CORPORATE GOVERNANCE

Turkey

LEXOLOGY
Getting The Deal Through

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Corporate Governance

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Quick reference guide enabling side-by-side comparison of local insights into corporate governance issues worldwide, including sources of rules and practice; responsible agencies and notable opinion formers; shareholder powers, decisions, meetings, voting, duties and liabilities; employee role in governance; corporate control issues; board structure and composition, duties, leadership, committees, meetings and evaluation; director and senior management remuneration; director protections; disclosure and transparency; hot topics, such as shareholder engagement, and sustainability, pay ratio and gender gap reporting; and other recent trends.

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The Turkish Commercial Code (TCC) dated 13 January 2011 (Law No. 6102) entered into force on 1 July 2012. The TCC has important objectives, such as ensuring transparency, adopting corporate governance standards and introducing internationally accepted auditing and reporting standards.

In addition to the above, the other laws, communiqués and principles governing corporate rules and practice are:

- Law No. 6335, amending the TCC;
- the Capital Markets Law dated 6 December 2012 (Law No. 6362), which entered into force on 30 December 2012, replacing the former Capital Markets Law dated 30 July 1981 (Law No. 2499);
- the Capital Markets Board Communiqués;
- the Corporate Governance Communiqué dated 3 January 2014, serial II, No. 17.1 (the Communiqué); and
- the Corporate Governance Principles (CGP) listed in Annex 1 of the Communiqué.

According to the Communiqué, publicly held companies that have shares that are traded on a stock exchange are subject to the mandatory implementation of certain corporate governance principles; however, there are minor exceptions to mandatory principles (eg, the number of independent board members). As per the Communiqué, the criteria regarding the number of independent board members shall not be applied to third-group corporations (corporations that are excluded from the first and second groups, the shares of which are traded on the National Market, the Second National Market and the Collective Products Market), so two board members are sufficient for these corporations.

There are also some listing requirements that are applied on a 'comply or explain' basis. For example, article 4.2.5 of the Corporate Governance Principles stipulates that the responsibilities of the chair of the board of directors and the chief executive or general manager must be explicitly separated; however, if it has been resolved that the roles of chair of the board of directors and the CEO or general manager are considered the same, this decision (and grounds for this decision) will be presented to the shareholders' information at the general assembly together with its justification and the reasoned explanation will be included in the annual report (CGP, article 4.2.6).

Law stated - 31 March 2022

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

The Ministry of Trade is the regulatory body responsible for enforcing the TCC's provisions on corporations (article 210 of the TCC). The disputes arising from the TCC are mainly resolved before commercial courts.

The Capital Markets Law, the Capital Markets Board Communiqués and the Corporate Governance Principles are enforced by the Capital Markets Board. The Capital Markets Board is the regulatory and supervisory authority in charge

of the securities markets in Turkey. It is entitled to hand out administrative sanctions to companies or individuals in the event of non-compliance. If the conditions set forth under the Capital Markets Law and the relevant legislation occur, the public prosecutor may prepare an indictment upon the written request of the Board.

The views of two associations are often considered: the Capital Market Investors' Association (BORYAD) and the Turkish Industry and Business Association (TUSIAD). TUSIAD was established in 1971 to represent the business world, and BORYAD was established in 2001 to defend shareholder rights and promote investment.

Under the TCC, there are legal grounds for proxy advisory firms, especially to protect the rights of minority shareholders in public companies.

Law stated - 31 March 2022

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

According to the Turkish Commercial Code (TCC), apart from specific exceptions (ie, the appointment of the initial board members of companies by the articles of association), shareholders have exclusive authority to appoint or remove board members. As per article 407 of the TCC, shareholders may use this authority during a general assembly. An exception to this rule is that should a board member leaves his or her post, the board may also temporarily appoint a new member. However, temporary appointments must also be approved during the next general assembly.

Article 408 of the TCC similarly determines the authority of the general assembly to appoint and dismiss board members. Accordingly, a general assembly is authorised to make decisions as set forth under the law and the articles of association. The same article also stipulates the non-transferable duties and authorities of the general assembly. Accordingly, privileges may be granted in respect of the election, nomination, release and dismissal of board members.

Under Turkish law, shareholders holding at least 10 per cent of the share capital of non-public companies and 5 per cent of the capital of public companies are defined as minority shareholders. The minority shareholders may:

- Request the board to call an extraordinary general assembly to question the company's management and request that additional items be added to the agenda (TCC, article 411).
- Ask the general assembly to appoint a special auditor to investigate and clarify certain issues, even if it was not on the agenda. For shareholders to use this option, they must first exhaust their rights of information and examination. If the general assembly accepts this request, minority shareholders can request the commercial court to appoint a special auditor (TCC, article 438). This is applicable not only for minority shareholders but for all shareholders.
- Request the board issue registered share certificates. If made, this request of the minority shareholders must be accepted and registered share certificates must be delivered to owners (TCC, article 486).
- Request the company to be dissolved if there is 'just cause'. The TCC does not define what a 'just cause' is, but it is accepted among scholars that there would be just cause to request dissolution if a general assembly was called to numerous meetings contrary to the law, the rights of minority shareholders were violated (especially the right to examine and demand information) or if the company constantly loses assets and does not generate any profit (TCC, article 531).

All shareholders are entitled to request information for them to examine. Pursuant to article 1.2.1 of the Corporate Governance Principles (CGP), which is applicable to public companies, this right cannot be limited or cancelled by the

articles of association or by a decision of the company.

In addition, any shareholder has the right to:

- ask the general assembly to file a lawsuit for damages against board members or auditors (TCC, articles 553 to 555);
- request to inspect the company's books and records and request information from the company's auditor; and
- request a court limit or abolish a managers' right to manage the company, if there is just cause (TCC, article 630).

The shareholder vote required to elect and dismiss directors is the simple majority of the votes represented in a general assembly unless provided otherwise by law or the articles of association. The necessary quorum for the general assembly is shareholders or their representatives corresponding to at least one-quarter of the capital. If this quorum cannot be reached in the first meeting, no quorum is sought for the second meeting (TCC, article 418).

Law stated - 31 March 2022

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

According to article 408 of the TCC, a general assembly has exclusive authority over:

- amending the articles of association;
- releasing the auditors and the board of directors or holding them liable;
- appointing the members of the board of directors, determining their fees, term of duties, discharging and replacing them;
- appointing and discharging auditors, except for the cases set forth under the law;
- taking decisions regarding:
  - financial statements;
  - annual reports of the board of directors;
  - savings on annual profits;
  - determining dividends and gain margins (including the injection of reserve funds into capital or the profit to be distributed); and
  - the use of the reserve fund;
- deciding on the company's dissolution, except for cases set forth under the law; and
- selling a substantial part of the company.

If the conditions stated under the Capital Markets Law and related legislation are met, some exclusive powers of the general assembly may be transferred to the board of directors. For example, if a company chooses the registered capital system, the share capital of the company can be increased upon a board of directors' resolution. In addition, when it is permitted by the articles of association, the board of directors may restrict the pre-emptive rights of shareholders (Capital Markets Law, articles 18/2 and 18/5).

Under Turkish law, there are no matters that can be resolved by a non-binding shareholder vote.

Law stated - 31 March 2022

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

The TCC has a 'one share, one vote' principle. Accordingly, each share grants at least one voting right (TCC, article 434).

Pursuant to article 479 of the TCC, disproportionate voting rights may be granted to privileged shares. However, the voting privileges for private companies are limited to a maximum of 15 votes per share. This number can only be increased by a court decision for the sake of institutionalisation or because of just cause. Thus, under the TCC regime, it is no longer possible to block a capital increase through the use of privileged shares. Privileged votes do not extend to resolutions regarding the amendment of a company's articles of association, or the filing of discharge or liability suits.

Law stated - 31 March 2022

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

Article 1.3.1 of the Corporate Governance Principles stipulates that the announcement regarding general assembly meetings should be made by means of all kinds of communication to reach as many shareholders as possible, including electronic communication, in addition to the procedures stipulated by the legislation, at least three weeks in advance of the meeting.

According to the TCC, shareholders are invited to the meeting as stipulated under the articles of association through an announcement published on the company's website (if the company is required to have a website) and in the Turkish Trade Registry Gazette. This announcement must be made two weeks before the general assembly meeting (TCC, article 414).

Article 415 of the TCC stipulates the shareholders who are entitled to attend meetings. Accordingly, shareholders whose names are written in the attendance list prepared by the board of directors have the right to attend the meeting.

Pursuant to article 437 of the TCC, which regulates the right to examine and demand information, the following must be made available to the shareholders at least 15 days before the meeting:

- financial statements;
- consolidated financial tables;
- annual reports of the board;
- audit reports; and
- the board's suggestions regarding the method of distributing dividends.

Pursuant to the TCC, electronic signatures can be used to prepare meeting documentation, and meetings can be held electronically (TCC, article 1527).

The following requirements have to be met to vote online:

- the company must have a website allocated for this purpose;

- shareholders who wish to participate in the online general assembly meeting must make such a request in advance;
- a technical report must be produced to prove that the electronic platform tools are sufficient for efficient participation and this report should be registered and published; and
- the identities of the online voters must be kept confidential.

The Ministry of Trade issued the Regulation on General Assembly Meetings of Joint Stock Companies held electronically, regarding the procedures of online general assembly meetings, published in Official Gazette No. 28395 of 28 August 2012. A company must integrate the sample article stating that the meetings can be held electronically into its articles of association. This article can be found in the Regulation published by the Ministry of Trade. The article must be incorporated as is because it is not possible to amend the article while adopting it.

Electronic meetings are mandatory for publicly listed companies.

Shareholders acting by written consent without a meeting can participate in meetings that are held electronically, as explained above.

Law stated - 31 March 2022

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

Article 411 of the TCC stipulates that shareholders holding at least 10 per cent of the company's capital (or at least 5 per cent for public companies), may request a general meeting. If such a meeting has already been convened, then they have the right to request that certain topics to be included on the agenda, including director nominations. If their request is not accepted by the board or not responded to within seven days, these shareholders have the right to apply to the commercial court to enforce their request.

According to article 446 of the TCC, the dissenting opinions of the shareholders must be recorded in the minutes of the general assembly to grant shareholders a right to claim these decisions as invalid.

Law stated - 31 March 2022

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

Under Turkish law, controlling shareholders do not have any specific duties to the company or to non-controlling shareholders. However, all controlling shareholders must exercise their rights by complying with good faith principles. Further, there are special provisions for minority shareholders.

Additionally, the TCC regulates provisions with regard to group companies, and article 202 of the TCC specifically stipulates that the dominant (controlling) company cannot exercise its dominance in a way that may give rise to a financial loss of a subsidiary (eg, instruct the subsidiary to be the guarantor of a loan), unless this loss is compensated within the same financial year or a right to claim compensation is granted to the subsidiary within the same financial

year by providing details on when and how the loss will be compensated. The loss concept herein covers causing a potential risk to the company's financial assets or future profitability as well as value depreciation on them. Therefore, not only the actual losses sustained, but also potential risks that may arise thereof, fall within the definition of 'loss'.

Both the shareholders of the subsidiaries and their creditors may claim the indemnification of the loss of the subsidiary company from the dominant company by filing a lawsuit.

Law stated - 31 March 2022

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

According to the TCC, the shareholders' liability is normally limited to their subscribed capital contribution. This rule is applicable for both joint-stock companies and limited liability companies. There is an exception for limited liability companies concerning government debts. Accordingly, shareholders of a limited liability company are personally liable for government debts and this responsibility should be calculated over the shareholding ratio in the company capital.

Regarding tax debts, the Council of State's General Assembly on Unification of Judgments decided that tax debts that are due and cannot be collected from a limited liability company (in whole or in part, or that are understood to be uncollectible from the company itself) can be collected from its shareholders directly in proportion to their share capitals. In such a case, there is no need to collect the debts in question from the legal representatives first.

Other than the foregoing, the shareholders are not responsible for the acts or omissions of the company, unless such an act or omission results from the shareholders' own acts and has criminal elements.

Law stated - 31 March 2022

Employees

What role do employees have in corporate governance?

According to the TCC, employees do not have a specific duty in terms of corporate governance, unless they have been provided with the responsibility to represent the company as commercial representatives under an internal directive to be issued by the board members. However, under the Corporate Governance Principles, employees are also listed as stakeholders, and companies must ensure that the rights and benefits of the stakeholders are protected (CGP, article 3.1.1).

Law stated - 31 March 2022

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

At present, share transfer restrictions are not permitted except on legal grounds determined under the Turkish Commercial Code (TCC). However, the TCC introduces specific provisions regarding the restriction of share transfers through the articles of association separately for limited liability companies and joint-stock companies. Article 492 of the TCC requires that joint-stock companies include the specific reasons why share transfers may be rejected in their articles of association. Reasons related to the nature of the shareholders' composition or the scope of the company's activities or the economic independence of the company are deemed as important grounds for rejection under the TCC. This is not an exhaustive list; therefore shareholders must select predetermined grounds for rejecting share

transfers, and be very specific if they want this protection to be reflected in the articles of association. Otherwise, limitations on share transfer will continue as a contractual obligation pursuant to the shareholders' agreement.

Article 493/1 of the TCC provides an escape clause for joint-stock companies through the option to reject a share transfer, without basing its decision on the grounds explained above, by offering to acquire, at real value, the transfer shares itself or on behalf of its shareholders or a third party.

For shareholders to resolve on the transfer restrictions of registered shares, an affirmative vote of 75 per cent of the shareholders or their representatives is required (TCC, article 421/3).

In contrast to the joint-stock companies, the TCC explicitly allows limited liability companies to limit share transfers based on pre-emptive purchase rights, call options or other ancillary or additional obligations by providing for them in their articles of association. These limitations may also be subsequently included in the articles of association by a decision of the general assembly. In this regard, a positive vote of two-thirds of the general assembly is required (TCC, article 621).

In limited liability companies, share transfers are subject to the approval of the general assembly and may be rejected without a just reason, unless otherwise stipulated in the articles of association (TCC, article 577).

Given the differences between limited liability companies and joint-stock companies, investors aiming to reflect the provisions of the shareholders' agreement to the articles of association may prefer to incorporate a limited liability company, provided that the regulations in their field of activity allow this.

Any agreement between the joint-stock company and a third party regarding the third party acquiring the joint-stock company's shares in lieu of the joint-stock company, its affiliate or parent company must comply with the terms set forth under articles 379 and 380 of the TCC. An agreement or obligation to this effect in violation of the terms of article 379 of the TCC will be invalid.

The TCC bans any joint-stock company, a third party, a joint-stock company's subsidiary acting for their parent or a joint-stock company's subsidiary promising shares in its parent, from selling treasury shares (TCC, article 380/2).

Law stated - 31 March 2022

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

Under the TCC, new shares are issued upon capital increases, and this requires a shareholders' resolution. In public joint-stock companies that adopt a registered capital system, capital can be increased without the approval of the shareholders; thus new shares can be issued accordingly, within the registered share capital (TCC, articles 459 and 460). In addition, according to article 461 of the TCC, existing shareholders have pre-emptive rights to acquire newly issued shares in proportion to their shareholding. Pre-emptive rights of shareholders may be restricted by a decision of the general assembly meeting, in the presence of just cause and with the positive vote of shareholders representing at least 60 per cent of the capital (TCC, article 461).

The TCC has introduced two new systems regarding capital. First, there is the new registered capital system for private joint-stock companies, which was previously available only for public companies. A private joint-stock company can adopt the registered share capital system by a provision to this effect in its articles of association. The articles of association must indicate the aggregate ceiling of the capital and the time limit for the board of directors' authority to increase capital within that set limit, which cannot be longer than five years. The company may then increase its capital without going through the burdensome procedures of holding a general assembly meeting up to a predetermined ceiling (TCC, articles 459 and 460). The minimum capital requirement for a joint-stock company adopting the

registered capital system is 100,000 Turkish lira (TCC, article 332).

Second, as a financing method for joint-stock companies, the TCC introduced a conditional capital increase system, through which the company's creditors (eg, holders of bonds or other debt securities) and employees may partake in its equity. The conditional capital increase is not triggered by new capital commitments of the shareholders but through the exercise of exchange (conversion option) and pre-emptive rights by creditors and employees (TCC, article 463).

Law stated - 31 March 2022

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

The Capital Markets Board prohibits restrictions on the transferability of shares of a public company. Accordingly, the transfer of shares must not be limited and other restrictions must not be imposed on shareholders to prevent them from going public. Further, pursuant to article 8(ç) of the Listing Directive issued by Borsa İstanbul, a company is prohibited from including any share transfer restrictions in its articles of association regarding securities to be listed on Borsa İstanbul. Article 490 of the TCC stipulates that fully paid, registered shares can be transferred without any restriction unless otherwise provided by law or by the articles of association. The transfers of bearer shares are subject to the transfer of possession.

Law stated - 31 March 2022

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

A share buy-back system that was already available for listed companies under capital markets legislation has been introduced by the TCC for joint-stock companies in exceptional cases. The conditions for the buy-back are as follows (TCC, article 379):

- authorisation of the board of directors by a general assembly is required;
- the acquisition and pledge may be accepted on the condition that the shares it will acquire in the future and the shares held by its subsidiary companies do not exceed 10 per cent of the company's authorised or issued capital;
- the general assembly can only delegate this authority for a maximum of five years;
- the board of directors is required to state in the authorisation that these legal requirements have been fulfilled;
- the nominal value of the shares that will be accepted as an acquisition or pledge by the authority must be stated;
- the minimum and maximum limits of the consideration that will be paid for the shares must also be stated; and
- acquired shares must be fully paid up (these shares so issued are stripped of any voting rights).

Further, article 385 of the TCC stipulates that shares acquired or accepted as a pledge in a way that is contrary to the principles set forth under the TCC shall be disposed of, or the pledge on them shall be released, within six months of the date of their acquisition or acceptance as a pledge. Any specific procedure regarding selling off or disposing of the pledge has not been provided. The authority to sell off these shares is held by the board of directors, which shall perform its duty according to the principles of equality and public disclosure.

Similar principles apply to share buy-backs in limited liability companies as well. A limited liability company may

acquire its own capital shares under two conditions (TCC, article 612): it must have the necessary equity that may be freely used to purchase these shares, and the nominal value of the shares to be purchased must not exceed 10 per cent of the total share capital.

Capital shares acquired in excess of this amount must be disposed of or redeemed through a capital reduction within a maximum period of two years (TCC, article 612/2).

The Communiqué on Share Repurchase (the Communiqué) issued by the Capital Markets Board entered into force on 3 January 2014. According to the Communiqué, the board of directors must be authorised by a general assembly for a publicly held company to repurchase its own shares (Communiqué, article 5/1). There is an exception to this rule where listed companies are allowed to repurchase the shares without the necessity of a general assembly authorisation if the repurchase is necessary to avoid a probable and serious loss. A 'probable and serious loss' is deemed to exist where the daily average price of shares is below the nominal value or has fallen by more than 20 per cent. Unless these circumstances are present, the only way for a listed company to repurchase its shares without a general assembly's authorisation is to obtain the approval of the Capital Markets Board (Communiqué, article 5, subparagraphs 4 and 5).

The nominal value of the repurchased shares cannot exceed 10 per cent of the paid-in capital where the total value of the shares cannot exceed the total value of the resources subject to profit distribution. Repurchased shares may be kept for an indefinite period as long as they do not exceed the aforementioned limits. The shares repurchased in breach of the Communiqué must be sold within one year of the date of the repurchase or else they will be amortised by way of capital decrease (Communiqué, article 19).

The maximum duration of the repurchase programme is three years for the companies listed on the stock exchange and one year for other publicly held companies unless the repurchase programme does not foresee any specific duration (the Communiqué, article 7).

The repurchase of shares is not permitted if there is any postponed disclosure process regarding internal matters or a significant transaction that has not yet been disclosed to the public.

Law stated - 31 March 2022

Dissenters' rights

Do shareholders have appraisal rights?

The TCC also provides categories of important reasons that allow joint-stock companies to reject the transfer of registered shares under their respective articles of association. The company may choose not to approve the share transfer by claiming an important reason stated under the articles of association, or to acquire the shares to be transferred on its own, a shareholders' or any third party's behalf by offering the nominal value of the shares to the transferee (TCC, article 493).

If the company prefers to use an escape clause, the nominal value of the shares must be offered to the transferee. There is no definite basis for how the nominal value of shares will be determined, and the transferor may apply to a court for a determination of the nominal value of the shares to be transferred. If the transferee is offered a nominal value and does not reject this value within one month of its acknowledgement, the acquisition offer will be deemed accepted. If the company remains silent for a period of three months from the date of the transferee's application for approval, it will be deemed that the company has approved the share transfer. As long as the company does not approve the share transfer, the ownership of shares will remain with the transferor, together with all monetary and management rights (TCC, articles 493 and 494).

In addition, the TCC regulates an escape fund to be paid to shareholders in the event of a merger or change in the type of company. In this regard, if the shareholders disagree with a merger or change in the type of company, they have the right to sell their shares to the company at a fair value (TCC, articles 141, 183 and 202/2).

Moreover, the Communiqué on Common Principles of Significant Transactions and Retirement Rights , issued on 27 June 2020, determines the extent of significant transactions and shapes the limits of voting rights and shareholders' retirement rights in publicly held companies. According to this communiqué, mergers, division transactions or a change in the type of company, along with other important transactions listed in article 4, require the approval of a general assembly. This communiqué details the provision regarding the retirement right in article 24 of the Capital Markets Law and determines the circumstances where the retirement right does not arise. In this respect, shareholders who voted against a significant transaction at the general assembly meeting and had their dissenting vote recorded in the minutes of that meeting will be able to sell their shares to the subject company.

According to this communiqué, it may be possible to take the general assembly's approval to abandon significant transactions where the total cost of the exercise of retirement rights exceeds their predetermined cost, or where certain shareholders, whose qualifications are specified beforehand, exercise their retirement right. According to article 11 of Communiqué on Tender Offer, in an acquisition of shares or voting rights of publicly held companies in a way that changes the controlling shareholders the transferee is obliged to offer to buy the shares of the other partners.

Law stated - 31 March 2022

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

Under Turkish law, both listed and unlisted companies use one-tier board structures.

Law stated - 31 March 2022

Board's legal responsibilities

What are the board's primary legal responsibilities?

The principal duties of board members are:

- to act prudently and diligently when performing their duties and conducting the business of the company;
- to monitor and supervise the management and the business of the company to ensure that it complies with principles of good faith, and the interests of the company and its shareholders;
- to keep confidential the information obtained during and after the term of duty;
- to refrain from attending board meetings regarding their own interests or the interests of their certain close relatives; and
- not to engage in transactions with the company unless a general assembly meeting authorises the board to repurchase shares (the maximum period this authorisation can last is five years).

In addition to the above, the Turkish Commercial Code (TCC) sets forth the non-transferable duties of board members. The most important non-delegable and indispensable duties and powers of the board of directors are as follows (TCC, article 375):

- determining the company's top-level management and giving instructions in this regard;
- establishing the necessary systems for financial planning, accounting and finance audits to the extent required;
- appointing and dismissing managers (and persons performing the function of a manager) and authorised signatories;

- high-level supervision of whether the persons in charge of management act in accordance with the law, the company's articles of association, internal regulations and the board's written instructions;
- keeping the share book, resolution book of the board and the general meeting and discussion register;
- preparing the annual report and corporate governance disclosure;
- submitting annual reports and governance disclosures to general assembly meetings;
- organising general meetings;
- enforcing resolutions of general meetings; and
- notifying courts regarding the company's state of excess of liabilities over assets.

None of these duties and authorities can be delegated to a representative, the company's management, a committee or managers (TCC, article 367). The general assembly meeting cannot seize or deprive these duties and authorities of the board of directors, or transfer them to the general assembly meeting or committees established under the provisions of articles of association. Similarly, the board of directors cannot waive these duties and authorities.

Law stated - 31 March 2022

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

The board is responsible for the management and representation of the company (TCC, article 365). Pursuant to article 553 of the TCC, if the board is liable owing to its own faults arising from the law and the articles of association, then the board will owe legal duties to the company, its shareholders and its company's creditors.

Law stated - 31 March 2022

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgment rule?

According to the TCC, the company, its shareholders and its creditors are entitled to file indemnification actions against board members to indemnify the damages that occurred owing to their faults. Shareholders may initiate actions against directors and request the indemnification of the damages that they directly incurred or request indemnification on behalf of the company for the damages that the company has incurred (TCC, article 553).

A voluntary insurance system for the damage incurred by the company through the fault of board members while performing their duties was introduced by the TCC.

In the case of public companies, if the damage is insured at a price exceeding 25 per cent of the company's capital and the company is secured, this must be announced in the bulletin of the Capital Markets Board; and if the company's shares are listed on a stock exchange, it must also be announced in the stock exchange's bulletin. This insurance will be taken into account when assessing compliance with the principles of corporate governance (TCC, article 361).

With regard to the board members' civil and criminal liabilities, the new TCC specifically regulates civil and criminal liabilities (TCC, article 553 and 562). If the board members do not comply with the obligations set forth under the law or articles of association, they will be subject to civil and criminal liability.

Law stated - 31 March 2022

Care and prudence

Do the duties of directors include a care or prudence element?

According to article 369 of the TCC, members of the board of directors and third parties in charge of management are obliged to act with care and in compliance with the rules of good faith.

Law stated - 31 March 2022

Board member duties

To what extent do the duties of individual members of the board differ?

According to the TCC, it is possible for a legal person to become a member of the board of directors (TCC, article 359/2).

The TCC requires that a chair and at least one vice-chair be appointed among the board members (TCC, article 366). The board members do not have any special duties that should be performed individually, except for calling board meetings. In addition, under Turkish law, board members do not have specific duties individually assigned to them. However, by inserting a relevant provision in the articles of association or regulating an internal regulation, the board can always assign different duties to its members. Therefore, each board member can be held to be authorised and liable for different business transactions and may have different specific duties in that regard. If there is this distribution of duties, the duties and authorities of individual board members shall be disclosed in the activity report of the company (Corporate Governance Principles (CGP), article 4.2.2). If the duties are not assigned, management is performed by all board members (TCC, article 367).

Law stated - 31 March 2022

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

According to the TCC, the board of directors can transfer all the management rights of the company to one or more executive members, or to a third party, who will then act as the manager. However, at least one of the board members must be entitled to represent the company (TCC, article 370). In such an instance, the transferee would have the same responsibilities as the board of directors had prior to the transfer.

The Corporate Governance Principles stipulate that if there is a delegation of authority among board members, it should be specifically disclosed under the activity report of the company (CGP, article 4.2.2).

An addition was made to article 371 of the TCC, relating to the representative authority of companies, by the Omnibus Law No. 6552 adopted on 10 September 2014. Pursuant to this addition, the board of directors may appoint non-representative members of the board of directors or persons bound to the company by a labour contract as commercial representatives with limited authority or as other commercial assistants. This act of the board of directors, and the powers and duties of the appointed persons, shall be explicitly reflected in the internal directive issued in accordance with article 367 of the TCC and this internal directive shall be registered and announced with the trade registry. This amendment has enabled companies to impose different kinds of limitations or categorisations for their representative authorities.

Law stated - 31 March 2022

Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Non-executive and independent membership structures are regulated mainly under the Corporate Governance Principles and in certain Capital Markets Communiqués. Pursuant to the Corporate Governance Principles, the majority of the board members should consist of non-executive members (CGP, article 4.3.2) and some of these members should be independent board members (CGP, article 4.3.3). Because all members of the audit committee must be independent board members (CGP, article 4.5.3), it only comprises of non-executive members.

Additionally, the TCC also regulates the non-executive board members. Accordingly, members of the board may solely have non-executive powers provided that it is explicitly stated in the internal guidelines.

According to the Corporate Governance Principles, the board must include the following:

- the majority of the board must consist of non-executive members;
- the total number of independent members shall not be less than one-third of the total number of members;
- in any case, the number of independent members cannot be fewer than two; and
- a person who has been acting as a board member for more than six years within the past 10 years cannot be appointed as an independent board member (CGP, article 4.3).

Pursuant to the Corporate Governance Principles, an individual not having any administrative duties within the company is defined as a non-executive member.

As per the definition of the independent member, the Corporate Governance Principles set forth specific requirements to be met by independent members (CGP, article 4.3.6).

Under Turkish law, non-executive or independent directors do not have different duties from the executive directors. As a general principle, all members of the board are jointly and severally liable to the company, its shareholders and its creditors for damage that occurs due to their fault and owing to the non-fulfilment of the duties stated in the law or the articles of association (TCC, article 553).

Law stated - 31 March 2022

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The TCC allows a board of directors to consist of just one member (a real person or a legal entity) assigned by the articles of association or elected by the general assembly. The requirement that a member of the board of directors must be a shareholder in joint-stock companies has been abolished. If a legal entity is elected as a member of the board of directors, a real person should be determined by the legal entity on its behalf and such a decision needs to be registered and announced with the trade registry (TCC, article 359).

In both the TCC and the Capital Markets Law, there is no ceiling stipulated for the size of the board of directors. For listed companies, it is stated that the number of members of the board of directors – provided that the number is not less than five in any case – shall be determined to ensure that the board members conduct productive and constructive activities, make rapid and rational decisions, and efficiently organise the formation and activities of the committees (CGP, article 4.3.1). At least one of the board members shall be a woman (CGP, article 4.3.10).

In limited liability companies, the management and representation of the company may be left to a shareholder or non-shareholder that has been elected as the manager. However, at least one shareholder must possess the right to manage and represent the company. If there is more than one manager of the company, one of these managers must be elected as the chair of the management board by the general assembly.

Article 363 of the TCC stipulates that in the case of a vacancy on the board, the board of directors shall temporarily choose someone who satisfies the legal conditions and present it for the approval of the general assembly. The member chosen this way carries out their duties until the general assembly meeting and, if he or she is approved, he or she continues working until the end of the mandate of their predecessor.

In listed companies, if there is a vacancy on the board and it is not possible to satisfy the board meeting quorum, or it is not possible for the shareholders to convene a meeting to appoint a new board member within 30 days of the vacancy, the Capital Markets Board is entitled to appoint an independent board member (Capital Markets Law, article 128/1(k)).

Law stated - 31 March 2022

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

Under Turkish law, it is possible for the same board member to hold both the titles of chair and chief executive. According to the Corporate Governance Principles, the duties and authorities of the CEO and the chair of the board must be specifically distinguished from each other and stipulated under the articles of association. In addition, if it is decided that the CEO and the chair of the board are one person instead of two separate persons, then this decision and the reasons for it must be included in the annual report (CGP, articles 4.2.5 and 4.2.6).

Law stated - 31 March 2022

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

According to article 25 of the Capital Markets Board Communiqué, serial X, No. 22 regarding the standards of independent audits in capital markets (as updated by Communiqué serial X, No. 28, published on the Official Gazette on 28 June 2013), it is required that, within the framework of the Corporate Governance Principles, the board appoints an audit committee constituting a minimum of two members of the board. In enterprises where it is not obligatory to establish an audit committee, the duties of the audit committee are fulfilled by the board of directors.

According to the Corporate Governance Principles, the following committees must be formed:

- an audit committee;
- a corporate governance committee;

- an early detection of risk committee;
- a nomination committee; and
- a price committee.

Banks are only required to form corporate governance committees.

If a nomination committee and a price committee cannot be formed, then the corporate governance committee will supersede the duties of these committees (CGP, article 4.5.1).

Pursuant to the TCC, listed companies are under the obligation to constitute a committee that will be in charge of detecting and managing risks in advance. Risk committees submit evaluation reports to their company's board every two months and inform the board of the problems and solutions. These reports are also sent to the company's auditor (TCC, article 378). If their auditors deem it necessary, non-listed companies must also form risk committees.

Law stated - 31 March 2022

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The frequency of board meetings is regulated under article 390 of the TCC. Accordingly, the law does not require a minimum number of board meetings per year; therefore boards convene meetings when it is deemed necessary unless their company's articles of association require a minimum number of board meetings.

The Corporate Governance Principles state that a board of directors must convene meetings on a regular basis to fulfil their duties effectively (CGP, article 4.4.1).

Law stated - 31 March 2022

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

The structure, members of the board, their term of office and remuneration of the members are determined in general assembly meetings, and the minutes of general assembly meetings are registered with the relevant trade registry and published in the Turkish Trade Registry Gazette. In addition to the TCC, capital stock companies subject to auditing will be required to set up and maintain a company website within three months following the incorporation of the company and must allocate part of the website to the announcements legally required to be made (TCC, article 1524).

Law stated - 31 March 2022

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

In listed companies, the board of directors shall issue its annual report in a detailed way that should include, among other things:

- information on the duties of the members of the board of directors and executives conducted in the company and declarations on the independence of the members of the board of directors;
- information on the members of the committees formed within the structure of the board of directors, the meeting frequency of these committees and the evaluation of the board of directors regarding the working principles, including the conducted activities and the efficiency of the committees; and
- the number of meetings of the board of directors in a year and the attendance of the members of the board of directors to these meetings.

The annual report shall be published so that the public can access this complete and accurate information with respect to the activities of the corporation. Additionally, the nomination committee that is mandatory in listed companies regularly evaluates the structure and productivity of the board of directors and submits its advice regarding possible amendments in this respect to the board of directors.

In non-listed companies, a similar annual activity report and affiliation report (necessary for group companies) are also annually prepared by the board, including information on management, activities of the company and related important developments, financial status and risk assessment, and submitted to the general assembly meeting.

The shareholders discuss the activities of the board and decide on the release of the board members' liabilities in the annual general meeting. This is one of the non-transferable duties of the general assembly (TCC, article 408).

Law stated - 31 March 2022

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

Remuneration

According to the Turkish Commercial Code (TCC), provided that the amount is determined by the articles of association or the general assembly resolution, directors can be paid a remuneration (TCC, article 394).

The Corporate Governance Principles (CGP) stipulate that the remuneration of independent board members cannot be determined by taking into account the profit share, share options or the company's performance-related payment schedules (CGP, article 4.6.3). Pursuant to the same principle, the remuneration to be paid to independent board members shall be satisfactory so as to protect their independence (CGP, article 4.6.4). The remuneration to be paid to board members and all managers having administrative responsibilities shall be made available to the public in the annual activity report (CGP, article 4.6.6).

Length

There is no requirement as to the length of the service contract of the board members under the TCC. According to the TCC, board members can be appointed for a maximum term of three years, unless otherwise specified in the articles of association of the companies, board members may be re-elected (TCC, article 362). The Corporate Governance Principles also set forth that the term for independent members is three years and that they may be re-elected (CGP, article 4.3.5).

Transactions between the company and board members

In strengthening the arm's-length principle, the TCC prohibits a joint-stock company from financing its shareholders and directors, aiming to preserve the company assets and protect the creditors of the joint-stock company. In this regard, a board member cannot conduct any transaction with the company in his or her or any other person's name without permission from the general assembly and the company can claim such transactions as null and void. The counterparty cannot make such a claim (TCC, article 395).

In addition, in the case of a board member who is not a shareholder, his or her relatives, including spouses, descendants, lineal ancestors and relatives by blood or marriage to (and including) the third degree, cannot be indebted in cash to the company. The prohibition provided for board members includes guarantees as well. In other words, the company cannot provide surety, guarantee or security for the persons listed above, undertake their liability or take over their debts. Otherwise, the creditors of the company are entitled to start execution proceedings directly against these people for the debt of the company in the amount for which the company is liable (TCC, articles 393 and 395).

If the related-party transaction principle is violated, a judicial fine will be imposed on the shareholder or board members (TCC, article 562).

In addition, shareholders cannot become indebted to the company unless the debt arises from their due capital commitments and the company's profit, together with the legal reserves, do not meet the company's losses for the previous years (TCC, article 358). In limited liability companies, the same principles only apply to partners of the company (TCC, article 644).

In addition, according to article 1.3.7 of the Corporate Governance Principles, majority shareholders, members of the board, managers with administrative responsibilities and their relatives (spouse, direct offspring or relatives up to the second degree by blood or by marriage) are obliged to provide information in the general assembly about the transactions that may conflict with the interests of the company or its affiliates. Furthermore, according to article 1.3.10 of the previous Corporate Governance Principles, the approval of a general assembly meeting was required for significant transactions (namely transferring or renting out all or a significant portion of company assets, establishing rights in rem on all or significant amounts of company assets, granting concessions to third parties or changing the scope and subject of already provided concessions, acquiring or renting significant amount of assets, and delisting from Borsa İstanbul). If the decision of a general assembly meeting is not required by the relevant board for the execution of such transactions, affirmative votes from the majority of independent directors are required. If this is not achieved, the transaction is submitted to a general assembly meeting for approval. In such cases, the reasoning of the independent directors must be disclosed to the public and the Capital Markets Board and explained to shareholders at a general meeting.

Article 1.3.10 of the current Corporate Governance Principles exemplifies 'significant transactions' as transferring all or a substantial part of a company's assets or establishing real rights on them or leasing them, taking over or leasing a significant asset, granting privileges or changing the scope or the subject of the available privileges, and delisting.

If the above transactions fall under the category of related-party transactions, those parties shall not vote in the relevant general assembly meeting. Accordingly, there is no minimum meeting quorum requirement for the approval of the above transactions (Capital Markets Law, article 29/6).

As per article 21(1) of the Capital Markets Law, in the case of transactions with another enterprise or individual with whom there is a direct or indirect management, administrative, supervisory or ownership relationship, publicly held joint-stock companies, collective investment undertakings and their subsidiaries shall not damage their profits or assets by engaging in deceitful transactions by applying a price, fee or value clearly inconsistent with similar transactions with unrelated third parties, market practices or principles of commercial prudence and honesty.

Compensatory arrangements between the company and board members

Under the TCC, the board members are under an obligation to act with care and in compliance with the rules of good faith (TCC, article 369). If they fail to do so and the company incurs damages as a result, shareholders and creditors of the company may initiate actions against the board members and request indemnification (TCC, article 553). In this context, there is no regulation regarding compensatory arrangements between the company and board members, but it is possible to lay down a clause in the agreement between the company and the board member stipulating how these damages shall be compensated. Accordingly, damages that were incurred owing to the fault of board members can be compensated by the relevant board members.

Law stated - 31 March 2022

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

According to the TCC, the board shall review the remuneration of the key executives and include the information in the activity report of the board of directors. However, there is no regulation that affects the remuneration of senior managers (TCC, article 516/2).

According to the Corporate Governance Principles, remuneration of the senior management must be prepared in a written form and submitted for the approval of the shareholders. The remuneration paid to the board members and the key executives who have administrative duties, and all other benefits to be provided to them, are disclosed to the public through the activity reports. It is essential to disclose the remuneration for each of them. In the event that a specific disclosure is not made, at the very least a separation must be made between the key executives and board members. The remuneration policies of the company must be published on the company's website (CGP, article 4.6.2). There is no regulation regarding compensatory arrangements between the company and senior managers. However, similarly to the board members, the managers are under an obligation to act with care, and according to article 553 of the TCC, they can be held liable if they fail to do so. In this context, it is possible to lay down a clause in the agreement between the company and the manager stipulating that the damages incurred owing to the fault of the manager shall be compensated by the relevant manager.

Law stated - 31 March 2022

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

According to the Corporate Governance Principles, a written remuneration policy should be submitted to the shareholders during a general assembly meeting and discussed as a separate agenda article to give them the opportunity to air their views and suggestions in relation to the remuneration policy that applies to members of the board of directors and key executives (ie, senior management). The remuneration policies of public companies are announced on their websites (CGP, article 4.6.2).

Law stated - 31 March 2022

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

A voluntary insurance system for the damage incurred by the company through the fault of board members while performing their duties has been introduced by the Turkish Commercial Code (TCC). If the damage is insured at a price exceeding 25 per cent of the company capital and the company is secured, in the case of public companies, this matter shall be announced in the bulletin of the Capital Markets Board, and if the shares are listed on a stock exchange this shall also be announced in the stock exchange bulletin, and this matter shall be taken into account in the assessment of compliance with the principles of corporate governance (TCC, article 361).

Law stated - 31 March 2022

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

There is no regulation preventing a company from indemnifying a director or officer against liabilities, but it should be noted that these indemnification claims are not common.

Law stated - 31 March 2022

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

There are no mandatory provisions as to the advancement of expenses to directors and officers, and there is no practice regarding this either. The companies may prefer to take these precautionary measures; however, these precautionary measures may not be included in the articles of association of the companies. Even so, the company may execute an internal protocol with the members of the board of directors where they agree on these measures.

For the damage incurred by the company through the fault of board members while performing their duties, the companies may voluntarily execute insurance policies.

Law stated - 31 March 2022

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

As stated under the Delegation of Board Responsibilities, the liabilities of board members can be restricted by delegating their duties to other board members or managers. This limitation can be realised through issuing an internal directive in accordance with article 367 of the TCC, and this internal directive must be registered and announced with the trade registry. However, the board members have a continuing duty to observe the acts and actions of the third

parties to whom liabilities are delegated. The restriction on authority of representation is not effective against third parties in good faith; however, the restrictions that are registered and announced in relation to limiting the authority of representation solely to the business of the headquarters or to the exercising thereof jointly are valid. In addition, they still have the duty to prudently and diligently delegate the responsibilities to persons who are qualified enough and supervise them (TCC, article 371).

As per the addition to article 371 of the TCC, explained under the Delegation of Board Responsibilities, limiting the liability of the board members or managers is only effective in the company and does not relieve them from responsibility against third persons. In this regard, the board of directors shall be liable jointly and severally towards the company or third persons for any damage caused by the commercial representatives with limited authority or other commercial assistants appointed pursuant to an internal directive.

Law stated - 31 March 2022

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

The articles of association of a company and any amendments thereto must be registered in the relevant trade registry and announced in the Turkish Trade Registry Gazette as of its incorporation. Further, the articles of association of a company that is obliged to launch a website are also announced on the company website. According to article 2.2.2 of the Corporate Governance Principles, articles of association must also be published on the company's website.

Law stated - 31 March 2022

Company information

What information must companies publicly disclose? How often must disclosure be made?

In accordance with the Turkish Commercial Code (TCC), each company subject to independent audit is obliged to maintain a company website within three months following the incorporation and must allocate a specific part of the website to making the announcements legally required (TCC, article 1524).

Pursuant to the relevant provision of the TCC, companies that are subject to the independent audit must be determined by the Council of Ministers. The Council of Ministers issued this decision on 26 May 2018 (the Decision Regarding the Determination of the Companies to be Subject to an Independent Audit (the Decision)).

In this Decision, the list of the companies subject to independent auditing are provided. However, even if the company is not listed in the Decision specifically, pursuant to article 3 of the Decision, companies that fulfil at least two of the three conditions given in article 3, together with their affiliates, subsidiaries or by themselves for two consecutive account periods, shall be subject to the independent audit. These conditions are:

- companies with aggregate assets amounting to 35 million Turkish lira or more;
- companies with annual net sale revenues amounting to 70 million Turkish lira or more; and
- companies with 175 or more employees.

In addition to the above, Law No. 6335 amending the TCC has narrowed the scope of the announcements to be made by the companies on their websites and has regulated that the announcements legally required to be made must be announced on the website, as well as having introduced certain time periods for publishing the commercial papers and

documents that are required to be published on the website of a company.

Companies that do not launch a website within three months of the date the TCC entered into force will be subject to a judicial fine for between 100 and 300 days, and authorised bodies of companies that do not allocate part of the website to public information within the same period of time will be subject to a judicial fine for up to 100 days (TCC, article 562/12).

Law stated - 31 March 2022

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

As per the Turkish Commercial Code (TCC), shareholders may appoint directors provided that it is explicitly stipulated under the company's articles of association. This ability can be granted to specific share groups, shareholders of a specific nature (eg, the founding family shareholders) or minority shareholders. Unless there is a just cause, the nominated director must be appointed as a member of the board of directors. In listed companies, the nominated directors of a corporation must be mentioned in the mandatory information form required to be published by proxy solicitors.

Law stated - 31 March 2022

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

The shareholders exercise their rights during the general assembly meetings; companies engage with shareholders mainly within the scope of the general assembly.

Under article 408 of the TCC, the management of a company is generally conducted by the board of directors, but the general assembly is also an essential organ of the company and has fundamental duties, including:

- the amendment of articles of association;
- the appointment and removal of board members;
- the appointment of an auditor; and
- the passing of decisions concerning:
  - financial tables;
  - the preparation of the annual report of the board of directors;
  - determining annual income, profit shares and revenues; and
  - the inclusion of reserve funds to the capital and profit to be distributed to the shareholders.

An ordinary general assembly shall be convened within three months of the end of each activity period. An extraordinary general assembly can be convened whenever it is required. The board of directors invites the shareholders to general assemblies. This invitation shall be made in the form provided in the articles of association.

The invitation to the general assembly shall also be published in the Turkish Trade Registry Gazette. For non-listed companies, the invitation shall be issued at least two weeks prior to the date of the general assembly meeting

(excluding the dates of announcement and meeting). All shareholders whose names appear on the attendance list prepared by the board of directors have the right to attend the meeting.

The Ministry of Trade issued the Regulation on General Assembly Meetings of Joint Stock Companies held electronically, regarding the procedures of online general assembly meetings, published in Official Gazette No. 28395 of 28 August 2012. The companies must integrate the sample article stating that general assembly meetings can be held electronically into the company's articles of association. This article can be found in the Regulation published by the Ministry of Trade. It is not possible to amend the article while adopting it, so it must be integrated as is.

Electronic meetings are mandatory for publicly listed companies.

Shareholders who state in the Electronic General Assembly System that they will attend the meeting electronically may participate in a meeting that is held electronically.

Law stated - 31 March 2022

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

Pursuant to article 11-h of the Regulation on the Minimum Contents of the Annual Activity Reports of Companies issued by the Ministry of Trade, the annual activity report should include the information on expenses for donation, philanthropy and social responsibility projects. Within this context, if the company held any social responsibility projects, it is required to disclose the information on expenses in the annual activity report.

Further, article 2.3.2-i of the Corporate Governance Principles (CGP) also stipulates the general content of the annual report by explicitly stating each clause that shall be in the report. Accordingly, in the listed companies, the board of directors shall issue its annual report in a detailed way that should include, among other things: 'Information on the corporate social responsibility projects conducted with respect to the corporate activities result in the social rights and technical training of employees and other social and environmental consequences'.

In addition, the listed companies are obliged to be aware of the rules of social responsibility and comply with the established regulations with respect to the environment, consumers, public health and rules of ethics. The relevant provision sets voluntary requirements for companies to support and to respect the human rights that are considered valid in accordance with international criteria.

Law stated - 31 March 2022

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

Pursuant to article 7/1-b of the Regulation on the Minimum Contents of the Annual Activity Reports of Companies issued by the Ministry of Trade, the financial rights provided to the board members and the key executives should be stated in the annual activity report.

On the other hand, pursuant to the Corporate Governance Principles, the general principles of remuneration of the board members and the key executives who have administrative duties must be prepared in a written form. In listed companies, the written remuneration policy should be submitted to the shareholders during the general assembly meetings and discussed as a separate agenda article to give them the opportunity to air their views and suggestions in relation to the remuneration policy that applies to members of the board of directors and key executives. The

remuneration policies of public companies are announced on their websites (CGP, article 4.6.2).

Law stated - 31 March 2022

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

The law does not mandate any specific requirement to disclose gender pay gaps from a corporate governance perspective. However, the law mandates not to discriminate between employees.

Law stated - 31 March 2022

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

Amendment to the Turkish Commercial Code, article 543

An amendment is made in article 543 of the Turkish Commercial Code (TCC) to provide a faster liquidation process.

Once a company enters into liquidation, three announcements are made at one-week intervals at the Turkish Trade Registry Gazette to inform the creditors that the company is entered into liquidation and will be dissolved, and to provide time for the creditors to submit their claims.

Once these announcements are made, and the debts (if any) are paid, as of the third announcement there was a waiting period of six months to allow the distribution of the company's assets. This period has been amended to three months. Therefore, as of the third announcement, the liquidator will be able to distribute all the assets in three months and dissolve the company.

Ultimate beneficial owner requirement

To prevent tax evasion and ensure financial transparency, the Turkish Revenue Administration under the Ministry of Treasury and Finance issued General Communiqué No. 529 on Tax Procedure Law (the Communiqué), which imposes an obligation to make an ultimate beneficial ownership declaration on a wide range of entities.

The Communiqué represents the ultimate beneficial ownership declaration as an obligation to be performed regularly. In this regard, by the effective date, obliged parties, including corporate taxpayers, are required to submit their ultimate beneficial ownership information annexed to their provisional tax returns and annual corporate tax returns. The obliged parties, except for corporate taxpayers, should declare their ultimate beneficial ownership status by 31 August each year.

All corporate taxpayers and, therefore, all companies are subject to the obligation to declare ultimate beneficial ownership status. This obligation also applies to the branches.

The Communiqué defines the ultimate beneficial owner as a real person or persons who ultimately has or have control or the ultimate influence over a legal entity.

For companies, the ultimate beneficial owner implies:

- real persons holding more than 25 per cent of the shares of that company;
- if ultimate beneficial ownership of such person is suspicious or in the event that there is no real person shareholder with such share, real persons having the ultimate control of the company (in group companies, shareholders of the holding company may be evaluated within this scope); and
- if the ultimate beneficial owner happens not to be determined as above, the person or persons with the highest executive power of the company.

The notification of ultimate beneficial ownership consists of the ultimate beneficial owner's name, surname, citizenship, identity number, address, telephone, fax and email information and, if any, explanations regarding why that person is declared as the ultimate beneficial owner. Notifications should be made via the Internet Tax Office by filling in the 'declaration form for ultimate beneficial owner'. Submission of physical declaration forms (either by hand or by post) will not be valid. Forms may be sent in the relevant period through certified public accountants with a brokerage and liability agreement concluded or through sworn-in certified public accountants with an income or corporate tax return certification agreement (full certification agreement).

Sanctions will be imposed on those who declare their ultimate beneficial owner in an incomplete or misleading manner or who fail to declare at all, according to the relevant provisions of the Tax Procedure Law No. 213 .

The necessity to convert the additional workplaces into branches or close them down

Before the TCC came into effect, the 'additional workplace' practice was present, and accordingly, companies used to register their warehouses or offices, which are outside the headquarters, as additional workplaces before the trade registry. However, with the new TCC coming into effect, the 'additional workplace' practice was replaced by the 'branch' organisation.

Although there was no longer a legislative basis for the additional workplace practice, some companies established additional workplaces without any registration by simply making a notification to their respective tax authorities. Therefore, today, there are active additional workplaces that were either established by registration before the new TCC or without any registration in the new TCC regime.

The trade registry directorates sent notifications to the companies having additional workplaces registered before the new TCC and requested from companies either to re-register the additional workplaces as branches or to close them down, by providing some criteria regarding whether these additional workplaces are active or not and whether they carry out any sort of production, sales, industrial or commercial activities.

The trade registry granted companies having additional workplaces to complete these actions by 28 February 2022, which deadline has now expired. However, there are additional workplaces established without any registration after the new TCC was in effect. Although it is not possible for these additional workplaces to be detected by the trade registries at the moment, in the case of any inspection, the additional workplaces will also have to be organised as branches or be closed down. For this reason, even if no notification has been sent by the trade registries, it would also be appropriate for the additional workplaces that were established after the new TCC and were not registered before the trade registry to be converted into branches or closed down, by evaluating whether these additional workplaces are active or not and whether they carry out any sort of production, sales, industrial or commercial activities.

Necessity for Turkish shareholders and authorised signatories to approve their registration or appointment through their e-government account

All the registration applications, including establishment, are first made through an online trade registry system called MERSIS. The shareholders or the authorised signatories are appointed through this online platform first and then the required documents are submitted to the trade registry by hand.

As a very recent practice, if the real person to be registered as a shareholder or appointed as an authorised signatory is a Turkish citizen, then after the online application is completed, the said real person will enter into their e-government account and approve the registration or appointment even if they were appointed previously.

This is a very recent practice and it is not possible to know how the system will work, but since this is an additional step to be completed before registration, it is unlikely that such practice will prolong the registration process.

Importance of directors' & officers' liability insurance

The need for directors' & officers' liability insurance has emerged, mainly to ensure that losses are covered, and board members or managers can act more safely and comfortably while performing duties that require great responsibility. Directors & officers liability insurance, as a kind of liability insurance, ensures the insurer's coverage of the compensation claims originating from unintentional mistakes and omissions of the company board members and managers while performing their duties arising from the law and company's articles of association.

In addition to the liabilities under the TCC, civil, administrative and criminal responsibilities and additional liabilities for board members and managers are provided in special legislations such as tax, employment, enforcement, bankruptcy, and criminal laws. This already comprehensive responsibility regime is planned to be expanded in the future. In this regard, the legislature considers new regulations as follows:

- As board membership in publicly traded joint-stock companies requires special experience and knowledge, board members without such qualifications will have to receive training and certification from the institutions authorised by the competent authority, namely, the Capital Markets Board (CMB).
- However, this training will not be required when board members with high-level qualifications of knowledge and experience or foreign professionals undertake board membership duties and responsibilities.
- The Corporate Governance Communiqué by the CMB may set out the necessary qualifications for board members of publicly traded joint-stock companies.
- Thus, the independent candidate for the board of directors should either have the qualifications described in the legislation or meet the training and certification requirements.
- Consequently, training and certification requirements may be set as an optional requirements rather than being mandatory for independent board members and it may eventually be stipulated as a mandatory requirement that a certain proportion of board members should meet the training and certification requirements.

Although the regulation is still in draft stage, it indicates the fact that the scope of liabilities and requirements for joint-stock companies' board members and managers will be further expanded. Therefore, in line with corporate governance principles, companies will be required to employ board members with high-level qualifications of knowledge and experience. This will subsequently make directors' & officers' liability insurance, which is currently not mandatory but optional, even more important.

Law stated - 31 March 2022

Jurisdictions

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