارت، وزارت کار و امنیت اجتماعی تنظیم می شود.

### مجوز اقامت طولانی مدت

#### ماده 42

1- برای آن دسته از اتباع خارجی که حداقل به مدت هشت سال بدون وقفه در ترکیه به صورت مجاز اقامت داشته باشند یا اتباعی که حائز شرایط اعلام شود از سوی شورای سیاستگذاری مهاجرت باشند با تصویب وزارتخانه، از طریق استانداری ها مجوز اقامت دائمی صادر می گردد.

2- افرادی که دارای حق پناهندگی، پناهندگی مشروط و وضعیت حمایتی ثانویه یا مجوز اقامت با اهداف انسان دوستانه و یا حق حمایت موقتی هستند، نمی توانند به استناد این حق تفضای مجوز اقامت دائم بنمایند.

### شرایط مجوز اقامت طولانی مدت

#### ماده 43

1- جهت اخذ مجوز اقامت احراز شروط ذیل ضروری است.

الف) اقامت بی وقفه در کشور ترکیه حداقل به مدت 8 سال

ب) عدم دریافت کمک اجتماعی در عرض سه سال اخیر



پ) برخورداری از توان مالی و منبع درآمدی مناسب و منظم برای تأمین معاشرت خود و خانواده در صورت وجود.

2- در صورتی که به دلیل برخورداری از شروط تعیین شده از سوی شورای سیاستگذاری مهاجرت اعطای مجوز اقامت طولانی مدت مجاز تشخیص داده شد، به غیر از بند(ث) سایر شروط ذکر شده در فقره اول ضروری نمی باشد.

### حقوق برآمده از مجوز اقامت طولانی مدت

ماده 44

1- اتباع خارجی که مجوز اقامت طولانی مدت دریافت داشته اند .

الف) مسوولیت خدمت سربازی

ب) حق انتخاب کردن و انتخاب شدن

پ) حق ورود به عرضه خدمات عمومی

ت) وارد کردن خودرو با حق معافیت کمرگی

و خارج از مقررات مربوط به قوانین خاص، با حفظ حقوق برآمده از امنیت اجتماعی و به شرط تبعیت از احکام مرتبط با برخورداری از این حقوق، از کلیه حقوق شناخته شده برای اتباع ترکیه برخوردار می شود .

2- شورای(هیأت) وزیران صلاحیت سلب تمام و یا بخشی از حقوق مطرح شده در فقره اول را دارد.

### ابطال مجوز اقامت طولانی مدت

ماده 45

1- مجوزهای اقامت طولانی مدت در مواقع ذیل ابطال می شود:

الف) چنانچه تبعه خارجی از منظر نظم عمومی و امنیت عمومی تهدیدی جدی تلقی شود.

ب) چنانچه تبعه خارجی بیش از یکسال به دلایلی غیر از خدمت وظیفه عمومی اجباری در کشور متبوع خویش و دلایل بهداشتی و آموزشی در خارج از ترکیه حضور داشته باشد.

2- اصول و مقررات مربوط به قبول و رسیدگی به تقاضای اتباع خارجی در خصوص صدور مجدد مجوز اقامت طولانی مدت در مورد آن دسته از اتباع خارجی که مجوز اقامت طولانی مدت آنها به استناد بند(ب) فقره اول ابطال گردیده و از طریق آیین نامه مشخص می شود.

### مجوز اقامت با انگیزه انسان دوستانه

ماده 46

1- در مواقع ذیل، بدون الزام شروطی که برای صدور سایر انواع مجوزهای اقامتی وجود دارد، با تصویب وزارتخانه از طریق استانداری ها مجوز اقامت انسان دوستانه حداکثر به مدت یکساله صادر می شود .

الف) هرگاه منافع عالی کودک مدنظر باشد.

ب) هرگاه علی رغم حکم به طرد یا ممنوعیت ورود اتباع خارجی ، نامبردگان نتوانند از ترکیه خارج شوند و یا خروج آنها از ترکیه معقول یا ممکن نباشد.

پ) هرگاه به استناد ماده 55 حکم طرد تبعه خارجی صادر نشود.

ت) هرگاه در مقابل اقدامات صورت گرفته بر مبنای مواد 53،72،77 به دادگاه مراجعه شود.

ث) در طی مدتی که برای انجام امورات مربوط به استرداد ارباب رجوع به اولین کشوری که وی به آن پناهنده شده و یا استرداد وی به یک کشور امن ثالث

ج) در مواقعی که به دلایل اضطراری و یا به خاطر حفظ منافع ملی

صدور مجوز ورود و اقامت برای تبعه خارجی از منظر نظم عمومی و امنیت عمومی ضروری باشد لکن با عنایت به مشکلات پدید آمده در خصوص صدور مجوز اقامت نتوان نوع دیگری از مجوزهای اقامتی برای وی صادر کرد.

چ) در مواقع فوق العاده

آن دسته از اتباع خارجی که مجوز اقامت انسان دوستانه دریافت داشته اند از تاریخ صدور مجوز اقامت حداکثر به مدت بیست روز فرصت دارند تا مشخصات خود را در سیستم ثبت آدرس به ثبت برسانند.

## ابطال یا عدم تمدید مجوز اقامت انسان دوستانه

ماده 47

1- مجوز اقامت انسان دوستانه به شرط تصویب وزارت، یا از بین رفتن که موجب صدور مجوز مزبور شده بودند از طریق استانداری ها ابطال می شود و یا تمدید نمی گردد.

## مجوز اقامت برای قربانیان تجارت انسان

ماده 48

1- برای آن دسته از اتباع خارجی که قربانی تجارت انسان شده اند می توانند در خصوص اینکه قربانی تجارت انسان شوند ظن قوی وجود داشته باشد، به منظور بهبود وضعیت روحی و برای اینکه در خصوص همکاری یا عدم همکاری صادر شوند.

2- در صدور اینگونه مجوزهای اقامت، شروطی که برای صدور سایر مجوزهای اقامتی لازم است، مطرح نیست.

## ابطال و تمدید مجوز اقامت قربانیان تجارت انسان

ماده 49

1- اینگونه مجوز اقامت که به منظور بهبود و خودیابی فرد صادر می شود با در نظر گرفتن وضعیت خاص قربانی و یا امنیت و سلامتی وی می تواند حداکثر به صورت شش ماهه تمدید شود اما در هر صورت این مدت نمی تواند در مجموع بیشتر از سه سال باشد.

2- چنانچه اثبات شود قربانی تجارت انسان یا فردی که ظن قوی در خصوص قربانی شدن وی وجود دارد با اقدامات خود موجب برقراری رابطه محدود با مرتکبین این جنایت شده، مجوز اقامت وی باطل می شود.

بخش سوم

اشخاص بی وطن

اثبات بی وطنی

ماده 50

1- اثبات بی وطنی از سوی اداره کل صورت می پذیرد برای اشخاص بی وطن « سند هویتی شخص بی وطن» تنظیم می شود که به موجب آن فرد مزبور می تواند به طور قانونی در ترکیه اقامت داشته باشد اشخاصی که از سوی کشور دیگر اقدام به اینکار نمایند از این حق برخوردار شوند.

2- اشخاص بی وطن پس از اخذ « سند هویتی شخص بی وطن» مسوول شناخته می شوند این سند با کسب نظر مساعد اداره کل در استانداری ها تنظیم می شود این سند که هیچگونه هزینه ای از بابت آن دریافت نمی شود در حکم مجوز اقامت فرد نیز می باشد و هر دو سال یکبار از طریق استانداری ها تمدید می شود در «سند هویتی شخص بی وطن» که شماره هويت اتباع خارجی نیز قيد می شود.

3- ایامی که با دارا بودن « سند هویتی شخص بی وطن» در ترکیه سپری می شود در محاسبه مدت اقامت فرد، مورد محاسبه قرار می گیرد.

4- « سند هویتی شخص بی وطن» با اخذ تابعیت هر کشوری از سوی دارنده این سند به خودی خود بی اعتبار می شود.

5- اثبات وضعیت بی وطنی و اصول و مقررات مربوط به « سند هویتی شخص بی وطن» طبق آیین نامه تعریف می شود.

### حقوق و تضمینات اشخاص بی وطن

ماده 51- اشخاصی که دارای « سند هویتی شخص بی وطن»

الف) می توانند متقاضی هر یک از مجوزهای اقامتی مطرح شده در این قانون باشند.

ب) تا موقعی که تهدید جدید از منظر نظم عمومی و یا امنیت عمومی ایجاد نکنند، طرد نمی شوند.

پ) از شرطی که برای سایر اتباع خارجی وجود دارد معاف هستند.

ت) در خصوص مجوز کار تابع احکام قانون به شماره 4817 می باشند.

ث) حق برخورداری از احکام ماده 18 قانون 5682 را دارند.

ج) آنها می توانند از حکم ماده 18 قانون و شماره 5682 استفاده کنند.

### بخش چهارم

## ماده 52

1- با صدور حکم طرد تبعه خارجی می توانند به کشور مبدأ و یا به کشوری که قصد عبور از آن را دارد و یا به کشور ثالث طرد می شود.

## حکم طرد

## ماده 53

1- حکم طرد بنا به توصیه اداره کل و یا رأساً از سوی استانداری ها اتخاذ می گردد.

2- حکم: حکم طرد همراه با دلایل آن به تبعه خارجی یا نماینده قانونی یا به وکیل او ابلاغ می شود. تبعه خارجی که حکم طرد وی صادر شده چنانچه وکیل نداشته باشد مستقیماً یا از طریق نماینده قانونی اش از نتیجه حکم، نحوه اعتراض باخبر می گردد.

3- تبعه خارجی و یا نماینده قانونی وی یا وکیل وی می توانند در خصوص حکم طرد ظرف مدت پانزده روز پس از ابلاغ حکم به دیوان عدالت اداره (دادگاه اداری) شکایت نمایند شخص مراجعه کننده به دیوان هم، رجوع خود به دادگاه را به اطلاع مقام صادر کننده حکم طرد می رساند تقاضاهای ارائه شده به دادگاه ظرف مدت پانزده روز مورد رسیدگی قرار گرفته و حکم نهایی ابلاغ می شود رأی دادگاه در اینخصوص قطعی لازم الاجرا است. به شرط رعایت رضایت فرد خارجی، در جریان طرح دعوی و یا در صورت اقدام جهت دادرسی، به غیر از موارد درج شده در بندهای (ب)، (ث) و (ک) پاراگراف اول و پاراگراف دوم ماده 54، تا زمانی که دادرسی به نتیجه برسد، فرد خارجی طرد نمی گردد.<sup>4</sup>

افرادی که حکم به طرد آنها می شود .

## ماده 54

1- در خصوص اتباع خارجی ذیل حکم طرد صادر می شود:

الف) افرادی که به استناد ماده 59 قانون به شماره 5237 طرد آنها ضروری باشد.

ب) رهبر، عضو و حامی سازمان های تروریستی و یا رهبر، عضو و حامی سازمان های جرائم سوداگرانه (سودجویانه)

پ) افرادی که جهت اخذ مجوز ورود، اقامت و روادید اطلاعات غیر واقعی و اسناد جعلی ارائه نموده داشته.

ت) افرادی که در مدتی که در ترکیه اقامت داشته اند گذران زندگی خویش را از راه های نامشروع کسب کرده اند.

ث) افرادی که حضور آنها از منظر نظم عمومی، امنیت عمومی و بهداشتی عمومی یک تهدید تلقی شود.

ج) افرادی که بیش از ده روز از مدت اعتبار روادید یا مهلت لغو روادید آنها سپری شده و یا روادید آنها باطل گردیده است.

چ) افرادی که مجوز اقامت آنها باطل گردیده است.

خ) افرادی که علی رغم اخذ مجوز اقامت بیش از ده روز پس از انقضای مهلت آن بدون عذر موجه نسبت به تعیین تکلیف خود مراجعه ننمایند.

ح) افرادی که اثبات شود بدون مجوز کار مبادرت به کار نموده اند.

د) افرادی که احکام ورود و خروج قانونی خود به ترکیه با اخلاف مواجه نمایند.

ذ) چنانچه اثبات شود فردی علی رغم ممنوعیت ورود، وارد ترکیه شده باشد.

ر) افرادی که تقاضای حمایت بین المللی آنها پذیرفته نشده، افرادی که مشمول حمایت بین المللی نمی شوند، افرادی که تقاضای خود را پس گرفته اند، افرادی که تقاضای آنها کان لم یکن تلقی می شود.

افرادى که شرایط حمایت بین المللی آنها منتفی شده و یا باطل گردیده، چنانچه پس از ابلاغ حکم نهایی نتوانند به استناد سایر احکام این قانون حق اقامه در ترکیه را کسب نمایند.

ز) چنانچه ظرف مدت ده روز پس از رد تقاضای تمدید مجوز اقامت از ترکیه خارج نشوند.

ک) (ضمیمه: ماده 676/36 2016/10/3) افرادی که از سوی سازمان ها و نهادهای بین المللی مشخص گردد که با سازمان های تروریستی در ارتباط می باشند.

2- (تغییر: ماده 676/36 2016/10/3) در خصوص افرادی که در قالب بندهای (ب)، (ث) و (ک) پاراگراف اول این ماده در شرایط مراجعه جهت حمایت بین المللی و یا در وضعیت تحت حمایت بین المللی قرار دارند، می توان در هر مرحله از امور حمایت بین المللی حکم به طرد آنها داد.

**افرادی که به حکم طرد در خصوص آنها صادر نمی شود.**

#### ماده 55

1- در خصوص اتباع خارجی ذیل حتی اگر مشمول ماده 54 هم باشند حکم طرد صادر نمی شود .

الف) در صورتی که دلایل جدی وجود داشته باشد که فرد در صورت طرد، در کشور که به آن طرد می شود مورد مجازات اعدام، مورد شکنجه، مورد مجازات یا اقدامات غیر انسانی، یا غیر حیثیتی قرار می گیرد.

ب) در صورتی که به خاطر کهولت سن، حاملگی یا مشکلات جسمانی جدی مسافرت برای وی خطر جدی داشته باشد.

پ) در صورتی که به خاطر بیماری مهلک تحت مداوا باشد و در کشوری که به آن طرد می شود امکان مداوا وجود نداشته باشد.

ت) قربانیان تجارت انسان از فرایند حمایت از قربانیان برخوردار شده اند.

ث) قربانیان تجاوزات جنسی و یا تجاوزات روحی و جسمی تا زمان اتمام مراحل درمان

2- ارزیابی موارد مطرح شده در فقره اول می توانند در خصوص هرکسی به صورت جداگانه گزیده و در صورت احضار حتمن خود را معرفی بنمایند.

**درخواست برای ترک ترکیه**

#### ماده 56

1- برای افرادی که حکم به طرد آنها شده است، به هنگام ابلاغ حکم طرد، برای ترک ترکیه حداقل 15 روز و حداکثر 30 روز مهلت داده می شود ولی در خصوص افرادی که احتمال فرار و مخفی شدن آنها وجود دارد، افرادی که مقررات ورود و خروج قانونی را نقض نمایند، افرادی که از سند جعلی استفاده نمایند.

افرادی که به استناد اسناد مجهول جهت اخذ مجوز اقامت اقدام نموده باشند یا مجوز اقامت اخذ نموده باشند و این امر به اثبات رسیده باشد، و نیز افرادی که برای نظم عمومی، امنیت عمومی و بهداشتی عمومی تهدید ایجاد نمایند این مهلت در نظر گرفته نمی شود.

2- برای افرادی که جهت خروج از ترکیه به آنها مهلت داده شده، « برگه مجوز خروج » صادر می شود این برگه هیچگونه هزینه ای ندارد مسئولیت مخارج اقامت و رواید و جرائم مربوط به آنها به جای خود باقی است.

### مراقبت اداری برای خاطر طرد و مدت آن

ماده 57

1- حکم صادره در خصوص اتباع خارجی مشمول ماده 54 در صورت دستگیری توسط مأمور بدون وقفه به استانداری اعلام می شود چنانچه صدور حکم طرد در خصوص این افراد ضروری به نظر برسند، این حکم از طریق استانداری صادر می شود مهلت رسیدگی و صدور حکم نمی تواند بیش از 48 ساعت طول بکشد.

2- در خصوص آن دسته از افرادی که حکم طردشان صادر گردیده است چنانچه احتمال فرار و مخفی شدن آنها وجود داشته باشد، در صورتی که مقررات ورود و خروج به ترکیه را نقض کرده باشند، از اسناد جعلی یا فاقد اصالت استناد نموده باشند، بدون عذر موجه در مهلت مقرر ترکیه را ترک ننموده باشند، و نیز افرادی که از منظر نظم عمومی، امنیت عمومی و یا بهداشت عمومی تهدید ایجاد نموده باشند از سوی استانداری حکم مراقبت اداری صادر می گردد.

آن دسته از اتباع خارجی که در خصوص آنها حکم مراقبت اداری صادر شده از طریق یگان دستگیر کننده در عرض 48 ساعت به مراکز استرداد فرستاده می شوند.

3- مهلت مراقبت اداری در مراکز نمی تواند بیش از شش ماه باشد ولی این مهلت در خصوص آن دسته از اتباع خارجی که در خصوص اجرای حکم طرد همکاری ننمایند یا اسناد و اطلاعات صحیحی در خصوص کشور خویش ارائه ننمایند و در نتیجه امورات مربوط به طرد آنها به نتیجه نرسیده باشد می تواند حداکثر تا شش ماه دیگر تمدید شود.

4- استانداری هر ماه به طور منظم ضرورت ادامه یا عدم ادامه مراقبت اداری را بررسی می کند اگر لازم باشد مهلت سی روزه رفع می شود چنانچه ادامه مراقبت اداری ضروری تشخیص داده نشود، این



امر فی الفور متوقف می شود این دسته از اتباع خارجی موظف خواهند بود در آدرس مشخصی اقامت گردیده و در صورت احضار خود را معرفی نمایند.

5- حکم مراقبت اداری، تمدید مهلت مراقبت اداری و نتایج بررسی های منظم ماهیانه همراه با دلایل آن به تبعه خارجی و یا نماینده قانونی وی یا وکیل وی ابلاغ می شود در عین حال، چنانچه فردی که تحت مراقبت اداری می باشد دارای وکیل نباشد نتیجه حکم و اصول و مهلت اعتراض به آن حکم به خود فرد یا نماینده قانونی وی اعلام می شود.

6- فردی که تحت مراقبت اداری قرار گرفته یا نماینده قانونی وی و یا وکیل وی می توانند علیه این حکم پیش قاضی صلح جزا اقامه دعوی نمایند این کار نمی تواند منجر به توقف مراقبت اداری شود به محض ارائه این درخواست، اداره، درخواست مزبور فی الفور به قاضی صلح جزا ارسال می شود قاضی مزبور در عرض پنج روز نتیجه بررسی ها را مشخص می کند حکم قاضی مزبور، مطلق و لازم الاجراست. شخصی که تحت مراقبت اداری قرار گرفته یا نماینده قانونی وی و یا وکیل وی می توانند با طرح این ادعا که شروط لازم برای مراقبت اداری منتفی شده یا دچار تغییر گشته مجدداً به قاضی صلح جزا مراجعه نمایند.

7- چنانچه متقاضی رسیدگی قضایی در خصوص امورات مربوط به مراقبت اداری توان پرداخت هزینه های وکالت را نداشته باشد بر اساس قانون وکالت شماره 1136 مورخه 1369/3/19 برای وی خدمات وکالتی مهیا می شود.

#### مراکز استرداد

#### ماده 58

1 اتباع خارجی تحت مراقبت اداری، به مراکز استرداد منتقل می شوند .

2- مراکز استرداد تحت نظر وزارت کار می کنند وزارت با همکاری نهادها و سازمان های عمومی، سازمان هلال احمر ترکیه و یا سازمان های عام المنفعه که در زمینه مهاجرت تبحر دارند این مراکز را اداره می کند.

3- اصول و مقررات مربوط به تشکیل، هدایت، به کار گیری، چرخش کار ف بازرسی و امورات مربوط به انتقال اتباع خارجی تحت مراقبت اداری به مراکز استرداد از طریق آیین نامه تنظیم و ابلاغ می شود.

خدماتی که در مراکز استرداد، ارائه می شود.

ماده 59

1 در مراکز استرداد:

- الف) برای تبعه خارجی خدمات درمانی اورژانسی و اساسی بدون هزینه ارائه می شود.
- ب) برای تبعه خارجی امکان تماس و ملاقات با خویشاوندان، دفترخانه اسناد رسمی، نماینده قانونی و وکیل فراهم می شود همچنین امکان برخورداری از تماس تلفنی برای وی مهیا می شود.
- پ) برای تبعه خارجی امکان ملاقات با کسانی که قصد دیدارش را دارند، مقامات صالح کنسولگری کشور متبوع وی، نماینده کمیساریای عالی، پناهندگان سازمان ملل فراهم می شود.
- ت) منافع عالی کودکان مدنظر قرار می گیرند، خانواده ها و کودکان بی سرپرست در جاهای مجزا مورد مراقبت قرار می گیرند.
- ث) در خصوص برخورداری کودکان از تعلیم و تربیت، اقدامات لازم از سوی وزارت آموزش ملی اتخاذ می شود.
- 2- نمایندگان سازمان های مردم نهاد که در زمینه مهاجرت تبحر دارند می توانند با کسب مجوز از اداره کل از مراکز استرداد بازدید به عمل آورند.

اجرای حکم طرد

ماده 60

- 1 اتباع خارجی حاضر در مراکز استرداد، توسط یگان دستگیر کند به مبادی مرزی منتقل می شوند.
- 2- آن دسته از اتباع خارجی که انتقال آنها به مراکز استرداد جهت طرد ضرورت ندارد، با هماهنگی ستادهای منطقه ای اداره کل توسط یگان دستگیر کننده به مبادی مرزی منتقل می شوند.
- 3- اتباع خارجی طرد شده باید خودشان هزینه مسافرت خودشان را تأمین نمایند در صورت عدم امکان، مابقی یا کل هزینه مسافرت آنها از طریق اداره کل و از محل بودجه آن اداره تأمین می شود و می تواند تا زمانی که این هزینه ها عودت داده نشود امکان جلوگیری از ورود مجدد تبعه مزبور به ترکیه وجود دارد.

4- اداره کل می تواند در خصوص امورات مربوط به طرد با نهادهای بین المللی، مقامات کشور مربوطه و سازمان های مردم نهاد همکاری نماید.

5- گذرنامه ها و یا دیگر اسناد اتباع خارجی می تواند تا موقع طرد ضبط شود و می توان برای تأمین مخارج طرد، بلیت های آنها را به پول تبدیل کرد.

6- اشخاص حقیقی و یا حقوقی که اقامت و یا خروج اتباع خارجی را ضمانت نموده اند، در خصوص تأمین هزینه های طرد اتباع مزبور مسوول هستند در خصوص مسوولیت های کارفرمایان که بدون مجوز اقدام به استخدام اتباع خارجی نموده اند یا وکلای آنها در باب امورات مربوط به طرد اتباع مزبور حکم مقرر در فقره سوم ماده 21 قانون به شماره 4817 اعمال می گردد.

### قسمت سوم

### حمایت بین المللی

### بخش اول

### انواع حمایت های بین المللی، عدم مشمول حمایت بین المللی

#### پناهنده

#### ماده 61

1- برای فردی که به دلیل حوادث رخ داده در کشورهای اروپایی، به دلیل مسائل نژادی، دینی، طبیعی، وابستگی به یک گروه اجتماعی خاص و یا به خاطر افکار سیاسی اش و به خاطر ترس از اینکه مورد ظلم واقع شود و ترس وی دلایل منطقی داشته باشد، کشور متبوع خویش را ترک کرده باشد و از حمایت کشور مزبور برخوردار نباشد و یا به خاطر ترسی که ذکر شد نخواهد از حمایت مزبور برخوردار شود و یا به خاطر تجربه کردن نتیجه یک چنین حوادثی در خارج از کشور خویش حضور داشته باشد و نتواند به کشور خویش برگردد و یا به خاطر ترس که ذکر شد نخواهد به کشور خویش برگردد پس از سیر مراحل مربوط به تشخیص وضعیت افراد بی وطن، وضعیت پناهندگی صادر می شود.

#### پناهنده مشروط

#### ماده 62

1- برای فردی که به خاطر حوادث رخ داده در کشورهای غیر اروپایی، به خاطر مسائل نژادی، دینی، طبیعی، وابستگی به یک گروه اجتماعی خاص و یا به خاطر افکار سیاسی اش و به خاطر ترس از اینکه مورد ظلم واقع شود و ترس وی دلایل منطقی داشته باشد، کشور متبوع خویش را ترک کرده باشد و از حمایت کشور مزبور برخوردار نباشد و یا به خاطر ترسی که ذکر شد نخواهد از حمایت مزبور برخوردار شود و یا به خاطر تجربه کردن نتیجه یک چنین حوادثی در خارج از کشور خویش حضور داشته باشد و نتواند به کشور خویش برگردد و یا به خاطر ترس که ذکر شد نخواهد به کشور خویش برگردد پس از سیر مراحل مربوط به تشخیص وضعیت افراد بی وطن، وضعیت پناهندگی صادر می شود. تا موقعی که فرد بتواند در یک کشور ثالث ساکن شود به پناهنده مشروط اجازه اقامت در ترکیه صادر می شود.

### حمایت ثانویه

#### ماده 63

1- کسی که از شرایط پناهندگی یا پناهندگی مشروط برخوردار نباشد ولی در صورت استرداد به کشور مبدأ یا کشور محل اقامت:

الف) به مجازات اعدام محکوم خواهد شد و یا مجازات اعدام به اجرا گذاشته خواهد شد

ب) تحت شکنجه یا مجازات و یا اقدامات غیر انسانی و غیر حیثیتی قرار خواهد گرفت

پ) به خاطر وضعیت درگیری مسلحانه بین المللی و یا داخلی، به علت اقدامات خشونت باری که تفاوتی بین مردم قائل نمی شوند با تهدید جدی مواجه باشد برای چنین فردی که از حمایت کشور مبدأ یا کشور محل اقامت خویش برخوردار نباشد و یا به خاطر تهدیدی که ذکر شد نخواهد برخوردار شود پس از سیر مراحل مربوط به تشخیص وضعیت وی، وضعیت حمایتی ثانویه صادر می شود.

### عدم شمول حمایت بین المللی

#### ماده 64

1- فرد متقاضی در شرایط ذیل مشمول حمایت بین المللی نمی گردد.

الف) اگر خارج از کمیساریای عالی پناهندگان سازمان ملل متحد، تحت حمایت و یا مساعدت یکی دیگر از ارگانها و یا نهادهای سازمان ملل متحد قرار داشته باشد.

ب) اگر فرد بنا به تشخیص مقامات صلاحیتدار کشور محل اقامت، از کلیه حقوق و مسوولیت هایی که اتباع آن کشور برخوردارند، برخوردار باشد.

پ) چنانچه دلایل جدی مبنی بر مجرمیت فرد به خاطر ارتکاب به یکی از افعال مصرحه در فقره اجرای

2- در صورتی که حمایت و مساعدت به عمل آمده از فردی که مشمول بند(الف) فقره اول می باشد به هر دلیلی قطع شود و چنانچه وضعیت این فرد به استناد احکام مجمع عمومی سازمان ملل متحد به صورت قطعی حل نشود، این افراد می توانند از حمایت این قانون برخوردار شوند.

3- قبل از اینکه فرد متقاضی، تقاضای حمایت بین المللی به عمل آورد، چنانچه دلایلی مبنی بر ارتکاب اعمال مجرمانه از هر نوعی در خصوص و موجود باشد، در خصوص مشمول بند(ب) فقره اول بررسی های لازم صورت می گیرد.

4- کسی که در ارتکاب جرم یا افعال مجرمانه مصرحه در بند(ب) فقره اول و نیز فقره سوم مشارکت داشته باشد و یا ارتکاب اینگونه افعال را تحریک نموده باشد مشمول حمایت بین المللی نمی گردد.

5- علاوه بر موارد مطرح شده در بند(پ) فقره اول و نیز فقره سوم و چهارم، کسی که اماره های جدی مبنی بر ارتکاب جرائم مخل نظم عمومی و یا امنیت عمومی علیه وی وجود دارد و یا شخص بی وطن و نیز شخصی که مشمول بند(پ) فقره اول نمی باشد ولی قبل از ورود به ترکیه در کشور مبدأ یا محل اقامت مرتکب جرم یا جرائمی گردیده که ارتکاب چنین جرائمی در ترکیه مجازات حبس دارد و فقط به خاطر فرار از چنین مجازاتی اقدام به ترک کشور مبدأ و یا کشور محل اقامت خویش نموده، مشمول حمایت ثانویه نمی گردد.

6- چنانچه هر کدام از افراد خانواده فردی که مشمول حمایت بین المللی نمی باشد هیچ کدام از اقداماتی که موجب عدم شمول حمایت بین المللی برای فرد متقاضی گردیده را مرتکب نشده باشند عدم شمول حمایت بین المللی برای فرد متقاضی موجب عدم شمول حمایت بین المللی برای آنها نمی باشد.

## بخش دوم

### اصول کلی

### متقاضی

- 1- تقاضاهای مربوط به حمایت بین المللی راساً به استانداردهای ارائه می شود.
- 2- چنانچه تقاضاها در داخل کشور و یا در مبادی مرزی به یگان های مأمورین تسلیم شود، این تقاضاهای الفور به استانداری اعلام می شود امورات مربوطه به تقاضهای مزبور از طریق استانداری صورت می پذیرد.
- 3- هر شخص بی وطن و یا بیگانه می تواند بنام خود تقاضایش را مطرح سازد متقاضی هم می تواند برای افراد خانواده خویش که تقاضایشان به همان دلایل مرجح شده از سوی فرد متقاضی مبتنی می باشد و همراه وی وارد ترکیه شده اند نیز تقاضا ارائه دهد در چنین مواقعی موافقت افراد رشید خانواده جلب می شود.
- 4- افرادی که در مهلت معقولی با مراجعه به استانداری ها تقاضای حمایت بین المللی بنمایند، در صورتی که دلایل معتبری در خصوص ورود یا اقامت غیر قانونی در ترکیه ارائه نمایند، بعلت نقض شرایط ورود قانونی به ترکیه یا اقامت قانونی در این کشور مورد پیگرد قضایی قرار نمی گیرند.
- 5- تقاضای حمایت بین المللی، افرادی که آزادی آنها سلب شده باشد، فی الفور به استانداری اعلام می شود و به دریافت و بررسی تقاضاها، مانع سایر امور اداری و قضایی و یا اقدامات معنی نمی شود.

#### کودکان بی سرپرست

- 1- در خصوص کودکان بی سرپرست که تقاضای حمایت بین المللی دارند، احکام ذیل اجرا می شود.
  - الف) در کلیه امورات مربوط به کودکان بی سرپرست مراعات منافع عالی کودک شرط اصلی است از لحظه دریافت تقاضای آنها، احکام قانون حمایت کودک به شماره 5395 مورخه 2005/7/3 در خصوص آنها لازم الاجراست.
  - ب) با در نظر گرفتن دیدگاه کودک بی سرپرست، از سوی وزارت خانواده و سیاست های اجتماعی، کودک به پرورشگاه مناسب و یا به خویشاوندان و یا به یک خانواده ای که سرپرستی وی را بر عهده می گیرد سپرده می شود.

پ) کودکانی که شانزده سال تمام دارند می توانند در صورت خصوص شرایط مناسب به مراکز پذیرش و مراقبت سپرده شوند.

ت) در صورت امکان، با در نظر گرفتن منافع، سن و پختگی (رشد بودن) کودکان برادران و خواهران به یکجا سپرده می شوند تا وقتی که ضرورت ایجاب نکند محل نگهداری کودک تغییر نمی یابد.

### نیازمندان مراقبت های ویژه

#### ماده 67

1- به افراد نیازمند مراقبت های ویژه در خصوص انجام امورات و حقوق مکتوب در این بخش از اولویت برخوردارند.

2- در خصوص اشخاصی که مورد تجاوز جنسی، یا سایر صدمات جدی روحی، جسمی و جنسی قرار گرفته اند امکانات درمانی موثر برای عوارض ناشی از اینگونه موارد فراهم می گردد.

### مراقبت اداری متقاضیان

#### ماده 68

1- متقاضیان به صرف تقاضای حمایت بین المللی دارد تحت مراقبت اداری قرار نمی گیرند .

2- مراقبت اداری متقاض 11111 یان یک امر استثنایی است و متقاضی می تواند تنها در مواقع ذیل تحت مراقبت اداری قرار بگیرد:

الف) در صورتی که ظن قوی در خصوص صحت اطلاعات هویتی و تابعیتی آنها موجود باشد، با هدف اثبات اطلاعات مزبور

ب) با هدف ورود سریع مغایر یا اصول مبادی مرزی به کشور

پ) چنانچه در صورت تحت مراقبت اداری قرار ندادن وی امکان بررسی موارد اساسی مطرح شده در تقاضای وی موجود نباشد

ت) چنانچه از منظر نظم عمومی و امنیت عمومی تهدیدی جدی ایجاد نماید

3- ضرورت یا عدم ضرورت مراقبت اداری می تواند در خصوص هر کسی به صورت جداگانه مورد بررسی قرار بگیرد و در مواقع مشخص شده در فقره دوم: قبل از تحت مراقبت اداری قرار دادن شخص، مشکل اقامتی مطرح شده ماده 71 و کفایت و عدم کفایت مسولیت ابلاغ قبلا مورد بررسی قرار بگیرد.

بجای مراقبت اداری سایر اصول قابل اجرا می شود اگر این اقدامات موثر واقع نشود، مراقبت اداری اعمال می گردد.

4- حکم مراقبت اداری همراه با دلایل و مهلت مراقبت اداری به صورت مکتوب به فردی که بایستی تحت مراقبت اداری قرار گیرد و یا نماینده قانونی وی یا به وکیل وی ابلاغ می شود . چنانچه فردی که بایستی تحت مراقبت اداری قرار گیرد دارای وکیل نباشد نتیجه حکم و نحوه اعتراض به این حکم به خود نامبرده و یا نماینده قانونی وی اعلام می گردد.

5- مدت مراقبت اداری فرد متقاضی نمی تواند بیش از سی روز باشد امورات مربوط به اینگونه افراد در کوتاه ترین زمان ممکن مورد رسیدگی قرار می گیرد با منتفی شدن شرایط منجر به مراقبت اداری بلافاصله مراقبت اداری به پایان می رسد.

6- در تمامی مراحل مراقبت اداری، مقام صادر کننده حکم مراقبت اداری می تواند با توقف مراقبت اداری درخواست اعمال احکام و مسولیت .

7 - فردی که تحت مراقبت اداری قرار گرفته و یا نماینده قانونی وی یا وکیل وی می تواند علیه مراقبت اداری به قاضی صلح جزا مراجعه نماید این تقاضا موجب توقف مراقبت اداری نمی گردد به محض ارائه درخواست به اداره، این درخواست بلافاصله به قاضی صادر صلح جزا تقدیم می شود قاضی مزبور ظرف مدت 5 روز بررسی ها را به نتیجه می رساند. حکم صادره از سوی قاضی مزبور ، مطلق و لازم الاجراست . فردی که تحت مراقبت اداری قرار گرفته یا نماینده قانونی وی و یا وکیل وی می توانند با ادعای اینکه شرایط منجر به مراقبت اداری منتفی شده یا دچار تغییر گردیده مجدداً به قاضی صلح جزا مراجعه نمایند.

8- فردی که بر مبنای فقره دوم تحت مراقبت اداری قرار گرفته، می تواند با کسانی که قصد دیدارش را دارند ملاقات نماید جزئیات و نحوه این امر به وسیله آیین نامه مشخص می شود فردی که تحت مراقبت اداری قرار گرفته می تواند با نماینده قانونی خویش، وکیل خود، سردفتر دفترخانه اسناد رسمی و نماینده کمیساریای عالی پناهندگان سازمان ملل متحد ملاقات نماید،



- 1- تقاضاهای حمایت بین المللی در استناداری ها به ثبت می رسد.
- 2- متقاضی وظیفه دارد که در حین ثبت تقاضایش اطلاعات هویتی خویش را به درستی بیان دارد و در صورتی که سند یا مدارک مسافرتی به همراه داشته باشد که بتواند هویت وی را اثبات کند باید آن را به مقامات صالح تسلیم دارد برای نیل به این مقصود متقاضی .
- 3- در مواقعی که هیچگونه سندی دال بر هویت فرد متقاضی موجود نباشد، می توان به اطلاعات حاصل از مقایسه مشخصات فردی و بررسی های به عمل آمده در جهت اثبات هویت وی استناد نمود. در صورتی که در نتیجه بررسی های به عمل آمده نیز اطلاعات لازم در خصوص هویت فرد به دست نیاید اظهارات متقاضی مورد استناد قرار می گیرد.
- 4- موقع ثبت تقاضا، دلایل ترک کشور مبدأ و یا کشور محل اقامت، حوادثی که پس از ترک کشورش برای وی پیش آمده و حوادثی که موجب شده وی تقاضایش را مطرح کند، نحوه ورود به ترکیه، گذرگاه های مورد استفاده و اطلاعات مربوط به واسطه ها، در صورتی که قبلاً در کشور دیگری تقاضای حمایت بین المللی به عمل آورد یا از آن برخوردار باشد اطلاعات و اسناد مربوط به تقاضای مزبور و یا حمایت مزبور از وی اخذ شود.
- 5- در حین ثبت تقاضا، زمان و محل ملاقات مشخص می شود.
- 6- چنانچه احساس شود که متقاضی ممکن است بهداشت عمومی را به خطر بیندازد اقدامات کنترل بهداشت در خصوص وی به عمل می آید.
- 7- برای متقاضی در حین ثبت تقاضا سند ثبتی ارائه می شود که به مدت سی روز اعتبار دارد و در این سند اطلاعات هویتی و موضوع تقاضای حمایت بین المللی از سوی وی قید می گردد . این سند می تواند در صورت ضرورت در مهلت های سی روزه تمدید بگردد سند مزبور تابع هیچگونه مخرجی نمی باشد و دارنده آن می تواند به اعتبار آن در ترکیه ماند.

اطلاع رسانی به متقاضی و خدمات مترجمی

1- به متقاضی در خصوص نحوه پیگیری تقاضای خود، حقوق و مسوولیت ها در باب بررسی های به عمل آمده در خصوص تقاضایش، نحوه عمل به مسوولیت هایش عواقب عدم همکاری با مقامات ذیصلاح و عواقب عدم عمل به مسوولیت هایش نحوه مهلت اعتراض اطلاع رسانی می شود.

2- در صورت درخواست، متقاضی می تواند در خصوص تقاضا، ثبت تقاضا و ملاقات های فردی از خدمات ترجمه بهره مند شود.

### اجبار اقامت و مسوولیت

ماده 71

1- متقاضی می تواند در مرکز پذیرش و مراقبت مشخص شده برای وی اقامت نماید و یا در جای مشخصی اقامت نموده و محل اقامت خود را گزارش کند.

2- متقاضی مسوولیت دارد که آدرس محل اقامت خود را در سیستم ثبت آدرس به ثبت برساند و آن را به اطلاع استانداری برساند.

تقاضایی که مورد پذیرش قرار نمی گیرد.

ماده 72

1- در موارد ذیل تقاضای متقاضی پذیرفته نمی شود.

الف) اگر بدون مطرح کردن دلیلی متفاوت، همان تقاضای قبلی خود را تکرار نماید .

ب) اگر پس از اعلام موافقت در خصوص ثبت تقاضا به نام خود، در هر مرحله از رسیدگی به تقاضای خود بدون ارائه دلیل موجهی و یا پس از رد تقاضایش بدون ارائه دلیل متفاوتی تقاضای دیگری را مطرح سازد.

پ) اگر از یکی از کشورهای مطرح شده در ماده 73 آمده باشد.

ت) اگر به یکی از کشورهای مطرح شده در ماده 73 شمول باشد.

2- چنانچه در هر یک از مراحل بررسی، یکی از موارد مطرح شده در فقره اول مصداق پیدا کند بررسی متوقف می شود.

3- حکم صادره در خصوص عدم پذیرش تقاضا به فرد ذیربط و یا نماینده قانونی وی یا وکیل وی ابلاغ می شود چنانچه فرد مزبور دارای وکیل نباشد، نتیجه حکم، مهلت و نحوه اعتراض به شخص خود یا نماینده قانونی وی اعلام می شود.

افرادی که از کشوری می آیند که قبلاً بدان پناهنده شده بوده اند.

#### ماده 73

1- چنانچه مشخص شود متقاضی از کشوری آمده که قبلاً پناهنده می شود در آنجا به رسمیت شناخته شده و اکنون نیز امکان برخورداری از حمایت مزبور فراهم باشد و یا امکان برخورداری از حمایت کافی و موثر با قانون منع استرداد برای وی فراهم بوده، تقاضای وی رد شده و در خصوص استرداد وی به کشور قبلی اقدامات لازم آغاز می شود ولی تا زمانی که امورات مربوط به استرداد وی به نتیجه برسد به وی حق اقامت در کشور داده می شود این وضعیت به اطلاع فرد مربوطه می رسد چنانچه کشوری که متقاضی قبلاً در آن پناهنده بوده است از پذیرش وی امتناع ورزد مجدداً رسیدگی به تقاضای وی آغاز می شود.

افرادی که از یک کشور امن ثالث آمده اند.

#### ماده 74

1- چنانچه مشخص شود متقاضی از کشور امن ثالثی که بر اساس معاهده می توانست حمایت مناسب از آن کشور دریافت دارد به ترکیه آمده در این صورت تقاضای وی مورد عدم پذیرش قرار گرفته و امورات مربوط به استرداد وی به همان کشور امن ثالث آغاز می شود ولی تا مدتی که امورات مربوط به استرداد وی به سرانجام برسد می تواند در این کشور بماند، این وضعیت به اطلاع فرد ذیربط می رسد چنانچه کشور امن ثالث از پذیرش وی خودداری نماید، رسیدگی به تقاضای وی مجدداً از سر گرفته می شود.

2- کشورهایی زیر که حائز شرایط ذیل باشند، کشورهای امن ثالث خوانده می شود:

الف) زندگی و آزادی افراد به خاطر مسائل نژادی، دینی، طبیعتی(سرشتی) و به خاطر وابستگی به یک گروه خاص اجتماعی و یا به خاطر افکار خاص سیاسی به خطر نیفتند.

ب) قانون منع استرداد افراد به کشورهایی که در آنها امکان شکنجه، اقدامات یا مجازات های غیر انسانی و غیر حیثیتی وجود دارد، قابل اجرا باشد.

پ) امکان تقاضای وضعیت پناهندگی وجود داشته باشد و در صورت احراز شرایط پناهندگی کشور مزبور امکانات حمایت از وی بر اساس معاهده را داشته باشد.

ت) احتمال خطر ضرر و زیان جدی برای فرد وجود نداشته باشد.

3- تشخیص اینکه آیا کشوری برای فرد متقاضی در حکم کشور ثالث امن می باشد یا نمی باشد با در نظر گرفتن روابط بین آن شخص و کشور مزبور در خصوص هر فردی به صورت جداگانه مورد رسیدگی قرار می گیرد و بدینوسیله مشخص می شود که آیا استرداد وی به کشور امن ثالث موجه می باشد یا خیر.

## ملاقات

### ماده 75

1 به منظور فراهم نمودن تصمیم موثر و عادلانه، با متقاضی ظرف سی روز از تاریخ تقاضای یک مصاحبه فردی انجام میشود. با توجه به حفظ حریم خصوصی شخص، فرصتی خوب برای شناسایی فرد به وی داده میشود. با این حال، در صورت لزوم حضور اعضای خانواده، با گرفتن رضایت فرد مصاحبه با اعضای خانواده انجام میشود. با درخواست متقاضی، وکیل می تواند به عنوان ناظر در مصاحبه شرکت کند.

2- شخص متقاضی برای همکاری با مقامات، مسئول فراهم آوردن همه اطلاعات و اسناد حفاظت بین المللی است.

3- در ملاقات با افرادی که نیازهای خاص دارند، این افراد استثنا در نظر گرفته میشود. در مصاحبه با کودک، روانشناسان کودک، رشد کودک، و یا مددکار اجتماعی، و یا پدر و مادر یا نماینده قانونی میتوانند حضور داشته باشند.

4- در صورت عدم انجام ملاقات، یک تاریخ جدید برای ملاقات تعیین شده و به شخص مورد نظر ابلاغ میشود. این شامل حداقل ده روز بین ملاقات میباشد.

5- در صورت نیاز یک ملاقات اضافی با متقاضی انجام میشود.

6- ملاقات ها ممکن است به صورت صوتی و یا تصویری ضبط شوند. در این صورت، به شخص مصاحبه شونده اطلاع داده میشود در پایان هر مصاحبه پروتکل تنظیم میشود و یک نمونه به شخص ملاقات شونده داده میشود.

## متقاضیان کارت شناسایی برای حفاظت بین المللی

مادهی شمارهی 76

1- با اتمام ملاقات متقاضی و در صورت وجود اعضای خانواده اش، شمارهی شناسایی خارجی برای حفاظت بین المللی و کارت حفاظت از هویت بین المللی شش ماهه صدور می شود. اسناد هویتی افرادی که تقاضایشان هنوز بررسی نشده و به نتیجه نرسیده به مدت شش ماه افزایش می یابد.

2- به متقاضی و اعضای خانوادگی افرادی که در دامنهی مادهی 72 و 79 قرار می گیرند کارت هویت و شناسنامه داده نمی شود.

3- فرم و محتوای کارت هویت توسط اداره عمومی تعیین می شود.

4- سند هویت منوط به هیچ هزینه ای نبوده و جایگزین اجاره ای اقامت می شود.

عقب نشینی و یا ترک متقاضی بر یا تلقی شدن عقب نشینی وی

مادهی 77- متقاضی

الف) اعلام متقاضی به صورت کتبی جهت ترک

ب) بدون هیچ عذری و سه بار پشت سر هم باید برای به مصاحبه بیاید.

ج) از مکانی که تحت نظارت اداری است باید خارج شود.

د) وظیفه اطلاع رسانی اش را بدون هیچ بهانه ای سه بار به صورت پشت سر هم انجام داده به محل اقامت مشخص شده نرفته و محل اقامتش را بدون اجاره ترک نکند.

ح) از اطلاعات شخصی اش محافظت کند.

خ) در صورت که ثبت نام و تعهدات ملاقات همخوانی نداشته باشد با قبول کردن متقاضی برای ترک ارزیابی متوقف می شود.

تصمیم گیری

مادهی 78

1- برنامه توسط اداره کل ظرف مدت شش ماه از تاریخ ثبت نام به نتیجه می‌رسد اگر ظرف این مدت تصمیمی گرفته نشود به متقاضی اطلاع داده می‌شود.

2- تصمیم‌گیری به صورت جداگانه گرفته می‌شود. بند ششم از ماده‌ی 64 بدون لطمه زدن به برنامه‌های تنظیم شده به ثبت نام‌هایی که به اسم خانواده انجام شده‌اند به صورت کلی ارزیابی می‌شود و این تصمیم تمام اعضای خانواده را پوشش می‌دهد.

3- در تصمیم‌گیری در مورد کاربرد و شرایط عمومی حاکم در کشور مبدا یا محل اقامت قبلی نیازهای شخصی متقاضی در نظر گرفته می‌شود.

4- برای مقابله با تهدید آزار و اذیت و آسیب جدی متقاضی در کشوری که در آن به عنوان یک شهروند است و یا در منطقه خاص کشوری که قبلاً در آن اقامت داشته و اگر شرایط حفاظت به وجود بیاید اگر وی در شرایطی باشد که بتواند با خیال راحت در این کشور سفر کرده و ساکن شود، متقاضی می‌تواند اعلام کند که به حمایت بین‌المللی احتیاجی ندارد.

5- اگر شرایط بند چهارم به میان بیاید سبب انسداد بررسی برنامه نمی‌شود.

6- این تصمیم به نماینده‌ی قانونی یا وکیل او ابلاغ می‌شود. در ارتباط با یک تصمیم ناخوشایند دلایل و مبنای قانونی این تصمیم هن نشان داده می‌شود، اگر فرد مرتبط توسط یک وکیل ارائه شود نتیجه‌ی تصمیم در مورد روش‌های درخواست تجدید نظر و مدت زمانشان بود مشخص و یا نماینده‌ی قانونی وی خبردار می‌شود.

بررسی سریع

ماده‌ی 79

1- متقاضی

الف) در اثنای تقاضا با بیان آنچه که نیاز است به مسائلی که نیاز به حمایت بین‌المللی دارند هیچ کاری نداشته باشد.

ب) با استفاده از اسناد و مدارک جعلی و یا اطلاعات گمراه‌کننده و یا اسناد و اطلاعات منفی ممکن است تصمیم‌گیری و جهت‌گیری اشتباه مقامات را سبب شود.

ج) برای تثبیت هویت و یا ملیت، سند هویت و یا مسافرت را با نیت بد تخریب می‌کند و از دست می‌دهد.

د) تحت بازداشت اداری از کشور خارج شود.

ه) فقط با هدف تاخیر و یا پیشگیری از پیاده‌سازی فرستاده شدن به ترکیه در تقاضا حضور داشته

و) به خاطر تشکیل خطری برای نظم عمومی و یا به دلایل امنیت عمومی از ترکیه اخراج شود.

ی) بعد از عقب نشینی از تقاضا اگر دوباره در تقاضا حضور پیدا کنند، تقاضایشان به سرعت ارزیابی می‌شود.

2- با متقاضی ای که تقاضایش به سرعت ارزیابی شده بعد از تاریخ تقاضا ظرف سه روز ملاقات انجام می‌شود. بعد از ملاقات نتیجه‌ی تقاضا ظرف پنج روز داده می‌شود.

3- برنامه کاربردی با توجه به این مقاله مورد بررسی قرار گرفت، بررسی موافقتنامه های بیش از حد طولانی می‌تواند به سرعت مورد بررسی قرار گیرد.

4- تقاضای فرزندان بی سرپرست نمی‌تواند به سرعت ارزیابی شود.

#### درخواست تجدید نظر و بررسی قضایی

ماده‌ی 80

1- در این بخش درخواست تجدید نظر اداری و بررسی قضایی تصمیمات اتخاذ شده به موجب مقررات اشاره شد، مقررات زیر باید اعمال شود.

الف) شخص یا نماینده‌ی قانونی یا وکیل ظرف مدت ده روز پس از ابلاغ تصمیم کمیسیون می‌تواند درخواست تجدید نظر بکند. اما با این حال که، تنها چاره‌ی قضایی مطابق ماده‌های 68، 72 و 74 ام اعمال می‌شود.

درخواست تجدید نظر اداری از تصمیم گرفته شده به عنوان یک نتیجه به نماینده‌ی مربوطه یا حقوقی و یا وکیل او ابلاغ می‌شود.

ب) درخواست تجدید نظر اداری از تصمیم گرفته شده به عنوان یک نتیجه، به نماینده مربوطه یا حقوقی وی یا وکیل او ابلاغ می‌شود. در مورد یک تصمیم منفی، اگر شخص مورد نظر توسط یک وکیل

حمایت نشود. به وی و یا نماینده قانونی او از نتیجه این تصمیم و درخواست تجدید نظر در مورد روش ها و ضرب العجل ها آگاه میشود.

ج) وزارت میتواند روشهایی برای درخواست تجدید نظر اداری علیه این تصمیم را سازماندهی کنند.

د) بررسی قضایی در برابر تصمیمات گرفته شده در درون مفهوم ماده 72 و 79، به استثنای ماده 68 پانزده روز پس از دریافت تصمیم گیری، تصمیمات اداری دیگر و اقدامات ظرف سی روز پس از ابلاغ این تصمیم شخص نگران و یا نماینده قانونی وی و یا یک وکیل می تواند توسط دادگاه صالح اداری اشاره وارد عمل شود.

د) تقاضاهای انجام شده در مورد قوانین 72 و 79 به دادگاه ظرف پانزده روز به نتیجه میرسند. تصمیم دادگاه در این زمینه نهایی است.

ه) استقرار شخص مورد نظر در انتظار نتیجه از درخواست روند محاکمه در این کشور مجاز است.

#### خدمات حقوقی و مشاوره

#### ماده ی 81

1- متقاضی باید وضعیت حمایت های بین المللی به افراد و معاملات در مورد کسب و کار نوشته شده است در این فصل را داشته باشد، به شرطی که هزینه ها توسط آنها پرداخت شده ملاقاتشان میتواند توسط یک وکیل حمایت شود.

2- شخص متقاضی که امکان پرداخت هزینه های وکیل را ندارد شخصی که در وضعیت حفاظت بین المللی قرار دارد در مقابل صلاحیت این موضوع دادگاه این هزینه ها و خدمات حقوقی ارائه شده را تحت مفاد قانون شماره 1136 پوشش میدهد .

3- فرد متقاضی و فردی که در وضعیت حمایت های بین المللی قرار دارد، می تواند از خدمات مشاوره ارائه شده توسط سازمان های غیر دولتی بهره مند شوند.

#### ماده 82

#### اقامت فرد واجد شرایط پناهندگی

1- فرد واجد شرایط پناهندگی و وضعیت حفاظت تابعه در اداره کل، نظم عمومی و یا امنیت عمومی، به اقامت در استان با توجه خاص به اعلام زمان و روش میتواند وظیفه ی خود را به انجام برساند.



2- این افراد موظف به ثبت نام آدرس در سیستم رجیستری ادرسو اطلاع دادن به دفتر فرماندار میباشند. وضعیت حفاظت بین المللی در سند هویت متقاضیان و افرادی که در وضعیت حمایت های بین المللی طبق ماده ی 81-1 با پرداخت هزینه ها توسط خودشان میتوانند از وکیل برای تمثیلشان استفاده کنند

### شناسایی وضعیت حمایت های بین المللی

#### ماده 83

1- برای کسانی که وضعیت پناهندگی داده می شود مدت سه سال اسناد هویت خارجی با شماره شناسایی صادر میشود

2- مهاجران شرطی با توجه به پناهندگان و وضعیت حفاظت تابعه، به مدت یک سال اسناد هویت خارجی با شماره شناسایی برایشان صادر میشود

3- هر گونه اسناد هویت موجود در پاراگراف اول و دوم شامل هیچ هزینه ای نبوده و جایگزین اجازه اقامت میشود. فرم و محتوا اسناد هویت توسط اداره کل اسناد هویتی تعیین می شود.

#### ماده 84

1- برای پناهندگان، حکومت سند سفر مشخص شده در قرارداد صادر شده امی شود.

2- ادعاهای شرطی پناهندگان و وضعیت حفاظت از دارندگان سند سفر تابعه در چارچوب ماده 18 قانون شماره 5682 ارزیابی شده میشود

### ختم وضعیت حفاظت بین الملل

#### ماده 85

1- شخص دارای وضعیت حمایت های بین المللی؛

(الف) دوباره با خواسته ی خود از حفاظت کشور بهره مند شود

(ب) شهروندی از دست رفته را به طور داوطلبانه آن را بست آورد

(ج) یک ملیت جدید به دست آورد و از حفاظت کشوری که در آن شهروند است برخوردار شود

(د) به طور داوطلبانه و بجز ترس از آزار اذیت کشور را ترک کرده، دوباره به آن برگشته،

ه) به خاطر از بین رفتن فراهم کردن شرایط مورد نیاز برای حفاظت از کشور؛ بتواند از بهره مندی کشوری که در آن شهروند شده بهره مند شود

وضعیت حمایت های بین المللی به پایان می رسد

2- در بررسی وضعیت زیر بند (د) و (ه) اولین پاراگراف داده شده برای از بین بردن شرایطی که باعث از بین رفتن و یا نرفتن و یا وجود یا عدم وجود یک تغییر مهم و دائمی در نظر گرفته میشود.

3- در حذف اعطای وضعیت حفاظت تابعه و یا تغییر شرایطی که برای حفاظت لازم نیست وضعیت به پایان می رسد. در وضعیت حفاظت فرعی اهمیت یک تغییر مهم و دائمی از شرایط مورد نیاز مورد توجه قرار میگیرد.

4- در صورت ظهور شرایط موجود در پاراگراف اول و سوم، وضعیت میتواند دوباره ارزیابی شود. پس از اطلاع به شخص یاد شده در مورد چرایی و ارزیابی وی به صورت شفاهی یا کتبی برای ادامه ی وضعیتش برای ارائه دلایل شفاهی یا کتبی و دلایل مورد نیاز به وی فرصت داده میشود

5- تصمیم نهایی در رابطه با اموال و مبنای قانونی به نماینده قانونی مربوطه و یا خود و یا وکیل او ابلاغ میشود. اگر شخص مورد نظر توسط یک وکیل حمایت نمیشود در مورد نتیجه ی تصمیم، روش ها و ضرب العجل ها وی و یا نماینده قانونی او باید آگاه میشود.

لغو وضعیت حفاظت بین المللی

ماده 86

1- اشخاص بین المللی که وضعیت حفاظت برایشان اعطاشده؛

الف) افرادی که با استفاده از اسناد جعلی، تقلب، فریب و بیان نکردن حقیقت سبب دادن مقام به فردی شده اند

ب) بعد از دادن وضعیت موافقت نامه های صادر شده که در چارچوب ماده 64 نیستند لغو می شود.

2- لغو تصمیمات مربوط به اموال و مبنای قانونی به شخص مورد نظر نماینده قانونی یا وکیل باید مربوطه ابلاغ میشود اگر شخص مورد نظر توسط یک وکیل حمایت نمیشود در مورد نتیجه ی تصمیم، روش ها و ضرب العجل ها وی و یا نماینده قانونی او آگاه میشود.

پشتیبانی برای بازگشت داوطلبانه

## ماده 87

1 از متقاضیان و صاحبان وضعیت حفاظت بین المللی کسانی که مایل به بازگشت داوطلبانه میباشند می تواند حمایت های نقوی از آنها شود.

2- اداره کل، میتواند فعالیت های بازگشت داوطلبانه، باسازمان های بین المللی، نهادهای دولتی و سازمان های غیر دولتی همکاری کند

### بخش سوم

### حقوق و تعهدات

### اصول کلی حقوق و تعهدات

## ماده 88

1- کسانی که از وضعیت حمایت های بین المللی، برخوردارند از نیاز به روابط متقابل معاف میباشند.

2- رد تقاضای فرد متقاضی و یا حقوق و امکانات داده شده به افراد صاحب وضعیت حفاظت بین المللی 'حقوق و امکانات برایشان بیشتر از شهروندان ترک نمی باشد.

### دسترسی به خدمات و کمک ها

## ماده 89

1- متقاضی و اعضا خانواده شخص صاحب وضعیت بین الملل میتواند از خدمات آموزش و پرورش ابتدایی و متوسطه بهره مند می شود.

2- به متقاضیان و صاحبان وضعیت بین الملل امکان دسترسی به خدات اجتماعی داده میشود

3- متقاضی یا صاحب وضعیت حفاظت بین المللی؛

الف) اشخاصی که بیمه سلامت داشته و توانایی پرداخت هیچگونه هزینه را ندارند منو به قانون مورخ 31/5/2006 و شماره 5510 به مفاد قانون تامین اجتماعی و بیمه بهداشت و درمان عمومی میباشند. این افراد برای پرداخت حق بیمه بهداشت و درمان میتوانند از تخصیص بودجه مدیر کل به طور کلی بهره مند می شوند. با توجه به توانایی پرداخت این افراد حق بیمه های داده شده توسط اداره کل تمام یا قسمتی از حق بیمه خواسته می شود.

ب) توانایی به پرداخت بیمه سلامت یا درمان پزشکی بعداً مشخص میشود، و یا موافقت نامه های وارد شده پس از آن، ظرف ده روزهزینه های بیمه برای سلامت از طرف سازمان کلی امنیت اجتماعی تعیین شده و هزینه های دارو و درمان از شخص مورد نظر گرفته میشود.

4- همانطور که برای دسترسی به بازار کار؛

الف) متقاضی یا پناهندگان مشروط، شش ماه پس از تاریخ درخواست برای حفاظت بین المللی میتواند برای دریافت مجوز کاردرخواست کند.

ب) صاحب وضعیت حفاظت تابعه، یا یک پناهنده بعد از گرفتن وضعیت تابعه میتواند به صورت مستقل و یا وابسته کار کند. قوانین مربوط به زمینه ی کسب و کار و حرفه ای خارجی ها که در آن زمینه نمیتوانند کار کنند در مقررات محفوظ می باشد. سند هویت داده شده به پناهنده یا صاحب وضعیت حفاظت تابعه میتواند به جای اجازه کار استفاده شود و این وضعیت در سند هویت وی نیز نوشته میشود.

ج) پناهندگان و صاحبان حفاظت تابعه می توانند برای دسترسی به بازار کار و وضعیت اشتغال و تحولات در کار زندگی و شرایط اقتصادی 'برایشان برای یک دوره خاص، در بخش های کشاورزی، صنعتی و یا خدمات، حرفه ای خاص در راستای کسب و کار اختصاصی منطقه جغرافیایی محدود داده میشود. اما با این حال شهروند که به مدت سه سال ساکن ترکیه بوده یا بایک شهروند ترکیه ای ازدواج کرده باشد است و صاحبان وضعیت حفاظت تابعه که فرزندشان در ترکیه به دنیا آمده باشد' این محدودیت ها اعمال نمی شود.

د) اصول و روش های بین المللی کار صاحبان وضعیت حفاظت تابعه و متقاضیان از طرف وزارت کار و امور اجتماعی تعیین می شود.

5- با استثنای افراد ذکر شده در ماده ی 72 و 79 افرادی که محتاج بودنشان تصویب شده با تصویب وزارت مالیه در چارچوب اصول و روش کمک هزینه توسط وزارت مشخص شده خرجی برایشان داده میشود.

## تعهدات

ماده 90

1- اگر متقاضی یا کسی که دارای وضعیت حمایت های بین المللی است، علاوه بر تعهدات کتبی در این بخش؛

الف) با گزارش اطلاعات به روز مربوط به کار ظرف مدت سی روز

ب) اعلام اموال منقول و غیر منقول، درآمدها، ظرف مدت سی روز

ج) گزارش در مورد تغییر آدرس، هویت و وضعیت کسب و کار ظرف بیست روز

چ) در صورت تثبیت استفاده ناعادلانه از خدمات ارائه شده به او، و فرصت های دیگر برای کمک به وی تمام یا بخشی از هزینه ها بازپرداخت خواهد شد،

د) با به جا آوردن آنچه هیئت مدیره عمومی از او در چارچوب این بخش خواسته. 2- در این بخش مطابق با تعهدات بر وضعیت برنامه های کاربردی برای محافظت بین المللی به استثنای آموزش و پرورش و حقوق و قانون مراقبت های بهداشتی اولیه، از دیدگاه دیگر حقوق ممکن است محدودیت هایی به میان بیاید ارزیابی انجام شده است به منظور محدود کردن به صورت فردی انجام میشود تصمیم نهایی به نماینده قانونی مربوطه و یا خود و یا وکیل او ابلاغ میشود. اگر شخص مورد نظر توسط یک وکیل حمایت نمیشود در مورد نتیجه ی تصمیم، روش ها و ضرب العجل ها وی و یا نماینده قانونی او باید آگاه میشود.

### بخش چهارم

#### سایر مقررات برای حفاظت بین المللی و حفاظت موقت

#### حفاظت موقت

ماده 91

1 افرادی که مجبور به ترک کشور خود شده، قادر به بازگشت به کشوری که از آن خارج شده نمیباشند، می توانند بصورت توده ای در جهت پیدا کردن حفاظت فوری و موقتی به مرزهایمان آمده اند و یابندگانگانی که از مرزهای مان عبور کرده اند حفاظت موقت داده شود.

2- تصویب این مردم در ترکیه، اقامت در ترکیه، حقوق و تعهداتشان کارهایی که به هنگام خروج از ترکیه باید انجام شود مقررات اقدامات در برابر جنبش های توده ای از سازمانهای ملی و بین المللی و نهادهای همکاری و هماهنگی بین نهاد های مرکزی و استانی به گرفتن بخشی در تعیین وظایف و اختیارات نهادها، توسط شورای وزیران صادر میشود.

همکاری با فرایندهای محافظت بین المللی

1- وزارت در بخش کتبی فرآیندها و مسائل مربوط به حفاظت بین المللی در چارچوب قانون شماره 1173 مورخ 05/05/1969 در رابطه با اجرا و هماهنگی کمیساریای عالی متحده برای پناهندگان، سازمان بین المللی مهاجرت و دیگر سازمان های بین المللی و غیر دولتی در روابط بین المللی می تواند همکاری کند.

2- تحقق وظیفه نظارت بر اجرای مفاد این کنوانسیون، سازمان ملل کمیساریای عالی سازمان ملل متحد با هیئت علمی بالای خود همکاری لازم برای پناهندگان ارائه شده میشود.

تحقق وظیفه نظارت بر اجرای مفاد این کنوانسیون، سازمان ملل کمیساریای عالی سازمان ملل متحد با هیئت علمی بالای خود همکاری لازم برای پناهندگان ارائه شده میشود. وزارت برای شناسایی برنامه ارزیابی و تصمیم گیری فرایندهای بین المللی تحت این قانون، برای مشخص کردن نتایج تصمیم گیری ارزیابی ها، برای این منظور با موافقت وزارت امور خارجه سازمان ملل کمیساریای عالی سازمان ملل متحد برای پناهندگان با داشتن یک ماهیت بین المللی مجاز به ایجاد پروتکل خواهند بود.

3- سازمان ملل متحد برای حفاظت بین المللی پناهندگان و متقاضیان به شمول عبور و مرورهای مرزی به شرط پذیرش متقاضی امکان دسترسی به برنامه ها مرتبط با تقاضایش فراهم میشود کمیسیونر عالی سازمان ملل متحد می توانند در مورد پناهندگان نظرات خود را در هر مرحله از این برنامه بیان کند.

#### اطلاعات مربوط به کشور مبدأ

1- بررسی برنامه های کاربردی برای حفاظت بین المللی، برای تصمیم موثر و عادلانه، مسائل مربوطه که توسط متقاضی به منظور تعیین دقت و صحت گفته توسط کشور های متقاضی از مبدأ، کشور حمل و نقل و منابع اطلاعات سازمان ملل کمیساریای عالی متحده برای پناهندگان و از دیگر منابع اطلاعات به روز جمع آوری می شود.

2- ایجاد سیستم اطلاعات کشور مبداء 'جمع آوری اطلاعات، ذخیره سازی، بهره برداری از سیستم، استفاده از نهادها و سازمانهای دولتی مربوط، در چارچوب اصول و روشهای مربوطه توسط مدیریت کل انجام می شود.

### سیاست حفظ حریم خصوصی و امکان دسترسی به پرونده

#### ماده 94

1- حریم خصوصی و تمامی اطلاعات متقاضی و شخصی که دارای وضعیت حفاظت بین المللی میباشد محرمانه نگه داشته میشود .

2- با این حال، متقاضی و صاحب وضعیت حمایت های بین المللی و یا نماینده قانونی وکیل شخص، می تواند فایل شخصی متقاضی و مدارک شخص صاحب وضعیت حمایت های بین المللی این فایل را بررسی کند؛ میتواند یک کپی از آن را دریافت کند. اسناد مربوط به پیشگیری از جرم و جنایت حفاظت از امنیت ملی و نظم عمومی داده نمیشود.

#### مراکز پذیرش و اقامت

#### ماده 95

1- تامین نیازهای مسکن متقاضی یا کسی که صاحب یک وضعیت حفاظت بین المللی است ، بر عهده ی خودش میباشد.

2- اداره کل تامین مسکن، غذا، بهداشت، اجتماعی و سایر نیازهای متقاضی یا شخص که صاحب حفاظت بین المللی میباشد را قبول کرده و میتواند مراکز محل اقامت راه اندازی کند.

3- در این مراکز تامین مسکن، نیازمندان در اولویت قرار دارد .

4- مراکز پذیرش و مسکن توسط فرمانداران اداره می شود. مدیر کل، مراکز، موسسات و سازمان های دولتی، انجمن هلال احمر ترکیه و انجمن های تخصصی که در زمینه ی مهاجرت فعالیت میکنند میتوانند به وسیله ی پروتکل کار کنند.

5- افرادی که در گروه متقاضی یا شخص صاحب وضعیت حمایت های بین المللی نیستند و نیز اعضای خانواده شان می توانند از خدمات این مراکز بهره مند شوند.

6- خدمات ارائه شده در مراکز پذیرش و اقامت، از طریق خرید و فروش نیز انجام میشود.

7- در حد امکان همه ی خانواده هایی که در این مراکز ساکن هستند' حفاظت میشوند.

8- نمایندگان سازمان های غیر دولتی مرتبط با تخصص مهاجرت با اجازه از اداره کل و پذیرش وی میتوانند به مراکز اقامت مراجعه کنند.

9- استقرار مراکز پذیرش و اقامت ایجاد اصول و روش های مربوط به مدیریت و بهره برداری از طبق بین نامه تنظیم میشود.

### قسمت چهارم

### حفاظت بین المللی و خارجی

### مقررات متداول

### هماهنگی

### ماده 96

1- اداره عمومی ، بر حد توان اقتصادی و مالی فرصت های این کشور، متقاضی خارجی و یا شخص صاحب وضعیت حفاظت بین المللی برای تسهیل انطباق متقابل در کشور مان و دوباره در کشورمان جای میگیرند و یا هنگام بازگشت به کشورشان بدون وساطت اشخاص ثالث و فعالیت مستقلانه به منظور تسهیل به دست آوردن دانش و مهارت های لازم با بهره گیری از پیشنهادات و کمک سازمان های دولتی، دولت های محلی، سازمان های غیر دولتی، دانشگاه ها و سازمان های بین المللی، میتواند فعالیت های سازگار برنامه ریزی کند.

2- بیگانگان میتوانند در کلاس های مربوط به ساختار سیاسی کشور، زبان، نظام حقوقی، فرهنگ و دوره های تاریخ، حقوق و وظایف شرح داده شده در سطح پایه شرکت کنند.

3- استفاده از کالاهای خدمات دولتی و خصوصی' دسترسی به فعالیت های اقتصادی' آموزش و پرورش' دوره های ارتباطات اجتماعی و فرهنگی' کلاس های پایه ای بهداشت' آموزش از راه دور و...، و تاثیر سیستم های تبلیغاتی و اطلاع رسانی، همکاری در فعالیت های اداره عمومی در نهادها و ب سازمان های غیر دولتی عمومی گسترش می یابد.

تعهد به متطابق بودن به دعوت نامه



ماده 97

1- اتباع خارجی و متقاضیان که دارای وضعیت حفاظت بین المللی میباشند؛

الف) نیاز به تحقیق و تفحص در ورود به ترکیه و یا اقامت در ترکیه،

ب) در نظر گرفتن وجود احتمال تبعید از مرز

ج) اطلاع رسانی معاملات مربوط به اجرای این قانونی تواند، امکان دعوت از فرماندار یا اداره کل مرتبط با دلایل موجود باشد. در صورت شک و تردید جدی در مورد دعوت نامه خارجی ها بدون دعوت نامه می توانند با اجرای قانون آورده شوند. این فرایند در بازداشت اداری اعمال می شود و دوره گزارشگیری از چهار ساعت تجاوز نمی کند.

تعهدات حامل

ماده 98

1- حامل

الف) بیگانگانی که به هر دلیلی ورود و یا عبورشان از مرز ترکیه رد شده، پذیرش و آمدنشان به یک کشور با برگشت مراجعه می شود.

ب) همراهی کردن با خارجی در شرایط مورد نیاز، و در صورت نیاز همراهی کردن در رفت و برگشتشان

ج) مسئول چک کردن مدارک و مجوز افرادی که همراهیشان می کنند، می باشند.

2- (تغییر: ماده 3/10/2016/37/676) اداره کل می تواند از حاملین مسافر که به مرز مسافر می آورند، از مرز مسافر می گیرند و در داخل ترکیه مسافر حمل می نمایند، بخواهد تا پیش از حرکت، در لحظه حرکت و پس از حرکت اطلاعات مربوط به تمامی مسافریین و خدمه را ارسال نمایند.

3- اصول و روش های لازم در رابطه با تعهدات که در پاراگراف اول و دوم ذکر شده، به صورت مشترک توسط وزارت امور دریانوردی و ارتباطات صادر می شود.

اطلاعات شخصی:

ماده 99

1- اطلاعات شخصی متقاضیان و اشخاص صاحب وضعیت بین المللی، توسط اداره‌ی عمومی و یا حکومت، مطابق با قانون مربوطه گرفته محافظت شده و ذخیره می‌شود و استفاده می‌شود.

#### اخطار

ماده‌ی 100

1- مراحل ابلاغ مربوط به این قانون با توجه به مفاد قانون شماره ی 7201، مورخ 1959/2/11 انجام می‌شود.

2- اصول و روش‌های اجرای این ماده، با در نظر گرفتن اینکه شخص مورد نظر یک غریبه است و نیز در صورت وجود شرایط ویژه، توسط مدیریت تنظیم می‌شود.

#### دادگاه صالح اداری

ماده ی 101

1- با توجه به کاربرد این قانون در صورت سر زدن به محکمه‌ی اداری، در صورت وجود بیش از یک محکمه‌ی اداری، قضات و دادستان در محکمه‌ها توسط شورای عالی قضات قبل از محکمه، مشخص می‌شود.

#### مجازات اداری

ماده‌ی 102

1- در صورت به میان آمدن جریمه‌ی سنگین تر نسبت به قوانین دیگر

الف) در صورت نقض ماده پنجم بیگانگی که به صورت غیر قانونی به ترکیه وارد شد پایه صورت غیر قانونی آن جا را ترک کنند. و یا حتی برای این کار تلاش کنند دو هزار لیره ترکیه جریمه میشوند

ب) براساس پاراگراف اول و دوم ماده‌ی 9 با وجود ممنوع‌الورود بودن به ترکیه افرادی هم که به ترکیه وارد شده‌اند هزار لیره ترکیه جریمه میشوند

ج) در صورت شناخته و در صورتی که در پاراگراف اول ماده‌ی 56 گفته شد، در رابطه با افرادی که ترکیه را ترک نمی‌کنند نیز هزار لیره ترکیه جریمه تعلق می‌گیرد

د) در مورد افرادی که در حین فعالیت هزار کرده‌اند در چهارچوب ماده‌های 57 و 58 و 90 پرداخت هزار لیره ترکیه به عنوان خسارت اداری برایشان تحمیل میشود.

2- در صورت قرار جریمه‌های اداری در عرض یک سال تقویمی ندارد، جریمه‌ها به یک و نیم برابر افزایش پیدا میکند.

3- خسارت اداری گفته شده در این ماده مانع استفاده سایر اقدامات اداری مندرج در قانون نمی‌شود.

4- مجازات اداری گفته شده در این ماده توسط فرماندار با مقامات اجرایی و قانون تنظیم میشود جریمه باید ظرف سی روز از تاریخ ابلاغ پرداخت شود.

### قسمت پنجم

#### اداره‌ی کل مهاجرت

#### بخش اول

#### ایجاد، وظایف و صلاحیت‌ها

#### استقرار

#### ماده ی 103

1- برای اطمینان از اجرای سیاست‌ها و استراتژیها در زمینه‌ی مهاجرت

هماهنگی بین سازمانها و موسسات در مورد این مسائل، ورود بیگانگان به ترکیه و اقامتشان در آن جاه تبعیدشان از مرز، حمایت و حفاظت بین‌المللی، حفاظت موقت و در رابطه با حفاظت از قربانیان قاچاق و اجرای عملیات و فعالیت‌ها، اداره‌ی کل مهاجرت وابسته به وزارت کشور تاسیس شده است.

#### وظایف و اختیارات

#### ماده ی 104

1- وظایف و اختیارات اداره‌ی کل به شرح زیر است:

الف) در زمینه‌ی مهاجرت، توسعه‌ی قوانین و ظرفیت اداری، به انجام مطالعات در مورد سیاست‌ها و استراتژی‌های تعیین شده توسط شورای وزیران و به نظارت و هماهنگی اجرای سیاست‌ها و استراتژی‌ها می‌پردازد.

ب) انجام خدمات مشاوره‌ی هیئت مدیره و در زمینه‌ی مهاجرت و نظارت بر اجرای تصمیمات هیئت مدیره

ج) انجام فعالیت‌های کسب و کار و فعالیت‌های مربوط به مهاجرت

د) قانون حل و فصل 5543 مورخ 2006/9/21 در رابطه با انجام وظایف و اگذار شده به وزارت

ه) انجام اقدامات مربوط به حفاظت از قربانیان قاچاق انسان

و) شناسایی افرادی که تابعیت ترکیه را ندارند و اجرای عملیات کسب و کار در رابطه با این افراد

ی) انجام اقدامات مربوط به فرایند ادغام

ز) انجام اقدامات مربوط به حفاظت موقت

ل) اجرای قانون و اطمینان از هماهنگی بین نهادها و سازمان‌های دولتی مرتبط به منظور مبارزه با مهاجرت‌های بی رویه و توسعه اقدامات و پیگیری و اجرای اقدامات انجام شده

م) همکاری در برنامه ریزی فعالیت‌های نمادهای دولتی و سازمانی در زمینه‌ی مهاجرت، بررسی و تصویب پروژه‌های پیشنهادی، نظارت بر پروژه‌ها و کارهای انجام شده و حمایت از اجرای پروژه‌های مطابق با استانداردهای بین‌المللی

ا) انجام کارهای دیگر

2- در رابطه با وظایف مدیرکل، نهادها و سازمان‌ها، دانشگاه‌ها، دولت‌های محلی سازمان‌های غیر دولتی به بخش خصوصی و سازمان‌های بین‌المللی مجاز به ارائه‌ی همکاری و هماهنگی می‌باشند.

3- درخواست هرگونه اطلاعات و سند در چهارچوب این قانون در رابطه با اداره‌ی خصوصی، بدون تاخیر توسط نهادها و سازمان‌های مربوطه انجام میشود.

بخش دوم

مهاجرت هیئت مهاجرت سیاستها

## وظایف هیئت مدیره در رابطه با سیاست‌های مهاجرتی

ماده 105

1- کمیته‌ی سیاست مهاجرت، ریاست وزیر امور داخلی، سیاست خانوادگی و اجتماعی از اتحادیه اروپا، امنیت کار و امور اجتماعی، امور خارجه، کشور، فرهنگ و گردشگری امور مالی، آموزش و پرورش، بهداشت و حمل و نقل، امور دریانوردی و ارتباطات با معاون ترک خارج از کشور و جوامع مرتبط متشکل از رئیس‌جمهور و مدیر اداره‌ی کل مهاجرت با توجه به دستور جلسه، وزارتخانه‌های مربوطه، سازمان‌های ملی و بین‌المللی و غیر دولتی و نمایندگانی از ادارات و سازمان‌های دیگر می‌توانند به این نشست دعوت شوند.

2- هیئت مدیره باید حداقل یک بار در سال با دعوت رئیس هیئت مدیره دور هم جمع شوند. در صورت لزوم و رئیس هیئت مدیره می‌تواند جلسه‌ی فوق‌العاده تشکیل دهد. دستور کار نشست توسط رئیس‌جمهور پس از مشورت با اعضاء تعیین میشود خدمات منشیگری هیئت مدیره باید توسط اداره‌ی کل انجام شود.

3- وظایف هیئت مدیره به شرح زیر می‌باشد.

الف) تعیین سیاست‌ها و استراتژی‌هایی مهاجرت به ترکیه، جهت نظارت و اجرای آنها

ب) آماده‌سازی اسناد و استراتژی و برنامه‌ریزی‌ها در زمینه‌ی مهاجرت

ج) مشخص کردن روش‌ها و تعیین اقدامات در صورت هجوم دسته‌جمعی

د) مشخص کردن اصول و روش‌ها و شرایط و مراحل ورود و اقامت کسانی که از مدت ترکیه پذیرش شده‌اند، با ملاحظت بشر دوستانه.

ه) تعیین اصول مرتبط با نیاز ترکیه به نیروی کار خارجی در چهارچوب پیشنهادات وزارت کار و تامین اجتماعی<sup>5</sup>

و) تعیین شرایط در رابطه با اعطای اجاره‌ی بلند مدت به خارجی‌ها

ی) همکاری فعال کشورهای خارجی و سازمان‌های بین‌المللی در زمینه‌ی مهاجرت و مشخص کردن چهارچوب این فعالیت‌ها

ل) برای ایجاد هماهنگی بین نهادهای دولتی و سازمان‌های مشغول به کار در زمینه‌ی مهاجرت تصمیم‌های مطمئن گرفته شود.

### بخش سوم

### سازمان مرکزی، استانی و بین‌المللی

### واحد خدمات

### سازمان

### ماده‌ی 106

1- اداره‌ی کل، مرکز از سازمان‌های استانی و خارجی تشکیل می‌شوند.

اداره‌ی کل سازمان مرکزی در شبکه نشان داده شده است.

مدیر ارشد اجرایی

### ماده‌ی 107

1- مدیر ارشد اجرایی، بالاترین مقام مدیریتی بوده و در قبال وزیر مسئول است.

2- وظایف مدیر کل به شرح زیر است:

آ) قوانین اداره کل باید مطابق با برنامه‌ها و سیاست‌ها برای مدیریت دولت، تعیین شود.

ب) انجام امور قانونی لازم باید در حوزه‌ی قضایی اداره‌ی عمومی، استراتژی اهداف، اقدامات و عملکرد در تطابق با مدیریت کل باشد.

ج) نظارت بر فعالیت و عملیات اداره‌ی کل و سیستم‌های مدیریت، بررسی و نظافت بر اثر بخشی ساختار حکومت شرکت‌ها و اطمینان یافتن از توسعه‌ی مدیریت

د) تعیین سیاست و استراتژی‌های میان مدت و بلند مدت، و برای این منظور اطمینان یافتن از همکاری سازمان‌های بین‌المللی و غیر دولتی و دانشگاهها

ه) ایجاد هماهنگی در زمینه فعالیت‌های نهادهای دولتی

3- برای کمک به مدیر کل اداره‌ی کل، دو معاون اختصاص می‌توان داده شد. این معاون، وظایفی را که از جانب مدیر کل تعیین می‌شود به جا آورده و در قبال مدیر کل مسئول می‌باشد.

واحد خدمات

ماده‌ی 108

1- وظایف اداره‌ی کل و واحدهای خدماتی‌اش به شرح زیر می‌باشد.

الف) ریاست گروه خارجی

1) انجام فعالیت‌ها و عملیات مرتبط با مهاجرت منظم

2) انجام فعالیت‌ها و عملیات مرتبط با مهاجرت بی‌رویه

3) انجام وظایف و گذار شده به وزارت مطابق قانون 5543

4) رسیدگی به فعالیت‌های کسب و کار افرادی که تابعیت ترکیه را ندارند.

5) ایجاد هماهنگی بین نهادها و سازمانهای دولتی و مطمئن شدن از اجرای قانون، توسعه قانون، توسعه اقدامات و نظارت بر اجرای اقدامات انجام شده به منظور مبارزه با مهاجرت بی‌رویه.

انجام مقررات در رابطه با موافقت نامه‌های مجدد حزب بودن ترکیه و اتباع کشور ثالث و بدون تابعیت.

7) انجام دیگر وظایف تعیین شده توسط مدیر کل

ب) گروه حفاظت بین‌المللی

1) انجام کسب و کار و عملیات حفاظت بین‌المللی

2) انجام اقدامات مربوط به حفاظت موقت

3) جمع‌آوری و به روز رسانی اطلاعات کشور مبدا

4) انجام دیگر وظایف تعیین شده توسط مدیر کل

ج) وزارت حفاظت از قربانیان قاچاق انسان

(1) انجام فعالیت و عملیات‌های مربوط در زمینه‌ی حفاظت از قربانیان قاچاق انسان

(2) انجام پروژه‌های مربوط به مبارزه با قاچاق انسان و محافظت از قربانیان

(3) راه‌اندازی خطوط مقابله با قربانیان قاچاق انسان

(4) انجام دیگر وظایف تعیین شده توسط مدیر کل

### وزارت سیاست مهاجرت و پروژه‌ها

(1) انجام مطالعات و نظارت بر اجرای سیاست‌ها و استراتژی‌ها برای تعیین سیاست‌ها و استراتژی‌ها در زمینه‌ی مهاجرت

(2) ارائه‌ی خدمات منشیگری به هیئت مدیره سیاست مهاجرت و نظارت و اجرای تصمیمات هیئت مدیره

(3) انجام پروژه‌های مرتبط با مهاجرت

(4) کمک کردن در فعالیت، برنامه‌ریزی‌ها و پروژه‌ها در زمینه‌ی مهاجرت، بررسی و تصویب پروژه‌های پیشنهادی، نظارت بر کار و پروژه‌های انجام شده و حمایت از اجرای پروژه‌های مطابق با استانداردهای جهانی و بین‌المللی

(5) بررسی، تحقیق و تجربه تحلیل در رابطه با مهاجرت

(6) با همکاری با موسسه‌ی آمار ترکیه، آمار مربوط به مهاجرت و حفاظت قاچاق انسان را منتشر کردن.

(7) تهیه و انتشار گزارش سالانه در مهاجرت

(8) انجام دیگر وظایف تعیین شده توسط مدیر کل

(د) وزارت ادغام و ارتباطات

(1) انجام عملیات و هماهنگی متقابل خارجی‌ها با جامعه

(2) اطلاع رسانی عمومی در رابطه با وظایف اداره‌ی کل و انجام فعالیت‌ها در جهت افزایش آگاهی عمومی



3) برنامه‌ریزی برای انجام فعالیت‌های توسط عمومی و مطبوعات

4) انجام دیگر وظایف تعیین شده توسط مدیر کل

ه) وزارت فناوری اطلاعات

1) ایجاد سیستم‌های اطلاعاتی در رابطه با وظایف اداره‌ی کل و کسب و کار و مدیریت

2) گرفتن اطلاعات شخصی در چهارچوب این قانون، محافظت و ذخیره و استفاده از زیر ساخت‌های لازم برای انجام کسب و کار و مدیریت

3) ایجاد ارتباط بین واحدهای ستاد اداره‌ی کل ثبت اسناد الکترونیکی، مرتب سازی و توزیع و تامین اطلاعات و نیازهای ارتباطی و نرم‌افزارهای مرتبط.

ایجاد و توسعه

4) انجام دیگر وظایف تعیین شده توسط مدیر کل

و) وزارت امور خارجه

1) ایجاد ارتباط و همکاری و هماهنگی لازم در رابطه با وظایف اداره‌ی کل و فعالیت‌های سایر کشورها و سازمان‌های بین‌المللی فعال در منطقه، اطمینان یافتن از ارتباط و هماهنگی لازم و انجام فعالیت‌هایی در زمینه‌های جدید

2) موضوعاتی که در دامنه‌ی وظایف اداره‌ی کل قرار می‌گیرد از اجرای روابط با اتحادیه اروپا مطمئن شدن

3) انجام فعالیت‌ها و عملیات اداره‌ی کل در رابطه با مسئولیت‌های موقت در خارج از کشور

4) برنامه‌ریزی هیئت و مقامات خارجی در رابطه با وظایف اداره‌ی کل و ایجاد جلسات بین‌المللی، کنفرانس‌ها، سمینارها و فعالیت‌های مشابه

5) نظارت بر فعالیت و تحولات کشورهای خارجی در حوزه‌ی اداره‌ی کل

6) در زمینه‌ی مهاجرت و مامورتهای دیپلماتیک در ترکیه و تماس ایجاد کردن

7) انجام دیگر وظایف تعیین شده توسط مدیر کل

ز) وزارت گروه توسعه‌ی استراتژی

1) انجام وظایف در چهارچوب قانون مدیریت مالی و کنترل عمومی به شماره 5018 مورخ 5126 /10/12/2003 مورخ 22/12/2005 و ماده‌ی 15 در رابطه با اصلاح برخی قوانین و احکام و انجام وظایف واگذار شده و توسعه‌ی دیگر استراتژی‌های مقننه و واحد خدمات مالی

2) انجام دیگر وظایف تعیین شده توسط مدیر کل

ر) مشاور حقوقی

1) در قانون شماره 659 مورخ 26/09/2011 در چهارچوب بودجه‌ی عمومی و مقامات دولتی و انجام خدمات حقوقی در اداراتی که بودجه‌ی ویژه به آنها تخصص یافته با توجه به مفاد قانون

2) انجام دیگر وظایف تعیین شده توسط اداره کل

ح) وزارت منابع انسانی

1) اداره‌ی کل سیاست و برنامه‌ریزی نیروی انسانی و توسعه‌ی منابع انسانی ناقصه و انجام فعالیت‌هایی در جهت استقرار معیارهای عملکردی

2) انتصاب کارکنان دفتر مرکزی، انتقال، ترفیع، بازنشستگی و انجام سایر عملیات ببرای پرسنل

3) انجام دیگر وظایف تعیین شده توسط مدیر کل

خ) وزارت خدمات پشتیبانی

1) در چهارچوب قانونی شماره 5018، اجاره کردن و خرید و فروش، تمیز کردن، امنیت، روشنایی، گرمایش، تعمیر و نگهداری، حمل و نقل ارائه‌ی خدمات مشابه

2) انجام معاملات مربوط به منقول و حقار تحت قانون مربوط اداره‌ی کل

3) سازماندهی اسناد و آرشیوها و انجام فعالیت

4) برنامه ریزی و اجرای خدمات اورژانسی دفاع و بسیج مدنی مدیر کل

5) اتخاذ تصمیمات لازم در خصوص پاسخگویی سریع ، موثر و مناسب به تقاضایی که در خصوص کسب اطلاعات صورت می گیرد بر مبنای "قانون حق کسب اطلاعات " به شماره 4982 مورخه 2003/10/9

6) ایجاد وبه کار گیری و یا اداره مراکز و پناهگاه هایی برای قربانیان تجارت انسان .

7) انجام سایر وظایفی که از سوی مدیر کل تعیین می شود.

1) ریاست دایره آموزش

1) برنامه ریزی و اجرای اقدامات آموزشی هماهنگ با حوزه وظایف اداره کل

2) پخش برنامه های مناسب علمی

3) اجرای سمینار ، سمپوزیوم ، کنفرانس و برنامه های مشابه دیگر

4) پیگیری ، انتخاب و اطلاع رسانی احکام قضایی ، موضوعات و برنامه های ملی و بین المللی و سایر اطلاعات و اسناد مرتبط به دوائر ذیربط

5) انجام سایر وظایفی که از سوی مدیر کل تعیین می شود.

تشکیلات خارج از مرکز

ماده 109

1- اداره کل می تواند در چارچوب احکام موضوعات مرتبط ، تشکیلات خارج از مرکز خود را ایجاد نماید .

تشکیلات خارج از کشور

ماده 110

1- اداره کل ، صلاحیت ایجاد تشکیلات خارج از کشور خود را بر مبنای مصوبه شماره 189 مورخه 1983/2/13 در خصوص قانون مربوط به تشکیلات خارج از کشور نهادها و سازمان های عمومی دارد.

2- وظایف مشاورانی که در زمینه مهاجرت در سفارت های کبری انجام وظیفه می نمایند از این قرار است:

الف) بین نهادها و سازمان های واقع ، در کشور های محل خدمت خویش و اداره کل در زمینه مهاجرت ، هماهنگی و همکاری ایجاد نمایند .

ب) پیگیری پیشرفت های به عمل آمده در حوزه وظایف اداره کل و گزارش آن به اداره کل

پ) پیگیری موضوعات مربوط به حوزه مهاجرت در بین دو کشور

ت) برقراری ارتباط لازم در خصوص تسهیل امورات مربوط به طرد یا بازگشت اتباعی که بدون رعایت مقررات مهاجرتی وارد کشور شده اند.

ث) انجام امورات بر مبنای اطلاعات کشور مبدا .

ج) انجام وظایف محوله از سوی اداره کل در خصوص مبارزه با تجارت انسان و حمایت از قربانیان

چ) آماده کردن و پیشنهاد پروژه هایی برای مبارزه با تجارت انسان و حمایت از قربانیان و همکاری در زمینه مهاجرت با مشارکت کشور محل خدمت و پیگیری پروژه های در حال اجرا

خ) انجام سایر وظایف محوله از سوی اداره کل

3- وظایف وابسته های امور مهاجرتی که در کنسولگری ها انجام وظیفه می نمایند از این قرار است:

الف) قبول و رسیدگی به تقاضاهای ارائه شده به کنسولگری ها در زمینه صدور روادید و مجوز اقامت

ب) جمع آوری اطلاعات و اسناد مرتبط با تقاضاهای واصله ، درخواست از تبعه خارجی در خصوص تکمیل اطلاعات و اسناد ، بررسی و ارزیابی اسناد و اطلاعات ماخوذه .

در صورت نیاز با ملاقات متقاضی و ثبت موارد مربوطه .

ت) رسیدگی به تقاضاهای واصله برای صدور روادید هایی که صدور آنها در صلاحیت کنسولگری می باشد و در مورد مجوز اقامت و روادید هایی که صدور آنها نیازمند کسب نظر از اداره کل می باشد پس از کسب نظر اداره کل ، ارسال به کنسول جهت تایید .

ث) پیگیری پیشرفت های به عمل آمده در زمینه امور مهاجرتی در کشور محل خدمت و آماده کردن گزارش های سالانه

ج) انجام سایر وظایف محوله از سوی اداره کل

کارگروه ها و صلاحیت تنظیم نظام نامه

## ماده 111

1- در تشکیلات مرکزی اداره کل ، با هدف پیشبرد امور ، با دستور روسای واحد ها و تصویب مدیر کل تشکیل کارگروه ها امکان پذیر می باشد.

گروه های مزبور تحت نظر و هماهنگی فردی متخصص که از سوی مدیرکل تعیین می شود فعالیت می کند.

2- اداره کل صلاحیت تنظیم نظام نامه هایی در خصوص وظایف ، صلاحیت ها و مسئولیت های آن اداره را دارد.

### پاسخگویی مدیران و دایره صلاحیت ها

## ماده 112

1- مدیران اداره کل در هر رتبه ای که باشند در خصوص انجام وظایف محوله در راستای موضوعات تعیین شده برنامه ها و طرح های راهبردی ، همگامی با استاندارد های کیفی خدمات و عملکردها در مقابل مقامات بالاتر از خود پاسخگو هستند .

2- مدیر کل و هر یک از مدیران اداره کل در هر رتبه ای می توانند پاره ای از اختیارات و صلاحیت های خود را به رتبه های پایین تر واگذار نمایند البته باید حدود این اختیارات مشخص گردیده و مکتوب شود این امر به نحو مناسبی به اطلاع فرد ذیربط می رساند .

### بخش چهارم

### کمیسیون ها و هیات ها دائمی و کمیسیون های موقت

### کمیسیون ها و هیات های دائمی

## ماده 113

1- کمیسیون ها و نهاد های دائمی اداره کل از این قرارند.

الف) هیات سخنگوی مهاجرت

ب) کمیسیون بررسی و حمایت بین المللی

پ) هیات هماهنگی مقابل با مهاجرت غیرقانونی

2- صلاحیت های اعضای کمیسیون ها و هیات های دائمی ، زمان و مکان ، گردهمایی های عادی و فوق العاده آنها ، اصول و مقررات فعالیت و تصمیم گیر های آنها و دیگر اصول مرتبط با کمیسیون ها و هیئت های مزبور از طریق آیین نامه مشخص می گردد.

3- دبیرخانه کمیسیون ها و هیات های دائمی و خدمات حمایتی از سوی اداره کل تعیین و تامین می شود

## هیات سخنگوی مهاجرت

ماده 114

1- هیات سخنگوی مهاجرت ، به ریاست مشاور وزیر یا معاون مشاور وزیر و با حضور نمایندگان سازمان حقوق بشر ترکیه ، اتحادیه اروپا و نمایندگان وزارت خانه های امور خارجه و امنیت اجتماعی و کار حداقل در سطح روسای دوائر ، مدیر کل ، معاونان مدیر کل ، روسای اداره اتباع خارجی ، اداره حمایت بین المللی ، اداره حمایت از قربانیان تجارت انسان،

دایره روابط عمومی و اطلاع رسانی ، اداره پروژه ها و سیاست گذاری مهاجرتی ، نماینده کمیسیون عالی پناهندگان سازمان ملل متحد در ترکیه ، نماینده سازمان مهاجرت بین المللی در ترکیه ، پنج نفر متخصص موضوعات مهاجرتی و پنج نفر از نمایندگان سازمان های جامعه مدنی که در زمینه مهاجرت فعال می باشند تشکیل می یابد .

امکانات دعوت از متخصصان داخلی و خارجی در زمینه امور مهاجرتی از سوی رئیس هیات ، به گرد همایی های هیات و اخذ دیدگاه های آنها وجود دارد . هیات در شرایط عادی سالانه دو بار گردهمایی تشکیل می دهند با دعوت رئیس هیات در هر موقعی می توانند گرد همایی فوق العاده تشکیل دهد. موضوع گرد همایی از سوی رئیس هیات مشخص می شود .

2- متخصصان امور مهاجرتی و نمایندگان سازمان های جامعه مدنی در چارچوب اصول و مقرراتی که از سوی وزارتخانه ها تعیین می شود ، و انتخاب می شوند.

3- وظایف هیات از این قرارند :

الف) پیگیری اقدامات مهاجرتی و ارائه پیشنهادات

ب) ارزیابی نظام نامه های برنامه ریزی شده جدید در زمینه مهاجرت

پ) ارزیابی پیشرفت های بین المللی و منطقه ای به عمل آمده در حوزه حقوق و سیاست های مهاجرتی و بررسی امکان تصمیم این پیشرفت های در ترکیه

ت) ارزیابی اقدامات و بررسی های به عمل آمده در حوزه مهاجرت

ث) تشکیل کمیسیون های فرعی به منظور فعالیت در حوزه مهاجرت و ارزیابی گزارش های منتشره در خصوص فعالیت های کمیسیون .

4- احکام مشورتی هیات از سوی اداره کل و سازمان ها و نهادهای عمومی مورد استفاده قرار می گیرد.

### کمیسیون ارزیابی حمایت بین المللی

ماده 115

1- کمیسیون ارزیابی حمایت بین المللی با ریاست نماینده اداره کل و با حضور نمایندگان وزارتخانه های امور خارجه و عدالت (دادگستری) و یک متخصص امور مهاجرتی تشکیل می شود. نماینده نمایندگی کمیساریای عالی پناهندگان سازمان ملل متحد در ترکیه می تواند به عنوان عضو ناظر به این کمیسیون دعوت شود. در تشکیلات مرکزی یا تشکیلات خارج از مرکز اداره کل یک یا چند کمیسیون می تواند تشکیل شود. نماینده اداره کل و متخصص امور مهاجرت برای مدت دو سال و سایر اعضا حداقل برای مدت یک سال به عنوان اعضای اصلی و علی البدل تعیین می شوند، برای رئیس و اعضای کمیسیون تا پایان مأموریت محوله ، وظایف دیگری محول نمی شود.

2- وظایف کمیسیون از این قرارند:

الف) تصمیم گیری در خصوص احکام مراقبت اداری و تقاضا های رد شده رسیدگی و پاسخگویی و ارزیابی های دارای فوریت ، رسیدگی و تصمیم گیری در خصوص اعتراض های صورت گرفته نسبت به احکام صادره در باب تقاضاهای حمایت بین المللی و افراد واجد شرایط حمایت بین المللی .

ب) رسیدگی و تصمیم گیری در خصوص اعتراض های صورت گرفته نسبت به خاتمه حمایت بین المللی یا ابطال آن.

3- کمیسیون ها تحت نظر مدیرکل فعالیت می نمایند .

هیات هماهنگی مبارزه با مهاجرت غیرقانونی

1- هیات هماهنگی مبارزه با مهاجرت غیر قانونی به ریاست مشاور وزیر ویا معاون مشاور وزیر و با حضور نمایندگان فرماندهی کل نیرو های مسلح ، وزارتخانه های امور خارجه و امنیت اجتماعی کار ، مشاور سازمان اطلاعات ملی ، یگان های مامورین ضابط و اداره کل ، که حداقل در حد رئیس دایره باشند تشکیل می شود.

2- نمایندگانی از یگان های مرکزی و خارج از مرکز سازمان ها و نهاد های عمومی مرتبط سازمان های جامعه مدنی و نهادهای بین المللی مرتبط و نیز متخصصان خبره در این زمینه می توانند به گرد همایی های هیات دعوت شوند . هیات به طور منظم هر شش ماه یک بار گرد همایی برپا می کند . علاوه بر این بنا به دعوت رئیس هیات در هر زمانی می تواند گرد همایی فوق العاده برپا دارد . موضوع گرد همایی با در نظر گرفتن دیدگاه های اعضا از سوی رئیس هیات مشخص می شود .

3-وظایف هیات از این قرارند:

الف) ایجاد هماهنگی بین یگان های مامورین و سازمان ها و نهادهای عمومی مرتبط به منظور مبارزه موثر با مهاجرت غیر قانونی

ب) اتخاذ تدابیر موثر در خصوص راه های ورود و خروج غیر قانونی به کشور

پ) اتخاذ تدابیر موثر در خصوص مهاجرت غیر قانونی

ت) برنامه ریزی در خصوص موضوعات مربوط به مبارزه با مهاجرت غیر قانونی اجرا و پیگیری آنها.

ث)تصمیمات هیات ، قبل از اجرا از سوی سازمان ها و نهادهای عمومی مورد ارزیابی قرار می گیرد.

**کمیسیون های موقت**

ماده 117

1- اداره کل می تواند به منظور پیگیری اقدامات در خصوص موضوعات مرتبط با وظایفش با تصویب وزیر ، با بهره گیری از سازمان ها و نهادهای عمومی ، سازمان های جامعه مدنی ، سازمان های بین المللی و متخصصین فن اقدام به تاسیس کمیسیون های موقت نماید.



3- اصول و مقررات مربوط به نحوه تشکیل کمیسیون های موقت ، تعداد اعضا ، صلاحیت های انتخاب و انتصاب ، زمان و مکان گرد همایی های عادی و فوق العاده ، فعالیت و تصمیم گیری و دیگر امور از طریق آیین نامه مشخص می شود.

### قسمت پنجم

#### احکام مربوط به پرسنل و انتصاب

#### انتصاب و ابلاغ مسئولیت

ماده 118

1- در اداره کل ، مدیرکل و سایر کارکنانی که به عنوان معاون مدیر کل خدمت می نمایند به طور مشترک از طرف وزیر و سایر کارکنان با پیشنهاد مدیر کل و تصویب وزیر منصوب می شوند.

2- کلیه پرسنل سازمان ها و نهادهای عمومی مرتبط با موافقت خود و نهاد مربوطه به صورت موقت می توانند قبول مسئولیت نمایند. در اینصورت حقوق و مزایا پرسنل مربوطه از طریق سازمان متبوع آنها پرداخت خواهد شد. پرسنلی که به این ترتیب قبول مسئولیت می نمایند از سازمان خود مرخصی ماهانه می گیرند. سوابق خدمت در اداره کل جزء سوابق کاری آنها تلقی می شود و رابطه آنها با کادر ثابت ادامه می یابد. این افراد به موقع ترفیع می یابند. تعداد پرسنلی که به آنها مسئولیت کار محول می شود نمی تواند بیش از سی درصد کل پرسنل باشد.

#### احکام مربوط به پرسنل

ماده 119

1- متخصص امور مهاجرت و معاون متخصص امور مهاجرت در تشکیلات مرکزی اداره کل می تواند در تشکیلات خارج از مرکز آن اداره به عنوان متخصص امور مهاجرت شهر یا معاون متخصص امور مهاجرت شهر به استخدام در آید.

2- برای انتصاب به عنوان معاون متخصص امور مهاجرت و معاون متخصص امور مهاجرت شهر علاوه بر شرایط ذکر شده در ماده 48 "قانون مأمورین دولت" به شماره 657 و تاریخ 14/07/1965 فرد باید دارای اطلاعات حقوقی و سیاسی بوده و باید در حوزه های روابط بین الملل و اقتصاد حداقل به مدت 4 سال در مقطع کارشناسی تدریس کرده باشد و علاوه بر اینها باید از دانشکده هایی که از طریق آیین نامه مشخص شده یا دانشکده های داخل و خارج از کشور همتراز آنها که از

سوی هیات آموزش عالی مورد تایید می باشد فارغ التحصیل شده باشد و در آزمون رقابتی خاصی که برگزار خواهد شد موفق شود آزمون رقابتی معاونت متخصص امور مهاجرتی و معاونت متخصص امور مهاجرتی شهر دارای مراحل کتبی و شفاهی می باشد.

3- در استخدام معاونان متخصصین امور مهاجرت، نتیجه آزمون، ارائه پایان نامه، و آزمون های شایستگی و ورود آنها به دایره تخصص، احکام مطرح شده در ماده 41 قانون به شماره 657 مدنظر قرار می گیرد.

4- افرادی که به معاونت متخصص امور مهاجرت شهری ارتقاء می یابند، به شرط حداقل سه سال کار پیمانی حق شرکت در آزمون شایستگی (مهارت) را پیدا می کنند افرادی که نتوانند آزمون مزبور را با موفقیت پشت سر بگذارند و یا بدون عذر موجه از شرکت در آن خودداری کرده باشند در عرض یکسال یک بار دیگر حق شرکت در آزمون را پیدا می کنند. افرادی که در آزمون دوم هم ناموفق باشند یا از شرکت در آن خودداری نمایند عنوان معاونت متخصص امور مهاجرتی را از دست می دهند و در جایگاهی مناسب به عنوان کادر پرسنلی به کار گرفته می شوند. اصول و مقررات مربوط به استخدام متخصص امور مهاجرت و معاون متخصص امور مهاجرت، آزمون رقابتی، تشکیل کمیسیون ها، شایستگی ها و آزمون شایستگی، ارتقاء، آموزش، کار و اعطا مسئولیت به آنها از طریق آیین نامه تنظیم می شود.

5- در اداره کل، در خصوص اموراتی که نیازمند تخصص و اطلاعات خاصی می باشد متخصص خارجی می تواند به استخدام در آید. خالص پرداختی ماهیانه به این گونه پرسنل به شرط این که از خالص پرداختی ماهیانه به متخصص درجه اول امور مهاجرت بیشتر نباشد از طریق مدیر کل تعیین می شود و این امر بر اساس بند الف فقره اول ماده 4 قانون به شماره 5510 تضمین می شود. تعداد افرادی که به این نحو به استخدام در می آیند نمی تواند بیش از یک صدم مجموع تعداد پرسنل اداره کل باشد اصول و مقررات مربوط به استخدام آنها از طریق آیین نامه تعیین می شود.

6- در اداره کل، مدیر کل، معاونان مدیر کل و روسای دایره پروژه ها و سیاستهای مهاجرت، دایره روابط عمومی و اطلاع رسانی، دایره روابط خارجی، دایره تعیین راهبردها و دایره خدمات حمایتی و مشاوران امور مهاجرت از میان کارکنان اداری کشوری انتخاب و به کار گمارده می شوند.

کارکنان

1- اصول مربوط به کارگیری کادرهای اداره کل بر مبنای مصوبه مورخه 1983/12/13 به شماره 19 در خصوص کادر عمومی و قانونی مربوطه تعیین می شود .

### بخش ششم

### انواع احکام

#### آیین نامه

ماده 121

1- اصول و مقررات مربوط به این قانون از طریق آیین نامه هایی که صادر می شود ، تعیین می شود .

#### احکام عطفی

ماده 122

1- در سایر موضوعات ، عطف هایی که به قانون مربوط به " اقامت سیاحت اتباع خارجی در ترکیه " به شماره 5683 مورخه 1950/7/15 افزوده شده در حکم عطف های افزوده شده به این قانون می باشد. آنچه در موضوعات دیگر تحت عنوان "تذکره اقامت" اتباع خارجی ذکر شده همان است که در این قانون تحت عنوان "مجوز اقامت گذر شده است .

#### احکام تغییر یافته

ماده 123

1- عبارت هموطنان برای اتباع خارجی که در ماده 34 قانون گذرنامه به شماره 5682 مورخه 1950/7/15 آمده در این قانون به "برای هموطنان" تغییر یافته است .

2- بندهای ذیل به فقره اول ماده 88 قانون مخارج به شماره 492 مورخه 1964/7/2 افزوده شده است :

(ج) کسانی که مجوز اقامت طولانی مدت دریافت کرده اند

(چ) کسانی که قربانی تجارت انسان شده اند

3- در قانون مأمورین دولت به شماره 657 مورخه 1965/7/14

الف) در بند به شماره (11) فقره الف) بخشی با عنوان "احکام مشترک" در ماده 36 بعد از عبارت "معاونان متخصصین امور مهاجرت شهری"، بعد از عبارت "تخصص منابع طبیعی و انرژی" عبارت "متخصص امور مهاجرت، متخصص امور مهاجرت شهری" افزوده شده است.

ب) در بند (ج) بخش "الف - تضمینات خدمت خاص" قسمت (2- تضمینات) ماده 152 بعد از عبارت "متخصصین هیات آموزش عالی" عبارت "متخصصین امور مهاجرت" آمده، در بند (ح) بعد از عبارت "متخصصین برنامه ریزی شهری وزارت کشور" عبارت "متخصصین امور مهاجرت شهری" افزوده شده است.

پ) در بند (ج) بخش "1- نوع خدمات اداره کل" جدول شماره (1) بعد از عبارت متخصصین اتحادیه اروپا "عبارت" متخصصین امور مهاجرت"، در بند (ح) بعد از عبارت "متخصصین برنامه ریزی وزارت کشور" عبارت "متخصصین امور مهاجرت شهری" افزوده شده است

4- بند ذیل به فقره اول ماده 19 قانون مربوط به وظایف و تشکیلات وزارت کشور به شماره 3125 مورخه 1385/2/14 افزوده شده است.

ث) مدیریت کل اداره مهاجرت:

5- در قانون مربوط به مجوز های کار اتباع خارجی به شماره 4817 مورخه 2003/2/27

الف) عبارت با مهلت مجوز اقامت از متن فقره اول ماده 5 حذف شده است

ب) بند ذیل به فقره اول ماده 8 افزوده شده است.

خ) برای اشخاص بی وطن و تبعه خارجی که وضعیت پناهندگی مشروط از سوی وزارت کشور اعلام شده و تقاضای حمایت بین المللی دارند.

پ) فقره اول ماده 12 به شکل زیر تغییر یافته است.

اتباع خارجی اولین تقاضای خود را به کنسولگری های جمهوری ترکیه در کشوری که در آن حضور دارند ارائه می دهند. کنسولگری این تقاضا ها را برای وزارتخانه های مربوطه ارسال می نمایند و وزارتخانه با کسب نظر از مراجع زیر ربط بر اساس ماده 5 این تقاضا ها را ارزیابی می کند در

صورتی که مناسب تشخیص داده شود به تبعه خارجی مجوز کار داده می شود. اتباع خارجی می توانند تا مدتی که در مجوز کار دگر شده در کشور ترکیه بمانند و کار کنند.

(ت) بند پ فقره اول ماده 14 به شکل زیر تغییر یافته است :

(پ) اعلام نظر منفی وزارت کشور

(ث) بند الف فقره اول ماده 16 به شکل زیر تغییر یافته است :

(الف) صدور حکم طرد تبعه خارجی و یا ممنوعیت ورود به ترکیه

6- به جدول ضمیمه شماره (1) قانون کنترل و هدایت مالی عمومی به شماره 5018 مورخه 2003/12/10 ردیف 55 اداره کل مهاجرت افزوده شده است.

7- در قانون خدمات نفوس به شماره 5490 مورخه 2006/4/25

(الف) بند (چ - ج) فقره اول ماده 3 به شکل زیر تغییر یافته است.

چ - ج : دفتر کل اتباع خارجی : دفتر کلی که در آن کسانی هستند که در ترکیه سند هویتی اشخاص بی وطن دریافت کرده اند و کسانی که به هر دلیل حداقل به مدت نود روز مجوز اقامت دریافت کرده اند از سوی کسانی که به طریق قانونی نمره ی هویت اتباع خارجی درخواست می کنند به ثبت رسیده است.

(ب) فقره اول ماده 8 به شکل زیر تغییر یافته است :

اتباع خارجی که به هر دلیلی حداقل به مدت نود روز مجوز اقامت در ترکیه دریافت داشته اند از سوی اداره کل در دفتر کل ثبت اتباع خارجی به ثبت می رسند ولی ان دسته از اتباع خارجی که به طور قانونی در ترکیه حضور دارند نیز در صورت تقاضا در دفتر کل به ثبت می رسد ، افرادی که نامشان در این دفتر به ثبت می رسد در خصوص اظهاراتی که در باب امار به اداره نفوس بیان میدارند مسئول هستند وابستگان مهوریت های سیاسی مشمول این حکم نمی شوند .

8- در قانون بیمه عمومی سلامت و بیمه های اجتماعی به شماره 5510 و به تاریخ 2006/5/31:

(الف) بند به شماره (24) فقره اول ماده سوم به شکل زیر تغییر یافته است :

27) فرد بی وطن و فرد دارای وضعیت و یا متقاضی حمایت بین المللی : اشخاصی که از سوی وزارت کشور به عنوان متقاضی ، پناهنده ، واجد شرایط حمایت ثانویه و یا پناهنده مشروط و و یا بی وطن شناخته می شود .

(ب) بند فرعی به شماره 2 بند پ فقره اول ماده 60 به این شکل تغییر یافته است .

2- اشخاصی که به عنوان اشخاص بی وطن و یا دارای وضعیت و یا متقاضی حمایت بین المللی شناخته می شود .

(پ) عبارتی بی وطن و پناهنده شمرده شدن در بند ب فقره اول ماده 61 به صورت ارائه تقاضای بین المللی و یا دریافت وضعیت حمایت بین المللی و یا بی وطن و یا پناهنده شمرده شدن تغییر یافته است .

9- با ثبت کادرهای مطرح شده در لیبست های به شماره 1 و 2 و 3 در قرارنامه مربوط به قانون به شماره 190 در جدول شماره 1 بخش اداره کل مهاجرت افزوده شده است .<sup>6</sup>

10- در ردیف 9 جدول ضمیمه به شماره 1 قرارنامه مربوط به قانون به شماره 375 مورخه 1989/6/27 بعد از عبارت اطلاع رسانی و چاپ و نشر عبارت اداره مهاجرت افزوده شده است .

موضوعاتی که ضمانت اجرایی خود را از دست داده اند :

ماده 124- 1- قانون مربوط به اقامت و سیاحت اتباع خارجی در ترکیه به شماره 5683 مورخه 1950/7/15 موارد چهارم ، ششم ، هفتم ، هشتم ، نهم ، دهم ، یازدهم ، بیست و چهارم ، بیست و پنجم ، بیست و هشتم ، بیست و نهم ، سی و دو ، سی و سه ، سیو پمچ ، سی و شش ، سی و هشتم و ماده پنجم ضمیمه ، فقره های اول و دوم ماده پنجم و جمله ی دوم فقره اول ماده 34 از اعتبار افتاده اند .

"توقیف خودروی مورد استفاده در جرم قاچاق مهاجر

ماده الحاقی (1) - 1) خودروهای مورد استفاده در جرم قاچاق انسان، بر اساس پاراگراف چهارم ماده 128 قانون محاکم کیفری به شماره 5271 و تاریخ 04/12/2004، توقیف خواهد گردید.

(2) خودرو که بر اساس پاراگراف اول توقیف گردیده است؛

(الف) در صورتی که در جریان بازپرسی و پیگرد، در همان جرم دوباره مورد استفاده قرار گیرد،  
(ب) در ترکیه ثبت نشده باشد،

ج) در صورتی که بر اساس تعداد کل مسافری، هنگامی که تعداد زیادی مهاجر حمل می نموده کشف گردیده باشد،

چ) در صورتی که پرسنل ویژه برای تسهیل ارتکاب جرم وجود داشته باشد، در صورتی که یکی از موارد فوق وجود داشته باشد، خودروی توقیف شده به صاحب آن اعاده نخواهد گردید. در این شرایط اگر صاحب خودرو ظرف سی روز از تاریخ توقیف، معادل ارزش خودرو، در نزد وزارت دارایی وثیقه قرار دهد، خودرو به صاحب آن اعاده می گردد. در غیر اینصورت، از سوی وزارت دارایی، بدون آنکه منتظر پایان بازپرسی و پیگرد گردد، فوراً تسویه خواهد گردید. در صورتی که تسویه با فروش انجام پذیرد، پس از آنکه تمامی هزینه های لازمه برای فروش و نگهداری خودرو از مبلغ دریافت از فروش خودرو کسر گردید، مبلغ باقی مانده بر اساس نتیجه پیگرد جهت انجام امور به حساب امانت واریز می گردد.

3) برای مبلغ ذکر شده در پاراگراف دوم، ارزش بیمه بدنه در خودروهای زمینی؛ ارزش بیمه دستگاه و قایق در وسایل نقلیه دریایی؛ ارزش روز بازار در وسایل نقلیه هوایی و ریلی و خودروهای بدون بیمه در نظر گرفته می شود.

## احکام انتقال :

### ماده موقت 1

1- در خصوص موضوعات مرتبط با وظایف اداره کل ، پرونده ها ، اسناد و اوراق مکتوب ، الکترونیکی ، سیستم های اطلاعات ، پایه های الکترونیک اطلاعاتی ، عملکردی از طریق اداره کل و واحد های خارج از مرکز مربوطه قابل ارسال خواهد بود

ظرف مدت شش ماه از تاریخ انشار این ماده بین اداره کل و اداره کل امنیت تفاهم نامه امضا می شود و این تفاهم نامه پس از امضا وزیر قابل اجرا خواهد بود.

2- یک سال پس از انتشار این قانون کلیه اموال منقول متعلق به مراکز استرداد و مراکز پذیرش و مراقبت بدون هیچ اقدامی متعلق به اداره کل شمرده می شود . اموراتی که به خاطر انتقال صورت می پذیرد از هر گونه هزینه ای معاف خواهند بود . اوراق تنظیمی از مالیات مهر معاف خواهند بود. صلاحیت رفع مشکلات پیش آمده در خصوص نقل و انتقالات و اختصاص اموال غیر منقول و موضوعات مرتبط با اجرای این قانون در اختیار وزیر می باشد .

3- نیازهای مالی اداره کل در سال مالی 2013 بر مبنای بند چ فقره اول ماده 6 قانون تعیین بودجه مرکزی 2013 به شماره ی 6363 مورخه 2012/12/20 تامین می شود . تا تاریخ 2014/12/31 کادرهای اختصاص یافته به اداره کل بدون اینکه مشمول محدودیت های قانون به شماره 6363 باشند می توانند ترخیص یابند البته تعداد کادرهای ترخیص یافته نمی تواند بیش از تعداد کل کادرها باشد .

4- تا زمان تکمیل شدن تشکیلات خارج از مرکز اداره کل که بر اساس این قانون تاسیس می شوند ، وظایف و خدماتی که بر عهده انها نهاده شده توسط واحد ها و پرسنلی که قبلا آن وظایف و خدمات را به جا می آوردند به جا آورده می شوند .

اداره کل پس از اتمام تشکیلات مزبور می تواند پرسنلی که در واحد های مزبور انجام وظیفه می نمایند را به شرطی که سه سال از تاریخ انتقال تغییر و تحول نگذشته باشد به استخدام در آرد این استخدام محدودیت های مطرح شده در فقره ی دوم ماده 118 در خصوص تعداد پرسنل نخواهد بود .

5- اداره کل می تواند برای انجام خدمت در تشکیلات مرکزی خود افرادی که حداقل به مدت 2 سال پناهندگی اتباع خارجی اداره کل امنیت و شعبه های مربوطه اداره های امنیت شهری خدمت نموده اند را بدون در نظر گرفتن محدودیت های مطرح شده در فقره دوم ماده 118 در خصوص تعداد پرسنل از تاریخ انتشار این ماده به مدت سه سال استخدام نماید .

6- از تاریخ اجرای قسمت دوم این قانون در عوض سک سال ، اتباع خارجی که به صورت مکتوب به استانداری ها مراجعه می نمایند از حقوقی که در خصوص مجوز اقامت بر اساس این قانون به انها تعل می گیرد برخوردار شوند .

7- آن دسته از اتباع خارجی که پیش از اجرایی شدن قسمت سوم این قانون بر اساس مصوبه هیئت وزیران به شماره 94/6169 مورخه 1994/9/14 در خصوص پناهنده شده به ترکیه و یا اتباع خارجی که به منظور پناهنده شده به کشور دیگری به صورت منفرد از ترکیه تقاضای اقامت دارند و اتباع خارجی که به منظور پناهندگی دسته جمعی وارد مرزهای ما می شوند و کسانی که بر مبنای افول و مققرات مربوط به حرکات نفوس statu دریافت داشته اند و اموراتشان بر مبنای وضعیت مشخص شده در این قانون مورد رسیدگی قرار می گیرد . از تاریخ انتشار این قانون تا تاریخ اجرایی شدن قسمت سوم و تا موقعی که آیین نامه اجرایی آن تدوین شود از دریافت دارندگان statu و متقاضیان اقامت هزینه مجوز اقامت دریافت نمی شود .

80 تا زمان اجرایی شدن نظام نامه های مرتبط با اجرای این قانون ، احکام مبتنی بر نظام نامه های موجود به شرطی که این قانون نداشته باشد قابل اجرا خواهد بود .

اجرائی شدن :



1- : این قانون :

الف) از تاریخ انتشار فقره هفتم ، پنجم ، دوم ، و اول ماده 123 ، ماده 122 و به شرط کنار گذاشته شدن ماده 124 با انتشار قسمت پنجم به اجرا در می آید .

ب) دیگر احکام این قانون یک سال بعد از انتشار به اجرا در می آیند .

اجرائی کردن:

ماده 126

1- احکام این قانون توسط هیئت وزیران به اجرا در می آید.

### جدول (1)

سازمان اداره کل مهاجرت

مدیر ارشد اجرایی	معاون اجرایی مدیر کل	واحد خدمات
مدیر ارشد اجرایی	معاون اجرایی مدیر کل معاون اجرایی مدیر کل	1. وزارت بخش اتباع بیگانه 2. وزارت گروه حفاظت بین المللی 3. وزارت گروه حفاظت از قربانیان قاچاق انسان 4. وزارت گروه سیاست مهاجرت و پروژه ها 5. وزارت ادغام و وزارت ارتباطات 6. وزارت گروه فناوری اطلاعات 7. وزارت امور خارجه 8. وزارت گروه توسعه استراتژی 9. مشاوره حقوقی 10. وزارت گروه منابع انسانی 11. وزارت گروه خدمات پشتیبانی

## فهرست (1)

آژانس: اداره کل مهاجرت

سازمان: مرکزی

احداث تیم های تاسیس شده				
ردیف	عنوان	درجه	تعداد کارکنان آزاد	مجموع
MIAH	مدیر ارشد اجرایی	1	1	1
MIAH	معاون اجرایی مدیر کل	1	2	2
MIAH	مدیر گروه سیاست مهاجرت و پروژه ها	1	1	1
MIAH	وزارت انعام و ارتباطات	1	1	1
MIAH	وزارت امور خارجه	1	1	1
MIAH	رئیس اداره توسعه استراتژی	1	1	1
MIAH	رئیس خدمات پشتیبانی	1	1	1
GIH	رئیس اداره اتباع خارجی	1	1	1
GIH	رئیس اداره حفاظت بین المللی	1	1	1
GIH	رئیس اداره حفاظت از قربانیان قاچاق انسان	1	1	1
GIH	رئیس اداره فناوری اطلاعات	1	1	1

GIH	رئیس منابع انسانی	1	1	1
GIH	سرپرست وزارت آموزش و پرورش	1	1	1
GIH	. مشاوره حقوقی	1	1	1
GIH	کارشناس مهاجرت	1	15	15
GIH	کارشناس مهاجرت	2	15	15
GIH	کارشناس مهاجرت	3	15	15
GIH	کارشناس مهاجرت	4	15	15
GIH	کارشناس مهاجرت	5	15	15
GIH	کارشناس مهاجرت	6	15	15
GIH	کارشناس مهاجرت	7	15	15
GIH	متخصص مهاجرت	8	35	35
GIH	متخصص مهاجرت	9	65	65
GIH	متخصص خدمات مالی	5	5	5
GIH	معاون متخصص خدمات مالی	9	5	5
GIH	تحلیل کننده	1	1	1
GIH	تحلیل کننده	2	1	1
GIH	تحلیل کننده	4	1	1
GIH	تحلیل کننده	6	1	1
GIH	تحلیل کننده	7	1	1
GIH	تحلیل کننده	8	1	1
GIH	برنامه نویس	1	1	1
GIH	برنامه نویس	3	1	1
GIH	برنامه نویس	4	1	1

GİH	برنامه نویس	5	1	1
GİH	برنامه نویس	6	1	1
GİH	برنامه نویس	8	2	2
GİH	مترجم	1	2	2
GİH	مترجم	2	2	2
GİH	مترجم	3	3	3
GİH	مترجم	4	3	3
GİH	مترجم	5	3	3
GİH	مترجم	6	3	3
GİH	مترجم	7	3	3
GİH	مترجم	8	3	3
GİH	مترجم	9	3	3
GİH	آماده سازی و کنترل داده ها و اپراتور	3	3	3
GİH	آماده سازی و کنترل داده ها و اپراتور	4	3	3
GİH	آماده سازی و کنترل داده ها و اپراتور	5	3	3
GİH	آماده سازی و کنترل داده ها و اپراتور	6	3	3
GİH	آماده سازی و کنترل داده ها و اپراتور	7	3	3
GİH	آماده سازی و کنترل داده ها و اپراتور	8	3	3
GİH	آماده سازی و کنترل داده ها و اپراتور	9	3	3

GIH	افسر	9	3	3
GIH	افسر	10	3	3
GIH	افسر	11	3	3
GIH	افسر	12	3	3
GIH	منشي	5	1	1
GIH	منشي	7	2	2
GIH	منشي	9	2	2
GIH	منشي	11	1	1
GIH	راننده	5	1	1
GIH	راننده	9	2	2
GIH	مشاوره حقوقی	1	2	2
GIH	مشاوره حقوقی	4	3	3
AH	وکیل دادگستری	5	3	3
AH	وکیل دادگستری	6	3	3
AH	وکیل دادگستری	7	3	3
AH	وکیل دادگستری	8	3	3
AH	وکیل دادگستری	9	3	3
TH	مهندس	1	1	1
TH	مهندس	6	2	2
TH	مهندس	8	2	2
TH	امارگر	1	1	1
TH	امارگر	6	2	2
TH	امارگر	8	2	2

TH	جامعه شناس	1	1	1
TH	جامعه شناس	6	2	2
TH	جامعه شناس	8	2	2
SH	مددکار اجتماعی	1	1	1
SH	مددکار اجتماعی	6	2	2
SH	مددکار اجتماعی	8	2	2
SH	روانشناس	1	1	1
SH	روانشناس	6	2	2
SH	روانشناس	8	2	2
YH	خدمتکار	5	5	5
YH	خدمتکار	12	5	5
مجموع			365	365

## فهرست (2)

نهاد: اداره کل مهاجرت  
سازمان: استانی

احداث تیم های تاسیس شده				
ردیف	عنوان	درجه	تعداد کارکنان آزاد	مجموع
GIH	مدیر استانی مهاجرت	1	81	81
GIH	مدیر استانی مهاجرت	1	50	50
GIH	مدیر استانی مهاجرت	2	50	50
GIH	مدیر استانی مهاجرت	3	48	48
GIH	مدیر مرکز	1	5	5
GIH	مدیر مرکز	2	5	5

GİH	مدیر مرکز	3	5	5
GİH	مدیر سرپناه برای قربانیان قاچاق انسان	1	5	5
GİH	مدیر سرپناه برای قربانیان قاچاق انسان	2	5	5
GİH	مدیر سرپناه برای قربانیان قاچاق انسان	3	5	5
GİH	متخصص مهاجرت استانی	1	50	50
GİH	متخصص مهاجرت استانی	2	50	50
GİH	متخصص مهاجرت استانی	3	50	50
GİH	متخصص مهاجرت استانی	4	100	100
GİH	متخصص مهاجرت استانی	5	100	100
GİH	متخصص مهاجرت استانی	6	130	130
GİH	متخصص مهاجرت استانی	7	250	250
GİH	معاون متخصص مهاجرت استانی	8	450	450
GİH	معاون متخصص مهاجرت استانی	9	500	500
GİH	تحلیل کننده	1	1	1
GİH	تحلیل کننده	2	2	2
GİH	تحلیل کننده	3	2	2
GİH	تحلیل کننده	4	2	2
GİH	تحلیل کننده	5	2	2
GİH	تحلیل کننده	6	2	2

GIH	تحليل کننده	7	2	2
GIH	تحليل کننده	8	2	2
GIH	برنامه نويس	1	1	1
GIH	برنامه نويس	2	2	2
GIH	برنامه نويس	3	2	2
GIH	برنامه نويس	4	2	2
GIH	برنامه نويس	5	2	2
GIH	برنامه نويس	6	2	2
GIH	برنامه نويس	7	2	2
GIH	برنامه نويس	8	2	2
GIH	مترجم	1	4	4
GIH	مترجم	2	4	4
GIH	مترجم	3	4	4
GIH	مترجم	4	4	4
GIH	مترجم	5	4	4
GIH	مترجم	6	4	4
GIH	مترجم	7	4	4
GIH	مترجم	8	4	4
GIH	مترجم	9	4	4
GIH	آماده سازى و كنترل داده ها و اپراتور	3	50	50
GIH	آماده سازى و كنترل داده ها و اپراتور	4	50	50



GIH	آماده سازی و کنترل داده ها و اپراتور	5	50	50
GIH	آماده سازی و کنترل داده ها و اپراتور	6	20	20
GIH	آماده سازی و کنترل داده ها و اپراتور	7	20	20
GIH	آماده سازی و کنترل داده ها و اپراتور	8	20	20
GIH	آماده سازی و کنترل داده ها و اپراتور	9	20	20
GIH	افسر	9	20	20
GIH	افسر	10	20	20
GIH	افسر	11	20	20
GIH	افسر	12	20	20
GIH	راننده	5	15	15
GIH	راننده	10	15	15
AH	وکیل دادگستری	5	5	5
AH	وکیل دادگستری	6	5	5
AH	وکیل دادگستری	7	10	10
AH	وکیل دادگستری	8	10	10
TH	جامعه شناس	1	5	5
TH	جامعه شناس	6	5	5
TH	جامعه شناس	8	5	5
SH	مددکار اجتماعی	1	15	15
SH	مددکار اجتماعی	6	15	15

SH	مددکار اجتماعی	8	15	15
SH	روانشناس	1	15	15
SH	روانشناس	6	15	15
SH	روانشناس	8	15	15
YH	خدمتکار	9	30	30
YH	خدمتکار	12	30	30
مجموع			2540	2540

### فهرست (3)

نهاد: اداره کل مهاجرت  
سازمان: خارج از کشور

احداث تیم های تاسیس شده				
ردیف	عنوان	درجه	تعداد کارکنان آزاد	مجموع
GIH	مشاور مهاجرت	1	15	15
GIH	مهاجرت وابسته	1	85	85
مجموع			100	100