

### III. COMMERCIAL LAW

#### A. Business Associations

##### 1. Joint Stock Company

**a. Concept:** Pursuant to the Turkish Commercial Code (TCC), a joint stock company is a capital company with the status of legal personality, founded by at least 5 partners under a tradename for economic purposes, having a definite capital that is divided into shares, in which the liabilities of the partners are limited to the capital stocks that they have committed.

A joint stock company must have a minimum capital of TL 5 billion, divided into definite and equal stocks. The par value of the stocks must be minimum TL 500 each, and this value can be increased by and in multiples of TL 100. No ceiling has been regulated for the nominal value of the stocks.

The liabilities of the partners are limited to the capital stocks which they have committed. The liability of a partner shall cease when he/she has fulfilled in his/her capital obligation to the company.

A joint stock company can be founded by at least 5 partners. The partners can be natural or legal persons. The TCC considers the drop of the number of partners to less than five not as an automatic termination, but rather as grounds for dissolution upon request. According to the Code, the court allows an appropriate period of time to companies, the partners of which have diminished to less than five, to complete their numbers; in case the number of partners are not increased up to five within this period, the court rules for the dissolution of the company (TCC Art.435).

**b. Foundation:** Joint stock companies can be founded in two ways, spontaneously or gradually.

**aa. Spontaneous Foundation:** In case of spontaneous foundation, the founders commit themselves for the entire capital. There are three stages in spontaneous foundation:

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### c. Organs

The organs of a joint stock company are the general assembly, the board of directors and the auditors.

**aa. General Assembly:** It is the highest organ of volition and decision of the joint stock company.

As the highest organ the general assembly controls all powers of critical importance in the company such as electing or dismissing the organs, amending the articles of association, increasing or decreasing the capital, and when necessary terminating the existence (the dissolution) of the company. The powers of the general assembly are limited on the one hand by the subject matter of the company, and on the other hand by the powers (such as the representation of the company) which the law grants exclusively to other organs (board of directors and auditors).

The general assembly convenes in ordinary or extraordinary meetings. Ordinary meetings are held latest within 3 months from the end of the accounting year, at the company headquarters or another place specified in the articles of association. Extraordinary meetings are held immediately when needed. Except for this feature, there are no differences between ordinary and extraordinary meetings.

The general assembly is called to a meeting by the board of directors or, in case of the negligence of the board or in important cases, by the auditors. In joint stock companies that are in the process of liquidation, the invitation shall be made by the liquidators, and in case of bankruptcy by the trustees. The TCC has recognized also to the stockholders representing 10% of the capital (the minority) the right to apply to the board of directors and the auditors, in that order, and in case of negligence on their part to go to court requesting the invitation of the general assembly to a meeting.

At a general assembly meeting each stock (principally) gives its owner one voting right. The stockholder may exercise his/her participation and voting rights through a proxy. A written power of attorney is sufficient for this purpose, on condition that it contains the date of the meeting and the number of votes of the partner; notarization is not necessary. The power to decide which persons are authorized to take part in the general assembly belongs to the board of directors. For this purpose the board determines the holders of registered stock certificates from the stock ledger of the company; on the other hand, the owners of bearer stock certificates should submit to the company their certificates or present the documents verifying their ownership (such as a deposit slip from a notary public or a bank) one week in advance.

**(i) Meeting Quorum:** is 1/4 of the capital, except for cases for which the law stipulates a special quorum. If this quorum cannot be achieved at the first meeting, a quorum shall not be looked for in the subsequent meeting and the meeting shall be held regardless of the number of the partners attending.

The TCC has stipulated a larger meeting quorum with respect to matters such as the amendment of the articles of association, in particular the increase or decrease of capital, the termination of the company and the issue of bonds. Furthermore, it is also possible for the articles of association to specify a qualified quorum for certain decisions.