



**SCREENING CHAPTER 6
COMPANY LAW**

AGENDA ITEM : DISCLOSURE REQUIREMENTS

**Country Session: The Republic of TURKEY
20 July 2006**



Related Legislation

- **Turkish Commercial Code (TCC) No.6762**
- **Law on Foreign Companies with Limited Shares and Foreign Insurance Companies No.974**
- **Regulation on Commercial Registry**



Scope:

Disclosure requirements for all companies limited by shares (public and private) or limited liability companies.



Purpose:

Ensure the protection of third party's interests by:

- Requiring the registration and disclosure of the basic company documents and information, manner of representation and particulars of the representatives authorised to bind the company.
- Limiting the grounds on which obligations entered into on behalf of the company are not valid



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- Providing evidence of, *inter alia*, the existence of the business association,
- Informing the public of the identity of the company, the manner of representation and the names and addresses of the persons who are authorised to represent the company.



Procedure:

- **Company establishment is realised by the registration in commercial registries within the Chambers of Commerce and Industry .**
- **There are 238 local commercial registries throughout Turkey,**
- **Each company has a special file with a unique number in the register,**
- **Commercial registry is open to public. All persons may examine the contents of the commercial register and all documents and certificates kept in the registry office, and demand certified copies .**



- **Although some registries have electronic files, most of the registries in Turkey keep the records in paper form,**
- **Online registration and online public access to the documents and information in the registries are not available.**
- **Draft Turkish Commercial Code provides that an electronic data bank is to be established within the Union of Chambers and Commodity Exchanges of Turkey (TOBB) in order to keep the compulsorily registered and disclosed information and to provide public access.**



Registration and announcement in the Turkish Commercial Registry Gazette is considered together.

Disclosure, in the Gazette, of

- **basic company documents and information,**
- **manner of representation,**
- **particulars of representatives and**
- **any later changes in these information**

is compulsory.



Articles of Association should be in written form, signed by the founders and approved by the notary before submission to the registry.

The minimum compulsory information to be included in the Articles of Association and the matters subject to compulsory registration and disclosure are given below.



The documents and information to be registered and disclosed :

- . The date of the Articles of Association of the company**
- . The name and the seat of the company**
- . The purpose, subject and the duration (if any) of the company**
- . The amount of the capital stock, the conditions and the way of payment and nominal value of the shares.**
The type of shares (bearer or nominative), the privileges granted to special shares.
- . The capital in kind, financial values taken over, appraisal of these values, and the nature and value of the personal benefits granted to the founders.**



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- . The way the company be represented
 - . The names, adresses and nationality of the members of the management board, directors and representatives.
 - . The type of announcements to be done by the company and if there is a provision in the Articles of Association regarding this issue, how the shareholders would be informed about the decisions of the board of directors
0. Identities of internal auditors.



Although there is no legal obligation, in practice, the whole text of the Articles of Association is announced in the Commercial Registry Gazette.

Draft Turkish Commercial Code makes the announcement of Articles of Association compulsory.



There is no requirement for private companies to disclose their balance sheets.

Public companies have to disclose their financial figures within the time limit foreseen in Capital Market Law. Sanctions are envisaged for public companies which do not meet the requirements.

According to Draft TCC, all companies limited by shares and limited liability companies shall disclose their financial figures within 6 months from the balance date in Commercial Registry Gazette and one of the country-wide journal having at least 50,000 circulation and put it on their web-site. Violation of this provision shall be subject to imprisonment and fine.



- **Other disclosure requirements:**

Although there is some compulsory information to be stated in the documents and invoices for tax purposes, these are not in conformity those mentioned in the Directive.

- **Draft TCC provides that letters and other forms of the company must state:**
 - **the name of the company**
 - **the location of its seat**
 - **the register in which the company's file is kept**
 - **the number of the company in that register**



Effect of registration and disclosure in the Commercial Registry Gazette in relation to third parties

Registered documents and particulars may be relied on by the company against third parties only after the publication in the Commercial Registry Gazette, unless the company proves that the third party had knowledge thereof before the publication.



Validity of obligations

Two situations:

- actions carried out in the name of the company before the establishment.
- acts done by the company organs after the establishment and acquisition of the legal personality.



Liability of founders before the establishment

Persons who took part in the formation of the company will be jointly and severally liable against the third parties, if the company does not accept the obligations arising from the action carried out in the name of the company within 3 months after the establishment.



Liability of the company after the establishment and acquisition of legal personality

Authorised representatives have the right to make all types of acts and transactions on behalf of the company, which fall within the scope of company's objectives and fields of activity and to use the name of the company.

Limitations of authorisation cannot be invoked against *bona fide* third parties. However, registered and disclosed limitations on the right to represent is valid provided that these limitations are confined to the activities of the company's central administration or a branch, or where the right to represent is subjected to collective representation.



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Violation of the Articles of Association and the decisions of general assembly by the authorised representative does not affect the responsibilities of the company to *bona fide* third party.

Company limited by shares is responsible for the acts and torts of authorised representatives and administrators in the performance of their duties.

The company has the right to recourse to the responsables.



Nullity of the company:

Nullity of the company is not regulated in TCC.

Draft TCC provides that a company cannot be declared null and void.

Creditors, shareholders, board of directors and Ministry of Industry and Trade have the right to apply to the court for dissolution within 3 months from the establishment of the company, claiming that their or public benefit is risked during establishment with actions contrary to the law.



Disclosure Requirements for Branches:

Branches of foreign companies in Turkey are not considered as separate legal entities. In other words, they remain to exist as a part of the foreign legal entity.

Registration and disclosure requirements for the first branch of a foreign company are similar to those for the establishment of a national company. Appointment of a fully authorised representative residing in Turkey is compulsory for branches.

The requirements for the second and following branches are similar to those foreseen for the branch of a national company.



In order to open the first branch, foreign companies must apply to the Directorate-General for Domestic Trade in the Ministry of Industry and Trade with the following information and documents to get permission:

1) Application including the following information

- Company name
- Date of establishment
- Nationality
- Capital
- Name, address and nationality of the representative resident in Turkey
- Representative's commitment to comply with Turkish legislation
- Address of the branch
- Activities of the branch



- 2) Decision of the authorised body of the company to open a branch**
- 3) Articles of Association**
- 4) Establishment documents, including the registrations indicating where, when and according to which state's law the company was established, and the company is active.**
- 5) The representative in Turkey shall be authorised to:**
 - Make the transactions stated in the Articles of Association of the company**
 - Represent the company before the courts.**
 - Delegate his/her powers to a third person when he/she temporarily leaves Turkey**
 - Appoint a representative for secondary branches.**



When all the requirements are met, Ministry of Industry and Trade issues a permit for the establishment of the branch.

The authorisation of the representative and the permit is published in the Commercial Registry Gazette.

Other documents are kept in the registry.



THANK YOU FOR YOUR ATTENTION