

# GEDİK & ERAKSOY

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## *Amendment to Turkish Commercial Code and Law on Movable Pledge with respect to Commercial Transactions*

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The Law Amending Certain Laws with the Purpose of Improvement of the Investment Environment (Law No. 7099), (the **Amendment**), published in the Official Gazette on 10 March 2018, significant amendments have been made to certain provisions of the Turkish Commercial Code and Law on Movable Pledge with respect to Commercial Transactions (**Movable Pledge Law**).

### Material amendments regarding Turkish Commercial Code

#### **Registry of the merchant with the trade registry**

According to the Amendment, a merchant shall provide the trade registry its commercial title and the signature that will be affixed under this title. With the amendment, the legalisation of the signature by the notary public will not be required. The signature declaration shall be drawn up in writing with the presence of the authorised personnel of the trade registry office. The procedures and principles regarding this process shall be determined with the communiqué issued by the Ministry of Customs and Trade.

#### **Representatives in General Assembly of Shareholders**

The Amendment abolishes the provisions on the presence of the representative of corporate body, independent representative and corporate representative in general assembly of shareholders in joint stock corporations (*anonim şirket*) set forth under Article 428 as well as Article 430 regarding the declaration of votes of the representatives and Article 431 on the notification requirement towards the company.

#### **Limited Liability Company**

According to the Amendment, the articles of association of a limited liability partnership will be signed by the founders before the personnel authorised by the trade registry office. Accordingly, the time of the incorporation of the company will be the date of signing of the articles of association before the trade registry authorised personnel. The Amendment further states that, the requirement to pay at least 25% of the nominal value of the total shares subscribed prior to registration with the trade registry does not apply to limited liability partnership as it is applied to joint stock corporations.

### Material amendments regarding Movable Pledge Law with respect to Commercial Transactions

#### **Establishment of pledge**

Article 4 of the Movable Pledge Law requires the distinguishing features of the asset subject to pledge to be listed such as its brand, production year, chassis number, etc. However, the Amendment states that these requirements do not apply to movable assets that have no such distinguishing feature.

The Amendment also introduces that any kind of movable asset and rights could be subject to pledge

pursuant to Article 5 of the Movable Pledge Law.

### **Scope of pledge**

Article 7 of the Movable Pledge Law entitled “unification and mixing” (*birleşme ve karışma*) was abolished with the Amendment and a new article was introduced with the title of “scope of pledge”:

*“The interest, insurance and other legal income as well as natural products and substitute goods are within the scope of the pledge that is established with respect to the movable.*

*If a production process is put in pledge along with the movable assets, the pledge is considered to be established on the receivable that will accrue during the production process at the same degree and rank. The relevant procedures and principles will further be determined under a regulation.*

*The good faith of third parties who do not know or need not know that the movable is subject to pledge shall be preserved.”*

### **Extinction of debts**

Release of pledge mechanics has been amended. Accordingly, the release of the pledge shall be requested from the registry within thirty days in case the pledgee is subject to foreign law, and fifteen days in case the pledgee is subject to Turkish law upon the extinction of the debt. If such obligation is not performed by the pledgee, one tenth of the secured debt shall be payable as an administrative fine imposed by the Ministry of Customs and Commerce upon the complaint of the pledger or the debtor.

Lastly, according to the Amendment, in case of lack of provisions in the Movable Pledge, Turkish Civil Code’s provisions pertaining to immovable pledge shall be applicable.

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