

Registered Capital System in Joint Stock Companies in Turkey

Introduction

The registered capital system is applicable for non-public Joint Stock Companies ("JSC") under the Turkish Commercial Code ("TCC"). The term "capital" mentioned in Article 329 of TCC has two different meanings: "principal capital" in the principal capital system and "issued capital" in the registered capital system.

1

In the principal capital system, a specific amount shown in the Articles of Association ("AoA") is registered to the trade registry. The change of capital requires the amendment to be made in AoA, and, the Ministry's permission in certain cases. On the other hand, in the registered capital system, it is possible to increase the capital simply by the decision of the Board of Directors ("BoD") within the lower and upper limits specified in the AoA.

The registered capital system is an alternative that has been introduced in order to overcome certain practical problems encountered in the principal capital system. The flexible structure of the registered capital system is ensured by the transfer of power from the General Assembly ("GA") to the BoD to increase the capital.

Registered Capital System in Non-Public JSCs

A JSC can choose the registered capital system at the time of incorporation or at post-incorporation stage by way of an amendment to made in the AoA. A JSC opting for the registered capital system at the time of incorporation must pay the initial capital in full, which must be at least TRY 100,000. Likewise,

GURULKAN ÇAKIR

companies wishing to switch to the registered capital system at post-incorporation stage must fully pay the issued capital which must be at least TRY 100,000.

It is obligatory to specify the following elements in AoA of a non-public JSC who will adopt the registered capital system;

- (1) Initial capital,
- (2) Duration of the power granted to the BoD (max. 5 years) to increase the capital up to the limit of registered capital,
- (3) Start and end dates of the duration of power,
- (4) Upper limit of the registered capital,
- (5) Conditions of the announcement of the resolution of the BoD regarding the capital increase.

A non-public JSC that has a registered capital system or those who have switched to this system after incorporation, must make an application to the Ministry of Trade's for a permission ("Ministry"). The documents required for this application is found in Article 6 of the The Communiqué Pertaining to the Principles related to the Registered Capital for Non-public JSCs. Once the permission is granted, the GA is called for a meeting and the amendments to the AoA regarding the company's transition to the registered capital system are made by resolution of the GA. Amendments to the AoA approved by the GA are registered and announced in the Turkish Trade Registry Gazette.

Registered Capital System in Public JSCs

Public JSCs including unlisted companies and stock-listed companies are able to adopt the registered capital system.

Public JSCs that will switch to the registered capital system must adopt a provision regarding the capital increase in their AoA. A draft amendment which indicates the new registered capital is prepared by the BoD and a resolution on the transition to the registered capital must be made by the BoD. The amendment is subject to the permission of the Capital Market Board ("CMB").

The required documents that will be submitted to the CMB for the permission are as follows;

GURULKAN ÇAKIR

- (1) The AoA,
- (2) Resolution of the BoD regarding the transition to the registered capital system,
- (3) Draft amendment of the AoA as prepared by the BoD,
- (4) Financial advisor's report showing that the entire capital has been paid,
- (5) A statement justifying the powers and authority to be given to the BoD within the scope of the registered capital system,
- (6) An introductory information about the BoD and the company,
- (7) A document demonstrating the structure of the partnership, and
- (8) Annual financial statements.

CMB has a wide discretion while examining the application. If CMB deems the permission is appropriate after its examination, it approves the application for the transition to the registered capital system and determines the upper limit of registered capital.

3

After the permission is granted by CMB, a permission from the Ministry of Trade to amend the AoA is required. The Ministry conducts its examination as to whether there is a violation of the law's mandatory provisions. After obtaining the permission from the Ministry, the GA meeting is called and the amendments to the AoA required for the transition to the registered capital system are submitted for the approval of the GA. Finally, the amendment of the AoA is registered and announced in the Turkish Trade Registry Gazette.

GURULKAN ÇAKIR AVUKATLIK ORTAKLIĐI

Beybi Giz Plaza, Office 43
Maslak 34398
Istanbul, TURKEY

T +90 212 215 30 00
M info@gurulkan.com
W www.gurulkan.com



Gurulkan Çakır Avukatlık Ortaklığı ("Gurulkan Çakır") is an attorney partnership registered at Istanbul Bar Association with a license number 105 and at the Union of Turkish Bar Associations with a license number 206.

This publication provides general information only and should not be relied upon in making any decision. It is not intended to provide legal or other advice. Gurulkan Çakır and its partners will not be liable for any loss or damage arising from reliance being placed on any of the information contained in this publication.

Before acting on any information, readers should consider the appropriateness of the information provided herein, having regard to their legal and financial status, objectives and needs. In particular, readers should seek independent professional advice prior to making any decision.

This publication may not be reproduced, in part or whole, by any process without prior written consent of Gurulkan Çakır.
