

Non-cash Capital Contributions into Turkish Companies

Introduction

Capital is the mix of assets or resources that allows a company to finance its business. In this regard, capital contribution obligation is a very important element for the companies in order to originate the company assets. The Turkish Commercial Code (“TCC”, Law No. 6102) regulates very specifically what can be evaluated and contributed as capital. Monetary contributions as well as non-monetary contributions can be contributed as capital. This indicates that, contribution in kind is permissible under TCC, consequently widening the range of the capital sources which is beneficial for the company in order to operate.

Scope of the Capital

Article 127 of TCC sets forth the scope of the *capital* for all type of companies. Unless otherwise is stipulated under TCC;

- Cash, claims, negotiable instruments and shares of commercial companies,
- Intellectual property rights,
- Movables and any type of immovables,
- *Usus* and *fructus* rights concerning movables and immovables,
- Personal effort,
- Commercial reputation,
- Commercial enterprises,

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- Values such as rightfully used and transferable electronic environment, names, signs and domains,
- Mining licenses and suchlike rights which has economic value,
- Any transferable and appraisable values,

can be contributed as capital.

Contribution in kind

Contribution in kind is a non-cash contribution to the capital in a company. Article 342 and 581 of TCC regulates what constitutes as a contribution in kind in the Joint Stock Companies (“JSC”) and Limited Liability Companies (“LLC”) respectively. Accordingly, not every asset can be contributed as capital directly and unconditionally as there are certain requirements to be met.

Pursuant to Article 342, assets not restricted with limited real rights or any type of attachments, that are appraisable and transferable, including intellectual property rights and virtual environments can be subject of contribution in kind in a JSC. Service performances, personal effort, commercial reputation and undue claims cannot be invested as capital.

Likewise, as per Article 581 of TCC, assets including intellectual property rights and virtual environments, and also names which can be appraised and can be transferred and not restricted with limited real rights or any type of attachments, can be subject of contribution in kind in an LLC. Similarly, service performances, personal effort, commercial reputation and undue claims cannot be subscribed as a share capital contribution.

Intellectual Property as Contribution in kind

Intellectual property refers to creations of a mind and divided into two categories: Industrial Property and Copyright. Examples for the term intellectual property in general are; patents, trademarks, geographical indications, intellectual and artistic works, designs, related rights, registered rights and information. It is important to note that only registered intellectual property can be contributed as capital.

Appraisal Process

Articles 342 and 581 especially uses the term “appraisable” as a requirement for the asset which will be contributed as capital. Parallel to this, in order to be invested as capital, the amount of Turkish Lira (TRY) corresponding the contribution in kind must be specified. Article 339/2-e specifically regulates this as one of the contents to be included in the Articles of Association (“AoA”). Accordingly, the AoA must include rights and non-monetary assets contributed as capital and their values as well as the amounts of shares to be provided in return.

The process of appraisal is regulated under Article 343 of TCC. Pursuant to this article, enterprises and non-monetary assets to be acquired during incorporation shall be appraised by experts to be assigned by a commercial court of first instance at the location of the company’s headquarters. The appraisal report must explain in detail that the appraisal process is justifiable for everyone. Furthermore, validity, reality and convenience of the claims as per article 342 must be determined.

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Moreover, the Turkish Lira equivalent of all the contribution in kind must be explained satially with a sound reasoning. The founders and stakeholders have a right to object to the report.

Pursuant to Article 578, provisions concerning JSC with regard to contributions in kind, acquisition of enterprises and of non-monetary assets, and special benefits shall apply to LLC as well.

On the other hand, some intellectual property rights (e.g. related rights such as record producers’ rights) might not be convenient to be a contribution in kind due to challenges concerning the appraisal process.

Conclusion

Even though it is not as common as cash contributions, contribution in kind is permissible for LLC and JSC. However, certain requirements must be met. Contribution in kind must be appraisable, transferrable and no attachments or limited real rights must be on the contribution and only registered intellectual property rights can be contributed as a capital. Appraisal process necessitates a specific

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evaluation and valuation, making it the most crucial step for contribution.

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