

The Turkish Commercial Code and amendments regarding IP rights

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Background of the New Turkish Commercial Code

Previous Turkish Commercial Code has went into force in 1957 and has been changed quite a lot since that day to comply with demand of the community. However, due to rapid changes in commercial and social life previous law become unoperational and does not meet with current expectations of society. After amendment of fundamental laws like Law of Obligations, Civil Code and Criminal Code, it is a necessity to also amend Turkish Commercial Code which is very old. For those reasons, a commission has charged to constitute a new commercial law. The commission in charge prepared a new commercial code after discussed it with relevant institutions and organizations. (631 meetings were held during preparation of new commercial law)

After long years of preparation, the new Turkish Commercial Code No. 6102 (hereinafter referred as The New Code) has been accepted by the Grand National Assembly and published in the Official Gazette on 14 February 2011. The New Code will enter into force on 1 July 2012.

The New Code aims to integrate Turkish commercial regulations in line with EU legislation and puts into effect generally accepted financial reporting and auditing principles all over World, bring democracy and transparency to capital companies by using technological instruments like internet.

Provisions related to IP Law in the New Commercial Code

The New Code consists of six main sections: namely commercial enterprise, commercial companies, negotiable instruments, maritime commerce, transportation operations and insurance law. The New Code brings completely different applications to company law and also there are many changes related IP Law.

First of all according to the New Code, any property rights and property items may be submitted as a part of capital to a joint stock company if those rights had registered before the related registries. It is stated in the New Code as follows :

ARTICLE 127 – (1) Unless otherwise is stated in the law, a) Money, receivable, valuable paper and shares in corporations b) intellectual property rights c) all kinds of movable and immovable properties d) right of usage and benefit on movable and immovable properties e) personal labor f) commercial goodwill g) business organizations h) transferable electronic environments, domains, names and marks that are legally used i) mine licenses and other rights having similar economic value j) any kind of transferable and cashable value can be deposited as investment in business organizations.

Considering the evolution of technology and implementing related modern rules, intellectual property rights are classified as a sort of qualified share capital. TCCD implements the general principle for qualified share capital, that in order to be contributable, there should be no measures, pledges or similar encumbrances imposed on aforesaid intellectual property rights. It is written in the law as follows :

ARTICLE 128 – (1) Each shareholder is responsible and owes to the company the capital it undertook to invest with the articles of incorporation duly issued and signed. (2) Movable and immovable properties, intellectual rights and other values are accepted as real capital with the values assessed by an expert as stated in articles of incorporation or prime contract provided that immovable properties are annotated on title deed, movable properties are entrusted to a trustee and intellectual property rights and other values are registered in special registries in accordance with this provision. Registration in special registry removes the good faith

Furthermore, according to the New Code, all equity capital companies are obliged to provide a web site for the use of shareholders and public. In mentioned web sites, companies should enclose documents that are written in the New Code as follows :

ARTICLE 1524 – (1) All stock corporations must have a web site and if already having one, must allocate certain parts of the site to publish below contents. Primary contents to be published are:

- a) Announcements that the company is required to make pursuant to laws
- b) Documents, information and statements that shareholders and partners need to see and know in order to protect their rights and interests
- c) Resolution of board of directors and management on the rights of priority, amendment, purchase, offer, conversion rate, leave; account breakdown indicating the way how relevant values are determined
- d) Assessment reports, statement of founders, public offering commitments, related guarantees, resolutions on postponement of bankruptcy or similar issues; resolutions of general assembly and board of directors on company's acquiring of its own shares, statements, information and documents on these transactions
- e) Information, tables and documents submitted to the review of partners and stakeholders in case of merger, demerger, type change of business organizations; documents and resolutions on the amendment of articles of association including capital increase, decrease; privileged shareholders general assembly resolutions, reports prepared for the issue of securities.
- f) Including general assembly meetings
- g) Information that are required to be disclosed pursuant to transparency principle and information society
- h) Questions asked to receive information and answers given thereof, issues prescribed in other laws to inform shareholders and stakeholders
- i) Financial statements, interim statements required by law, balance sheets and other financial statements issued for special purposes, financial reporting required to be known by share- and stakeholders, their footnotes and annexes
- j) Annual report of board of directors, annual assessment indicating the level of compliance to corporate management principles; all monies, representation and travel expenses, indemnities, insurance and similar amounts paid to chairman and members of board of directors
- k) Auditors, special auditor, process auditor reports
- l) Information which are related with shareholders and capital market required by relevant boards and ministries

The aim of those provision is to provide transparency of capital companies and use technology efficiently. Another recently amended code, Code of Notification brings obligation to make electronic notification to joint stock companies, limited companies, and limited partnerships divided into shares. Those provisions apparently will enhance importance of internet and particularly domain names as a part of intellectual property rights.

The New Code broadens scope of protection of trade names as well and brings additional provisions like claiming compensation if there is a harm given through that company name to the plaintiff;

change or removal of the company name, elimination of results of infringement , if necessary request confiscation of related products and the equipment and machinery used to produce those products. Plaintiff also has right to request publication of the verdict in a newspaper. It is stated in the New Code as follows :

ARTICLE 52 – (1) If trade title is used by another person against commercial fairness, rightful owner may ask its determination, prohibition, legal correction or deletion of the trade title used unfairly if it was already registered, removal of the material conditions resulting from the violation, destruction of the devices and relevant goods if necessary and also ask pecuniary or non-pecuniary damages if there is loss considering the significance of the fault. Court may order as the pecuniary damage the equivalent of the benefit which may possibly be obtained by the violator as a result of its violation. (2) Court may order, upon the request of prevailing party, that its decision is published on a newspaper with the expenses thereof is paid by the party that lost the case.

The New Code further explicitly states that disputes which are raised from any intellectual property rights shall be accepted as commercial dispute. However, legislation immunises cases regarding copyright disputes from that provision as exception, in case they are not related to any commercial company. The mentioned article is as follows :

Article 4 – (1) Law cases resulting from business organizations of both parties and regardless of the status of relevant parties as being trader or not, all legal cases related with and resulting from the provisions of a) this Law, articles 962 through 969 of Turkish Civil Code on pawnbrokers who are lending upon pawn, d) regulation on intellectual property are considered as commercial cases. However, cases resulting from the rights related with money orders, bailment and literary and artistic works which are not related with a business organization are not included.

Another development is in the provisions with regard to unfair competition, has modified and written in a more simplified manner. The list of the acts which constitute unfair competition was expanded. The New Code gives power to consumer associations to bring lawsuit against third parties whose acts constitute unfair competition. Further, the New Code also gives power to consumers directly to bring lawsuit against unfair competitors. However, they can not request confiscation of related products. It is stated in the New Code as follows :

Article 56/ (2) Customers whose economical interests are damaged or may expose to such danger can file above cases but can not request destruction of devices and goods (3) Chambers of industry and trade, chambers of artisans, exchange markets and other professional and economical unions, non-governmental organizations and public organizations that protect economical interests of their customers pursuant to their bylaws can also file the cases stated in sub-paragraphs (a), (b) and (c) of first paragraph. (4) Any order given against a person pursuant to sub-paragraphs (b) and (c) of first paragraph are also enforced on the persons who directly or indirectly obtained the goods subject to unfair competition for business purposes.

Conclusion

The world has experienced a serious economic crisis which makes competition even harder for emerging markets to attract foreign investment. Every country is taking certain steps in order to overcome of the adverse effects of the global economic crisis. In this respect, the New Code could be considered as a prominent move towards adaption to the new economic environment.

Moreover, it is clear that with the New Code, legislation considers technological improvements in the IP rights and internet in particular. We can say that, after amendments, IP rights have seen as a one of the primary capital of the companies. This will apparently increase the value of IP rights in the community and the community will give utmost importance to protection of their intellectual property.

Further, it is predictable that internet and online World will occupy a huge place among the commercial companies and so domain names as an intellectual right. As far as we estimate, companies will look up to domain name databases as well as trademark databases to create a unique trade name and trademark as well in view of the heavy penalties that has to be imposed by legislation related to infringement of trade names.

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