

Attorney Obligation For Joint Stock Companies

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As joint stock companies play a major role in the development of the economy and welfare, they are deemed to be the most important economic and social units in Turkey and therefore worthy of being protected by law. As per Article 35/3 of the Attorneyship Law, joint stock companies with a share capital of TRY250,000 or more (1) must have an attorney; violation of this legal obligation will result in significant administrative fines imposed by public prosecutors (2).

Compliance with the Attorneyship Law is recommended not only to avoid administrative fines and undesirable confrontations between company executives and public prosecutors, but also to ensure that companies and their operations are built on legally supported and evaluated grounds.

According to a 2010 Constitutional Court decision (3), the reason behind Article 35/3 of the Attorneyship Law is that joint stock companies with large share capitals involve notable conflicts of interest among their shareholders, employees and creditors and society. Therefore, it is important for such companies to be operated in a manner that complies with the applicable laws and maintain a fair balance between these competing interests.

Companies which are already being evaluated or will be evaluated under Article 35/3 of the Attorneyship Law should keep the following points in mind:

- Joint stock companies incorporated with a share capital of TRY250,000 or more fall within the scope of Article 35/3 of the Attorneyship Law at the time of their registration with the relevant trade registry, whereas companies with a share capital of TRY250,000 or more as a result of a capital increase should comply with the law as of the date of registry of the capital increase.
- 'Having an attorney' does not necessarily mean employing an in-house lawyer within the company. As the publicly available judicial decisions suggest, companies can also outsource their attorney-related matters to one or more attorneys (and law firms) by executing attorney agreements therewith.
- As the legal obligation was introduced to the Attorneyship Law as a result of a 2008 amendment, companies should retrospectively (from 2008 to today) check their compliance with the law and be aware of and evaluate the potential risks they carry regarding previous transactions conducted without consulting an attorney.

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Endnotes

- (1)** In addition to such joint stock companies, cooperative companies with 100 members or more must also have an attorney. However, this update covers only the joint stock companies referred to in the Attorneyship Law.
- (2)** An 'administrative fine' of double the gross minimum wage applicable to employees (over 16 years' old) employed in the industry sector on the date on which the crime occurred will be imposed for each month of violation.
- (3)** Anayasa Mahkemesi, June 30 2011 T, 2010/10E, 2011/110 K.

This article aims to endow the reader with a general outline about its subject matter. Each individual case should be evaluated according to its circumstances.