



LIQUIDATION OF CAPITAL COMPANIES UNDER TURKISH LAW

The Turkish Commercial Code ("**TCC**") governs the principles and procedures applicable to liquidation of capital companies in Turkey. Given that limited liability partnerships ("**LLP**") and joint stock corporations ("**JSC**") are most commonly used types of capital companies in Turkey, this article has been prepared to provide a general overview on liquidation of JSCs and LLPs.

All companies that are terminated (e.g. due to bankruptcy or expiry of its term) are subject to the liquidation process. Once a company enters into liquidation, the management powers are transferred to the liquidator(s). Unless delegated under the article of association, liquidators are appointed by the General Assembly of Shareholders' (the "**GAS**") in JSCs and General Assembly of Partners' ("**GAP**") in LLPs. Liquidators can be appointed from among the company's shareholders/partners or managers or any other pertinent third parties. In accordance with the TCC, at least one liquidator must be a Turkish citizen residing in Turkey. In JSCs, if the liquidator is not appointed under the articles of the association or by the GAS, the board of directors will carry out the liquidation process.

Liquidators have fiduciary duties and are liable for the consequences of their actions, which they willfully and intentionally commit or which they fail to perform in an objectively prudent manner. A company in liquidation is also responsible for the tortuous acts of the liquidator(s), committed during their duties.

After adopting a GAS/GAP resolution regarding the commencement of the liquidation process and appointment of the liquidator(s), this resolution together with additional documents (including the liquidator's signature declaration and statement on acceptance of duty) required by the relevant trade registry must be registered with the competent trade registry and announced in the Turkish Trade Registry Gazette.

Following the registration of the relevant GAS/GAP resolution, the liquidator(s) must determine the company's creditors, based on the company books/records. Furthermore, three consecutive (with one week intervals) announcements must be made in the Turkish Trade Registry Gazette, to invite creditors to report their receivables. The company's assets will not

be liquidated until the lapse of a one-year period from the date of the final announcement to the creditors. The court may decide for the liquidation of assets prior to the lapse of this one-year period, if it is clear that no risk exists on the receivables of the creditors.

Until the completion of the liquidation process, tax statements must be duly submitted and the outstanding tax duties must be paid to the tax authorities, as required under the tax legislation. A company in liquidation does not lose its legal personality or its legal capacity to act, until its liquidation is finalized and the company is de-registered from the trade registry. The trade name of a company in liquidation must be amended, so as to include the words 'under liquidation'. The "profit purpose" of a company under liquidation is replaced by "liquidation purpose". The company's relationships with third parties (e.g. agreements with third persons) are not automatically terminated. However, when a company is under liquidation, a new business can only be conducted if it supports the liquidation procedure.

After the one-year period following three consecutive announcements made to the creditors (or court's decision on liquidation of the company's assets), the company's remaining assets (following payment of the debts and return of the share value to the shareholders) will be distributed to the shareholders in proportion with the paid-up share capital.

Following the end of the liquidation, another GAS/GAP resolution must be adopted for the company's de-registration from the trade registry. Together with this resolution, additional documents (e.g. final balance sheet signed by the liquidator(s)) must be prepared and submitted to the trade registry. After the company is de-registered from trade registry, this will also be announced in the Turkish Trade Registry Gazette and the relevant tax office must be informed accordingly.

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