

NEWSLETTER – TÜRKİE

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### Turkish Economy

Unemployment rate (09/2012) age over 24		9,1%
Unemployment rate (09/2012) between age of 15 and 24		18,0%
Export (11/2012)		149.5 Mrd. USD
Import (11/2012)		248.7 Mrd. USD
Foreign Investments (2012)	Germany	35 Mio USD
	France	4 Mio USD
	Netherlands	198 Mio USD
	GB	8 Mio USD
	Italy	21 Mio USD
New Companies (2012)	Germany	11
	Netherlands	4
	GB	5
	Italy	2

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## New Legislation and Regulations

### **New law on leasing and factoring**

On 13 December 2012 the new law no. 6361 of 21 November 2012 on leasing, factoring and financing companies was promulgated in the Official Journal no. 28496. The new law regulates the establishment and operation of companies which provide financial services outside the banking and capital markets. For the first time one law covers all the mentioned financial services.

The Banking Regulation and Supervision Agency (BDDK) is responsible for issuing the permits which are required for companies whose activities fall into the scope of the new law. The minimum capital of such a company must be at least 20 million TL. The company must be run in the form of a joint stock company and is required to have a minimum of five founding shareholders. The shares may be only issued as registered shares after full payment in cash. The law provides for strict supervision of the companies and their shareholders. The founding shareholders must come with clean hands: no white-collar crimes, no insolvencies in the past.

### **Circular of the Ministry of Customs and Trade on the minimum joint stock capital and activities of companies subject to approval (Official Journal No. 28468 of 15 November 2012)**

The Circular requires joint stock companies incorporated prior to the coming in force of the new Commercial Code to raise their minimum capital in accordance with the provisions of the new Commercial Code in force since 1 July 2012 during a transitional period to end on 14 February 2014. The requirement applies to joint stock companies with a minimum capital of less than 50,000 TL. Similarly, the Circular requires limited liability companies with a minimum capital of less than 10,000 TL to raise their capital in accordance with the provisions of the new Commercial Code until 14 February 2014. Failure to increase the minimum capital results in the compulsory liquidation of the company.

Furthermore, the Circular provides that the incorporation of companies operating in certain sectors of the economy need the approval by of the Ministry of Customs and Trade for the amendment of their articles of association. The affected sectors are banking, leasing, factoring, insurance, holding activities carried out by joint stock companies, capital market.

### **Regulation of the Ministry of Customs and Trade on the formalities for general meetings of a joint stock company and the participation of a representative of the Ministry (Official Journal No. 28481 of 18 November 2012)**

The Regulation specifies the provisions of the new Commercial Code dealing with the general meeting of a joint stock company. The general meeting shall be held at the seat of the company unless the articles of association provide otherwise. Furthermore, the Regulation allows to hold a general meeting without observing the formalities if all shareholders consent. Resolutions of the general meeting which are legally required to be registered shall immediately be filed with the Commercial Register. The Regulation also defines the term "annual general meeting", which allows to more easily distinguish

the “annual general meeting” from an “extraordinary general meeting”. The Regulation contains extensive details on formalities, participants and responsibilities.

The most important provision of the Regulation is article 32 on the participation of the representative of the Ministry (formerly the Government Commissioner) during a shareholders’ meeting of a company. The new article 32 restricts the participation of the representative to companies which according to the Circular of 15 November 2012 are subject to the approval for their incorporation and amendments of their articles of association by the Ministry of Customs and Trade. For these companies, the participation of the representative of the Ministry is also required for shareholders’ meetings held online or abroad. For other joint stock companies a shareholder minority of at least 10% can require, for good reasons, the participation of a representative of the Ministry. In practice, the new provision means that bureaucracy related to the participation of a representative of the Ministry has been trimmed back on special cases.

### **Auditors and audit firms**

In November 2011, an independent Accounting and Auditing Standards Authority was formed (Decree Law No. 660, published in the Official Journal No. 28103 of 02 November 2011). This public body has now published a Regulation on the requirements of auditors and audit firms in the Official Journal No. 28509 of 26 December 2012.

For the purpose of the Regulation, the term “auditing” covers both the preparation of the usual financial statements as well as some other tasks set out in the new Commercial Code. The audit must be performed by individuals / companies that have the necessary permit. Audit firms must be registered as a joint stock company. The auditors must have a relevant university degree, pass a state examination and demonstrate an additional three years’ work experience.

With the reform of the Commercial Code, business chances have emerged for auditors which are not new, but have become more important. Under the new system, the auditing division within the company (in the future this applies both to joint stock companies and limited liability companies) is not more regarded as an “organ”, but remains its reviewing function. The responsibilities of the internal auditing division have been tightened, the auditor is not only superfluous accessory, but is integrated, with the risk of legal liability, in the supervision of the board activities. The internal auditing section must be independent, the appointed auditors must not be dependent on the company in any respect nor shall they compete with the company through their own activities.

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This information does not replace professional legal advice.