



Impact of Spin-off Transactions on Employment Relations

Spin-off is a type of transaction, at the end of which the corporation splits off and new independent companies or entities are incorporated. The parent company (the **“Company”**) and its “new born” company (the **“Spinco”**), become two independent commercial entities having separate managements, places of business, assets, and separate labor forces. This bulletin focuses on a spin-off’s impact on employment relations between the Company and its employees.

There are three major laws that regulate employment contracts in the event of spin-off transactions: (i) the Turkish Code of Obligations (the **“TCO”**); (ii) the Labor Law (the **“Labor Law”**); and (iii) the Turkish Commercial Code (the **“TCC”**). The Labor Law and the TCC specifically set out the status of employment contracts in spin-off transactions, whereas the TCO prescribes the general rules of transfer of “service agreements” in a broader sense.

1. Impact under the Labor Law

The Labor Law’s primary concern is the employee’s interests. For this reason, it suggests permanence in employment relations. Article 6 of the Labor Law provides that (i) the Spinco becomes party to the Company’s transferred employment contracts (with all rights and obligations); (ii) the spin-off transaction does not constitute a just cause or valid reason for termination of the employment contracts; and, finally (iii) the Company will remain jointly liable together with the Spinco, for the labor entitlements which have become due and payable before or at the time of the spin-off transaction. This joint liability will survive for two years. In addition, the Company and the Spinco may not agree that the employment contracts will terminate at the time of the spin-off transaction.

2. Impact under the TCC

The TCC is the primary legislation for corporate transactions. Following its entry into force on 1 July 2012, Article 178 of the TCC brought a novelty that conflicts with Article 6 of the Labor Law. Under Article 178 of the TCC, the employees have “a right of objection” and the Spinco becomes party to the Company’s employment contracts (with all rights and obligations), only if the related employees do not object to such transfer. If an employee objects to the transfer, the employment contract will be deemed terminated following the completion of the notice period. Another novelty brought by Article 178 of the TCC is that the employees have a right to request a warranty for their labor entitlements.

As the TCC entered into force more recently than the Labor Law and it specifically governs the transfer of employment contracts in corporate transactions, the primary piece of legislation that should be considered while assessing the employment law aspect of a spin-off transaction should be Article 178 of the TCC.

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Generally, in Turkish practice, the Company notifies its employees regarding the contemplated spin-off transaction, prior to the signing date. Turkish law does not stipulate any specific requirement as to when and how this notification must be made. Upon such notification, if the employees do not object to the transfer of their employment contracts, the Spinco becomes their new employer following the closing. However, the Company will remain jointly liable for the labor entitlements which have become due and payable before or at the time of the spin-off transaction. The TCC does not stipulate any specific time limitation for this joint liability.

However, if any employee objects to the transfer, then his/her employment contract will be terminated upon completion of the applicable notice period following the delivery of his/her oral or written objection to the Company. If the spin-off transaction is closed before completion of the notice period, then the Spinco will become the employer of the employee, until the end of the termination notice.

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