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Amendments to the Turkish Commercial Code

The Law on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction No. 7262 (the "Law No. 7262") was published in the Official Gazette No. 31351 on December 31, 2020. Although the Law in general sets forth the principles related to implementation of the sanctions of the United Nations Security Council regarding prevention of financing of proliferation of weapons of mass destruction, the same legislation also introduces certain amendments to the Turkish Commercial Code (the "TCC") regarding commercial books and bearer share certificates.

The amendments to the TCC, however, will enter into force on April 1, 2021, except for the additional clause to the 4th paragraph of Article 64 of the TCC, which authorizes the Ministry of Trade to require share ledger, board of directors resolution book and general assembly resolution book to be kept electronically. The latter entered into force on the publication date of the Law No. 7262 and no further announcement has been made by the Ministry of Trade regarding the procedure and the principles to be followed.

As notification to the Central Registry Agency ("CRA") has become mandatory with respect to the bearer shares, the Law No. 7262 abolished the 3rd paragraph of Article 415 of the TCC, which provided that owners of bearer share certificates may attend general assembly meetings with an entrance card to be obtained at the latest one day before the general assembly meeting by proving their possession of such certificates. Accordingly, the statement in the 2nd paragraph of Article 417 of the TCC concerning entrance cards to be obtained by owners of bearer share certificates was removed with the Law No. 7262. By virtue of these two amendments, there will be no implementation of entrance card within the Turkish Commercial Law practice for owners of bearer share certificates as of April 1, 2021.

The Law No. 7262 further stipulates that companies that issue bearer share certificates shall notify the CRA of the owners of such certificates and their shares before they are distributed to the relevant shareholders. Accordingly, the amended version of the 2nd paragraph of Article 426 of the TCC, effective as of April 1, 2021, regulates that owners of bearer share certificates may

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exercise their rights arising from their shareholding against the company provided that they have proven the possession of such certificates and have been notified to the CRA. The obligation for notification to the CRA under Law No. 7262 does not only apply to first owners of bearer share certificates. Under the amended article 489 of the TCC, the transfer of bearer share certificates is valid against the company and third parties only if the transferee notifies the CRA of the transfer. As per the same article, those who fail to notify the CRA may not exercise their shareholding rights arising from the TCC. Therefore, as of April 1, 2021, the possession of bearer share certificates alone will not grant the authority to exercise shareholding rights.

The 2nd paragraph of Article 489 of the TCC also provides that the date of notification to the CRA shall be taken as the basis for claiming the rights arising from bearer shares against the company and third parties. By way of this paragraph, the Law No 7262 clarifies that the notification to the CRA will not be effective retrospectively. The principles and procedures regarding the notification to be made to the CRA will be determined by a communiqué to be issued by the Ministry of Trade.

As there are bearer share certificates that are already issued and currently circulating, the Law No. 7262 also refers to their status and regulates that owners of bearer share certificates shall apply to the company with their certificates to notify the CRA of their certificates until December 31, 2021. Upon the application, companies' board of directors shall notify the CRA of the owners of such certificates and their shares within 5 business days. If owners of bearer share certificates fail to apply to the company, they may not exercise their rights arising from the bearer shares under the TCC until a due application.

In addition to the suspension of shareholding rights and invalidity of share transfers regarding bearer share certificates, the Law No. 7262 also regulates administrative fines to be imposed on those who fail to fulfill their obligations of application and notification from TRY 5,000 to TRY 20,000.

As these novelties will have impacts on the owners of bearers share certificates and failure with the notifications will lead companies/shareholders to face with the administrative fines and suspension of shareholding rights, it is important



for owners of bearers share certificates as well as the companies to closely monitor the developments and comply with the obligations as set forth above.

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