

Are you free to restructure in free zones?

With regard to the nature of commercial business life and along with the effects of scale economy, companies consider and lean to restructuring transactions such as merger, full spin-off and partial spin-off.

This necessity is also valid for the companies operating in free zones located in Turkey.

For the restructuring transactions that the companies, located in Turkey are involved in, Turkish Code of Commerce ("TCC") no. 6102 and related other related legislation apply.

As contrary regulations are not provided thus there is no other regulation under related legislation, TCC and other related legislation shall be applied as well, for the restructuring transactions that companies operating in free zones are party to.

On the other hand, under circular order no. 1998/4 published by Ministry of Economy Directorate General of Free Zones, conditions are stipulated and a road map of limitations is drawn for the restructuring transactions, which free zone companies are party to.

By evaluating the circular order it is understood that these conditions are in restrictive manner and they are not provided under either TCC or other related regulations.

The mentioned Circular numbered 1998/4 stated that separate accounting records shall be kept for the activities realized within free zones and it stipulates that the companies operating in free zones cannot operate under same commercial title and cannot open a branch in another part of Turkey.

In other words, as per the circular order no. 1998/4, restructuring transaction cannot be realized if transaction in question results with a Turkey branch of the free zone company.

Accordingly, within the scope of implementation it is observed that some obstacles arise from different legislations regarding possible restructuring transactions which free zone companies are party to.

We are of the opinion that, these obstacles encountered in practice can be overcome.

Within this scope, a well drafted clarifying secondary legislation e.g. directive covering the methods and principles regarding the restructuring transactions like merger, full spin-off and partial spin-off to which these companies party to may be put in force.

Else, in case that a transaction results with a Turkey branch of a company located in free zone, General Directorate of free zones may provide an acceptable time period for these companies to bring their structure in compliance with the conditions provided under circular order no. 1998/4.

Within this time period, these companies may bring their structure in compliance with the conditions provided within the circular no.1998/4 by way of liquidating their Turkey branch, relocation etc.

In accordance with the current legislation and implementation; operational steps of restructuring transactions that the companies located in free zones in Turkey are involved in, would be determined within the scope of conditions provided under Circular numbered 1998/4 and a model must be composed in line with that. However it should be taken into account that the final saying in those types of applications comes from the Ministry itself and it will handle the assessment over the applications on case-by-case basis.

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