

Capital Increase in Joint Stock Companies under Turkish Law

Introduction

In legal terms, capital increase is the increase of the capital amount stated in the Articles of Association (“AoA”) of a company by following the procedures stipulated in the Turkish Commercial Code (“TCC”).

The right to increase the capital is stipulated in TCC and does not need to be mentioned in AoA. A Joint Stock Company (“JSC”) can increase its capital by fulfilling the conditions envisaged under TCC.

There may be various reasons for a capital increase, such as providing capital to the partnership, merging with other partners, going public, strengthening the capital, or recovering the capital losses.

Capital Systems

TCC adopts two capital systems, namely the “principal capital system” and “the registered capital system”. In the principal capital system, a specific amount shown in AoA is registered to the trade registry. The change of capital requires an amendment in AoA.

The registered capital, on the other hand, is an alternative system designed 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 Board of Directors (“BoD”) to increase the capital. In the registered capital system, it is possible to increase the capital simply by the decision of BoD within the lower and upper limits specified in AoA.

Capital increase is formulated separately for each capital system under TCC. It should be noted that although they are regulated under separate provisions, there are also common provisions to which they are subject.

Types of Capital Increase

Depending on the source of the increase, a distinction can be made between external and internal resources. Capital increase can be realised either receiving external resources by way of capital subscription or using internal resources by way of conversion to capital.

The capital can be increased by way of bringing new capital, in cash or in kind, to the company by persons who undertake to participate in the capital increase through capital subscription.

On the other hand, if the company has sufficient internal resources, it can increase its capital without need to seek funding from outside. Following financial elements can be converted and added to the capital:

- ▶ Contingency reserves (except for the reserves allocated to a specific purpose)
- ▶ Legal reserves which can be used without restriction
- ▶ Funds that are permitted by law to be added to the capital.

Conditions for Capital Increase

Following conditions must be met to accomplish the capital increase and are applicable to all capital systems:

1) All share subscriptions must be fulfilled.

The first condition for a capital increase is that all share prices must have been paid and the capital subscription in kind has to be fulfilled. It is a prerequisite for increasing the capital.

Except for the capital increase via internal sources, unless pecuniary considerations of shares are paid completely, capital cannot be increased. On the other hand, capital increase cannot be prevented

even if the amounts which are not considered as important compared to the capital are not paid.

However, this prerequisite is not applicable for capital increase through internal resources.

2) There must not be any funds taking place in the company's balance sheet that are permitted by law to be added to the capital

In case the existence of any funds in the company's balance sheet that are permitted by law to be added into capital, the capital cannot be increased via capital subscription until such funds have been capitalized. This is an imperative rule that cannot be eliminated in any way. It is also a prerequisite for capital increase.

3) The decision regarding the capital increase must be registered to the Trade Registry within three months from the decision date. Otherwise, the decision and the related permission become invalid.

4) A declaration must be issued by BoD in accordance with the type of capital increase. Such declaration includes the type of capital increase and necessary explanations. This declaration is prepared in accordance with the principle of providing clear and complete information.

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Procedure and Decision Quorum

BoD prepares a draft amendment to AoA regarding the capital increase in the principal capital system. Since the capital increase is an amendment in the AoA, unless there is a contrary provision in the law or in AoA, it is resolved with the majority of the votes present at GA meeting where at least half of the company's capital is represented.

In the registered capital system, BoD can take this decision within certain limits. Unless otherwise stated in AoA, BoD convenes with the majority of the total number of members. The decision is taken with the majority of the members present at the meeting.

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