Corporate Governance and Directors' Duties in Turkey: Overview

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A Q&A guide to corporate governance law in Turkey.

The Q&A gives a high-level overview of corporate governance trends; the main forms of corporate entity used; the corporate governance legal framework; corporate social responsibility and reporting; board composition and restrictions; directors' remuneration; management rules and authority; directors' duties and liabilities; transactions with directors and conflicts; disclosure of information; shareholders' rights, company meetings, and minority shareholder action; and internal controls, accounts and audits.

Corporate Governance Trends

1. What are the main recent corporate governance trends and reform proposals in your jurisdiction?

Amendments to the Commercial Code

Following amendments to Article 40 of the Turkish Commercial Code (CC), the Ministry of Trade amended its Communiqué on Execution of Articles of Association before trade registry directorates.

The communiqué stated that the signatures of merchants who are real persons and the authorised signatories of merchants that are legal entities will be obtained electronically from the databases of public institutions and organisations and recorded in the *Central Registry Number System (MERS#S)* by the trade registry directorate during the registration process.

If there is no record of a signature in the relevant database or the relevant records are not obtained, a specimen signature can be physically provided before a notary public, except the registration process of limited liability companies.

A fourth paragraph was added to Article 64 of the CC authorising the Ministry of Trade to require share ledgers, board of director's resolution books and general assembly resolution books to be kept electronically.

No further announcement has been made yet by the Ministry of Trade regarding the procedure and the principles to be followed regarding electronic company records.

Bearer Share Certificates

Under the Law on Prevention of Distribution and Financing of Weapons of Mass Destruction No. 7262 (published in the *Official Gazette* on 31 December 2020), bearer shares and bearer shareholders in joint stock companies must be notified and recorded to the Central Registry Agency (*Merkezi Kay#t Kurulu#u*). This law intends to enhance transparency by keeping records of the information about bearer shares and their shareholders and the transfer process at the Central Registry Agency.

Companies that issue bearer share certificates must notify the Central Registry Agency of the owners of such certificates and their shares before they are distributed to the relevant shareholders. This means that owners of bearer share certificates can exercise their rights arising from their shareholding against the company, if:

- They have proven their possession of such certificates.
- The Central Registry Agency has been notified of this.

The transferring of bearer share certificates is only valid if the transferee notifies the Central Registry Agency of the transfer. The date of notification to the Central Registry Agency will be taken as the basis for claiming the rights arising from holding bearer shares (Article 489, CC).

In addition to suspending shareholding rights and invalidating share transfers using bearer share certificates, administrative fines will be imposed on those who fail to fulfil application and notification obligations.

Loss of Share Capital

The Communiqué Amending the Communiqué on the Procedures and Principles Regarding Implementation of Article 376 of the CC was published in the *Official Gazette* on 26 December 2020 and entered into force on the same date.

Article 3 of this communiqué stipulates that if a company has lost at least two-thirds of its share capital and legal reserves, its share capital can be decreased by up to the minimum share capital amount, if at least half of the sum of the share capital and legal reserves are preserved in equity.

This communiqué also enables companies that fall within the scope of Article 376 of the CC to increase and decrease their share capital in the same general assembly meeting (GaM) without being bound by any requirements, if the following conditions are fulfilled:

- The increased amount is fully paid.
- At least half of the sum of the share capital to be registered and legal reserves are preserved in equity during the process.

Joint-Stock Company GaMs

The obligation to prepare the attendance list was abolished for GaMs of joint-stock companies with single shareholders (amendments made to the Regulation on the Procedures and Principles of the GaMs of Joint Stock Companies and the Ministry Representatives to be Present at These Meetings).

In addition, the requirement for the attendance of ministry representative at GaMs of joint-stock companies with single shareholders was also abolished, except where establishing or amending articles of association (articles) are subject to the ministry's permission (for example, banks, financial leasing companies, and so on).

MERSIS

For all corporate governance issues that are subject to registration before the trade registry directorates (including establishment), online application on the Central Registration System (*Merkezi Sicil Kay#t Sistemi*) (MERSIS) is a mandatory step before submitting the hard copy documents to the competent trade registry directorate by hand.

One of the aims of introducing MERSIS was to expedite the registration process, but MERSIS is now considered as an additional step in the registration process (as the documents still must be submitted in hard copies).

The shareholders or the authorised signatories are appointed through the online platform first and then the required documents are submitted to the trade registry by hand.

If a natural person who is a Turkish citizen is being registered as a shareholder or appointed as an authorised signatory of a business, they must approve the registration or appointment in the online system even if they were appointed previously.

Amended Liquidation Process

An amendment to Article 543 of the CC aims 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, the waiting period of six months to allow the distribution of the company’s assets has been reduced to three months. This means that the liquidator can distribute all the assets in three months after the last announcement 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 (UBO Communiqué), which imposes an obligation to make an ultimate beneficial ownership (UBO) declaration on a wide range of entities.

The UBO Communiqué represents the UBO declaration as an obligation to be performed regularly. Relevant parties, including corporate taxpayers, are required to submit their UBO information annexed to their provisional and annual corporate tax returns by the effective date.The effective date for all taxpayers except corporate taxpayers is 31 August. All companies are subject to the obligation to declare UBO status. This obligation also applies to branches.

The UBO Communiqué defines the UBO as a natural person or persons who ultimately have control or the ultimate influence over a legal entity.

For companies, the UBO is defined as a real person or persons holding more than 25% of the shares of that company.

If the UBO is uncertain or cannot be determined or there is no natural person shareholder with such a share, the UBO can be considered to be:

- Those having ultimate control of the company (such as shareholders of the holding company in group companies),
- Natural person or persons with the highest executive power in the company.

The UBO notification must include the person(s)':

- Name/identity.
- Citizenship.
- Identity number.
- Address, telephone, fax and email information.
- The reasons why that person is declared as the UBO.

Notifications must be made to 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) are not valid. Forms can 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 submit an incomplete or misleading UBO notification or who fail to declare at all, under the relevant provisions of the Tax Procedure Law No. 213.

Corporate Entities

2. What are the main forms of corporate entity used in your jurisdiction?

The main forms of corporate entity used in Turkey are the:

- Limited liability company (LLC).
- Joint-stock company (JSC).

The LLC and JSC are the preferred company forms in Turkey for both foreign and local entrepreneurs. The minimum capital requirement for a JSC is TRY50,000 while the capital requirement for establishing an LLC is TRY10,000.

As the CC is structured around JSCs and many provisions applicable to JSCs also apply to LLCs, the answers in this article relate to JSCs unless indicated.

Legal Framework

3. Outline the main corporate governance legislation and authorities that enforce it. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? List any such groups with significant influence in this area.

The main corporate legislation includes the:

- CC.
- Communiqué on Commercial Books of 19 December 2021 (28502).
- Regulation on the Procedures and Principles of GaMs of Joint Stock Companies and the Representatives of the Ministry Attending Such Meetings of 28 November 2012 (28481).
- Decision on the Determination of Companies Subject to Independent Audit of 26 March 2018 (2018/11597).
- Capital Markets Law of 6 December 2012 (6362), which entered into force on 30 December 2012.
- Capital Markets Communiqués, including the Corporate Governance Communiqué of 3 January 2014 (CG Communiqué) (*see Question 4*).

The Ministry of Trade is the main authority for the enforcement of the CC and its secondary legislation. Disputes arising from CC are mainly resolved before the commercial courts.

The Capital Markets Law and Capital Markets Communiqués 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 can impose administrative sanctions on companies or individuals for non-compliance.

The Turkish Industry and Business Association (*Türk Sanayicileri ve ## #nsanlar# Derne#i*) (TUSIAD), which is an independent, voluntary non-governmental organisation, has an important role in the formation and development of corporate governance principles. TUSIAD issued the first Corporate Governance Best Practice Code in Turkey in 2002.

4. Has your jurisdiction adopted a corporate governance code?

The CC regulates the main principles of corporate governance for both public and non-public companies, including establishment, board composition, audit, sanctions and so on.

Various sanctions are provided for by the CC for non-compliance with its provisions. The sanctions include both judicial fines and prison terms.

Amendments are made to the CC from time to time reflecting the needs of companies in the changing business environment, however there are currently no plans to reform the CC in the near future.

The CG Communiqué regulates in detail corporate governance principles applicable to public companies. Under the CG Communiqué, public companies with shares traded on the stock exchange are subject to its mandatory Corporate Governance Principles (CG Principles).

The CG Communiqué has three categories of implementation, depending on the average market value of the company and its shares. Category 1 companies must comply with all mandatory corporate governance rules while there are some exemptions for companies that fall into Category 2 and Category 3.

The main topics covered under the CG Principles are:

- Shareholders.
- Other stakeholders.
- Public disclosure.
- BoD.

Public companies must state whether they comply with corporate governance principles in their annual reports.

If public companies do not comply with the CG Communiqué, the Capital Markets Board can take enforcement action such as filing a lawsuit or seeking an interim injunction to determine and cancel unlawful transactions that are contrary to the principles.

See *Question 3*.

Corporate Social Responsibility and Reporting

5. Is it common for companies to report on social, environmental, and ethical issues? Highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.

There are no legal requirements for companies in relation to corporate social responsibility (CSR). However, many larger Turkish companies choose to take part in CSR projects and to co-operate with non-governmental organisations. In practice, reputable companies (especially large or publicly held companies) disclose their social responsibility projects on their website and through the media.

With the growing awareness of environmental, social and governance (ESG) issues globally, such as climate change and equity and diversity, investors are demanding higher standards for companies to operate in a sustainable environment . The authors expect further guidelines and legislation to be set for companies to establish and comply with CSR policies.

Board Composition and Restrictions

6. What is the management/board structure of a company?

Structure

The board structure for both JSCs and LLCs is one-tier.

Management

The management body of a JSC is a BoD containing at least one director. An LLC is managed by a board of managers consisting at least one manager.

Board Members

Natural persons and legal entities can be board members in both JSCs and LLCs. If a legal entity becomes a board member, a natural person representative to represent that legal entity must also be elected who can attend the board meetings and vote on behalf of the legal entity. For a JSC, the board members do not have to be the shareholders. However, in an LLC, at least one of the shareholders must be appointed as a manager to the company.

Employees' Representation

Employees do not have a right to be represented in the board.

Number of Directors or Members

The board must be composed of one or more members under the CC. The number must not be less than five for companies subject to the Corporate Governance Principles (*CG Principles, 4.3.1*).

7. Are there any general restrictions or requirements on the identity of directors?

General Restrictions

Board members must have full capacity with power of discernment.

Age

Board members must be older than 18 years.

Nationality

There are no nationality restrictions in the CC.

Corporate Directors

Legal entities appointed as a director must not be bankrupt.

Diversity

There are no gender restrictions in the CC. However, the CG Principles require companies to set a target ratio for female board members, which should not be less than 25%, and to create a company policy for achieving that target (Article 4.3.9, CG Principles).

8. Are non-executive, supervisory, or independent directors recognised or required?

Recognition

Although there is no provision in the CC, both non-executive directors and independent directors are recognised and required by the CG Principles.

Board Composition

Under the CG Principles, a majority of the board's members must consist of non-executive members. In addition, the number of independent board members cannot be fewer than one-third of the total number of BoD' members, and there must be at least two independent board members (Article 4.3.4, CG Principles).

Independence

The CG Principles set out specific requirements for independent members (Article 4.3.6, CG Principles). The independence requirements state that members must:

- Not work or be linked with any companies and corporations whose management is controlled by the member's company.
- Not be shareholders (of 5% or more of shares) or employees at an administrative level in the last five years in companies that the company purchases or sells goods or services to or from.
- Have the requisite professional education and knowledge to carry out the assigned duties.
- Not be full-time employees in any public authority, except as faculty members.

- Reside in Turkey (under the Income Tax Law).
- Be able to contribute to the operations of the company and must be impartial and able to independently take decisions according to strong ethical standards.
- Have time for the corporation business.
- Not have been on a BoD for more than six years within the last ten years.
- Not be an independent board member of more than three corporations of which the company or controlling shareholders of the company hold the control.
- Not be registered and announced as a legal entity representative board member.

9. Are the roles of individual board members restricted?

The roles of individual board members are not restricted. One person can be both the chairman and chief executive.

10. How are directors appointed and removed? Is shareholder approval required?

Appointment of Directors

In the company establishment process, directors are appointed under the articles of association (Article 359, CC). Afterwards, the general assembly appoints the directors. Both the articles of association and relevant GaM must be registered with the relevant Trade Registry and announced in the *Trade Registry Gazette*.

Removal of Directors

Directors can be dismissed at any time with a GaM if either of the following occurs:

- The dismissal is included in the meeting agenda.
- There is a justified reason for the dismissal, even it is not included in the agenda (Article 364, CC).

11. Are there any restrictions on a director's term of appointment?

In JSCs, directors can be appointed for a maximum three-year period. The same director can be appointed again, unless otherwise specified in articles (Article 362, CC). However, in LLCs, directors' terms of appointment are not subject to time restrictions.

12. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

Directors Employed by the Company

Under the CC, directors do not have to be employees of the company. However, directors can be employees, shareholders or third parties.

Shareholders' Inspection

Shareholders have a right to receive information and to investigate the company's annual reports and financial statements (Article 437, CC). Directors must make an annual activity report and financial report available in company's central and branch offices for shareholders' inspection at least 15 days before the annual GaM. Every shareholder has a right to receive a copy of the statement of income and balance sheet.

In addition, during the GaM, shareholders can request information from directors concerning company operations, or from auditors concerning audit results.

13. Are directors allowed or required to own shares in the company?

Directors can own shares in the company, but there is no requirement in this regard.

In an LLC, at least one of the shareholders must be appointed as manager with full authority to represent the company (*see Question 6*).

Directors' Remuneration

14. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

The articles of association or a GaM can grant financial rights to directors, such as:

- Attendance fees.
- Wages.
- Bounties.
- Premiums.
- Percentages of annual profits.

(Article 394, CC)

Determination of Directors' Remuneration

The general assembly of shareholders determines directors' remuneration, and this is one of the non-transferable duties of the general assembly.

Disclosure

The GaM deciding on the directors' remuneration does not need to be disclosed.

Shareholder Approval

Shareholder approval is required, as the general assembly of shareholders determines directors' remuneration, and this is one of the non-transferable duties of the general assembly.

General Issues and Trends

Directors' remuneration can vary depending on the sector in which the company is operating, the size and field of activity of the company.

Management Rules and Authority

15. How is a company's internal management regulated? For example, what is the length of notice and quorum required to convene board meetings, what are the quorum requirements at those meetings, and what voting requirements must be met to pass resolutions?

There is no specific provision on the length of the notice for board meetings. However, it is possible to regulate this in the articles of association.

Every board member can call the board for a meeting. Unless determined otherwise in the articles of association, the meeting quorum requires a majority of the members to be present and the votes of a majority of the members present are needed to pass a resolution.

In a JSC, if none of the board members requests a physical meeting, a decision by circulation among all board members can be taken (Article 390, CC). In this case, written approvals of at least majority of the members are needed.

16. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

Directors' Powers

The BoD is responsible for all company business and transactions required for realisation of the company's operations, save for the non-transferable powers granted to the general assembly by law or the articles of association.

Under the CC, the following issues are non-transferrable powers of the general assembly (Article 408, CC):

- Amending the articles of association.
- Releasing the auditors and the BoD from liability or holding them liable for any wrongdoing.
- Appointing the members of the BoD, determining their fees and term of duties, and releasing and replacing them.
- Appointing and releasing the auditor (except in certain legally-defined circumstances).
- Taking decisions regarding:
    - financial statements;
    - annual reports of the BoD;
    - savings from annual profits; or
    - the determination of the dividend and gain margin, including injections of the reserve fund into capital or profit to be distributed, and deciding on the use of the reserve fund.
- Dissolving the company (except in certain legally-defined circumstances).
- Sale of a substantial part of the company.

Restrictions

Under the CC, in principle, signature authority must be exercised jointly by any two of the board members, unless otherwise stated by the articles of association or the BoD consists of only one member. However, the BoD can transfer all the management rights of the company to one or more executive members, or to a third party as the manager. In such a case the company regulates an internal directive but this internal directive does not need to be registered and announced by the trade registry.

Apart from the management rights, the BoD can transfer its representation authority to one or more executive members or a third party as the manager. In principle, a restriction on a director's power of representation has no effect against third parties acting on that representation in good faith, unless:

- The power of representation is restricted to the affairs of the company headquarters or branch or is restricted to joint signatures of members of the BoD.
- This restriction is duly registered and published.

(Article 371, CC.)

In addition, the BoD can appoint non-representative members of the BoD or persons bound to the company by a labour contract, as commercial representatives with limited authority or as other commercial assistants. This must be explicitly reflected in an internal directive issued in accordance with Article 367; however, this time the internal directive must be registered and announced.

17. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

Although there is no requirement to do so, it is possible for BoD to delegate responsibility for specific issues under the CC (*see Question 16*).

Directors' Duties and Liabilities

18. What is the scope of a director's general duties and liability to the company, shareholders and third parties?

The principal duties of directors are:

- To act prudently and diligently when conducting business and performing their duties and the business of the company.
- To monitor and supervise the management and the business of the company to ensure that it complies with the principles of good faith and the interests of the company and its shareholders.
- To keep confidential information obtained during and after the term of duty.
- To refrain from attending board meetings regarding their own interests or the interests of certain close relatives.
- Not to engage in transactions with the company unless authorised by the GaM, which can be for a maximum period of five years in relation to the repurchase of shares.

In general, for a director to be personally liable, the following conditions must be met:

- The director must have:
    - breached their duties under the legislation or the articles of association;
    - acted with fault (including negligence).
- The company, shareholders or creditors must have suffered a loss/damage as a result of the breach,
- There must be a causal link between the loss/damage and the director's breaches.

(Article 553, CC.)

Directors who have assigned their duties (to the extent legally possible) arising from the law or the articles of association do not bear any liability for the acts and decisions of the assignee director (unless it is established that they failed to show reasonable care in the selection of the assignee officers).

In relation to directors' negligence, the required standard of care is that given by a prudent director, who acts cautiously and considering the interests of the company in good faith.

A judicial fine can be imposed for a breach of duty under the CC. In certain cases, a prison term can be imposed on the director or they must indemnify the company against the losses that resulted from their acts.

19. Briefly outline the regulatory framework for theft, fraud, and bribery that can apply to directors.

There is no umbrella legislation regulating white-collar crimes. However, the general regulations relating to white-collar crimes are mainly found in the Criminal Code.

Under the Turkish Constitution and the Criminal Code, criminal liability is personal and legal entities cannot be sentenced to criminal sanctions (unlike individuals). Therefore, directors who are involved in white-collar crimes such as theft, fraud and bribery can be held individually responsible under the relevant provisions of the Criminal Code. However, if the crime is

committed for the benefit of the legal entity, the entity may be subject to some measures such as the cancellation of permission to operate or confiscation of profits received due to the crime.

20. Briefly outline the potential liability for directors under securities laws.

In securitisation processes, in case of a loss caused by false, fraudulent, fake and untrue documents, statements, commitments and warranties, the director who has prepared the relevant document or made the relevant declaration is liable (Article 549, CC).

The Capital Markets Board can take any measures and request preliminary injunctions or provisional attachments against individuals who illegally issue or attempt to issue capital market tools as compensation for sold and for-sale securities (Article 91, Capital Markets Law).

After a determination of liability, the Capital Markets Board issues a written notice to the issuers within 30 days for mitigation of the consequences and refund of cash and other assets to right holders.

If the consequences resulting from this illegal issuance are not totally eliminated within one year starting from the date of the written notice, the Capital Markets Board can file a lawsuit for refund of cash and other assets to right holders or for the liquidation of the company.

21.What is the scope of a director's duties and liability under insolvency laws?

If a company becomes bankrupt due to the management failures by its directors, the shareholders or the creditors of the company can hold the directors or officers liable for their losses under the Code on Enforcement and Bankruptcy. The relevant criminal sanction is applied to the directors, liquidators or the auditors who committed the act defined in the crime.

If there are signs that the company may be insolvent, the directors must prepare an interim balance sheet (Communiqué on the Procedures and Principles Regarding the Implementation of Article 376 of the CC) (Article 376 Communiqué). Signs of insolvency can be found in the annual and interim financial statements, audit reports (if any), reports of the early detection committee and the findings of the directors.

If the balance sheet indicates that the company is insolvent, the directors must apply to the court to decide the company's bankruptcy if the following are present:

- The BoD decides that the assets of the company are insufficient to cover the company's debts.
- None of the measures set out in Article 7 of the Article 376 Communiqué have been taken (that is, to continue trading with one third of the capital and making a capital decrease, or restoring or increasing the capital).

Provisional Article 1 of the Article 376 Communiqué prevents foreign exchange losses arising from the foreign currency liabilities that are not yet fulfilled and half of the total personnel expenses, depreciation and expenses arising from leases in 2020 and 2021 from being considered in the calculations regarding the loss of capital or insolvency under Article 376 of the CC until 1 January 2024.

The directors in charge of management and representation can be be subject to a prison term of up to three months on a complaint by the creditors for not requesting the bankruptcy of the company when required to do so.

In addition, under the Code on Enforcement and Bankruptcy, directors who do not pay the company's debts partially or fully with the intention of damaging creditors' rights can face a prison term of between six months and two years, and a judicial penalty of up to 5,000 days, on a complaint by the creditors.

Negligent and fraudulent bankruptcy is defined under the Code on Enforcement and Bankruptcy, which refers to the Criminal Code regarding the sanctions applied. The following actions can constitute negligent bankruptcy:

- Not being able to show reasonable grounds for the losses.
- Incurring large losses during stock exchange transactions.
- Undertaking debts or issuing bonds in case of indebtedness.
- Not complying with the bankruptcy procedures.
- Not requesting the bankruptcy where it is compulsory.

Transactions aiming to damage the creditors' rights constitute fraudulent bankruptcy. These include:

- Entering into collusive transactions before or after the bankruptcy.
- Misrepresenting the value of the assets.
- Providing favourable conditions to one of the creditors.
- Selling off the assets for an amount much less than its value.

The sanctions under the Criminal Code are:

- For negligent bankruptcy: prison term of between two months and one year.
- For fraudulent bankruptcy: prison term of between three and eight years.

22. Briefly outline the potential liability for directors under environment and health and safety laws.

Legal entities must ensure that they have taken the necessary environmental measures in respect of their commercial activities in accordance with the Environment Code (2872).

Requirements under the Environment Code include:

- Obtaining the necessary Environmental Impact Assessment Report before commencing activities that may lead to environmental problems (mostly construction projects).
- Obtaining the required licences and all other related permissions in relation to the commercial activity to be conducted.
- Notifying the relevant Ministry and administrative bodies of any material change in the business that may result in any environment issues, and so on.

The Environment Code sets out administrative fines for non-compliance with these duties by companies. The companies can claim against the liable directors and officers for those losses under the general principles of liability (*see Question 18*).

Both natural and legal persons, institutions and organisations without legal capacity who hire employees are considered to be employers (Law on the Occupational Health and Safety (6331)). In addition, representatives of an employer who act on behalf of the employer and take part in the governance of the work and workplace, have the responsibilities and duties of employers, including in relation to:

- Protecting employees' safety and health by preventing occupational risks.
- Providing appropriate training.
- Making risk assessments.
- Hiring occupational safety specialists or physicians.

Administrative fines can be imposed on the employer or employer representative for non-fulfilment of these responsibilities.

23. Briefly outline the potential liability for directors under anti-trust laws.

An administrative fine of up to 10% of an undertaking's annual gross revenues can be imposed for an infringement of competition law (Article 16, Law on the Protection of Competition No. 4054). In addition, an administrative fine of up to 5% of the penalty imposed on the undertaking can be imposed on managers/directors of the undertaking who are found to have a decisive influence in an infringement.

24. Briefly outline any other liability that directors can incur under other specific laws.

Liability for public debts. Liability arising out of the failure to pay the JSC's public debts lies with the company itself. Liability of the legal representatives for public debts, which are determined to be uncollectible from the company are collected from the personal assets of the legal representatives (regardless of fault) (reiterated Article 35, Law on Collection Procedure of Public Receivables No. 6183).

Liability for tax debts. There is also a special provision for the tax debts, which are included within the scope of public receivables (Article 10, Tax Procedural Law No. 213 (Tax Law)). Under Article 10, the total amount of tax and its receivables that cannot be obtained in whole or in part from the assets of the taxpayer company will be collected from the legal representatives who acted in breach of their legal duty to pay tax debts on behalf of the company.

Despite the current practice, the Council of State previously ruled that for a legal representative to be held personally liable for tax debts, they must have had an actual power of representation for tax issues and the capacity to pay the tax debts of the company (which would require having management authority). The Council of State's General Assembly on Unification of Judgments recently decided that tax debt that is due and cannot be collected (in whole or in part, or which is uncollectible from the company itself) can be collected from the shareholders of an LLC directly in proportion to their share capitals. In such a case, there is no need to collect from the legal representatives first.

Liability for Social Security Institution (SSI) Receivables. The Social Security and General Health Insurance Law No. 5510 (Law No. 5510) sets out special provisions regarding Social Security Institution (SSI) receivables to the effect that SSI receivables have priority before other public debts. If the SSI receivables are not paid without just cause, senior executives or authorised signatories of the company (including members of the BoD and its legal representatives) are jointly and severally liable together with the company itself (paragraph 20, Article 88, Law No. 5510).

The Constitutional Court recently ruled that holding members of the BoD that do not have any representation authority, jointly and severally liable with the joint stock company for the SSI debts does not violate proprietary rights of the concerned member of the BoD.

Employment-related liabilities. Directors can also have employment-related liabilities under the Labour Code. Companies can be held liable for losses if there is a breach of any of the obligations or responsibilities imposed by the Labour Code and can be punished with administrative fines if its general provisions are breached. If a company is punished with administrative fines, it has a right to claim against the relevant directors who have caused the loss under the general liability principles (*see Question 18*).

Criminal liability. If an employee is injured or dies due to a work accident that occurred under the supervision of an employer's representative (directors or officers), the representative can also be criminally liable under the Criminal Code.

Liability for data protection. Directors can have data protection related liabilities. Under Personal Data Protection Code No. 6698, companies can be punished with high administrative fines if they:

- Act against the information obligation.
- Breach data security obligations.
- Fail to comply with decisions of the Personal Data Protection Board.
- Fail to meet the obligation to register on the Data Controllers' Registry.

If a company is punished with administrative fines, it has a right to claim against the relevant directors who have caused the loss under the general liability principles (*see Question 18*).

25. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

Directors can delegate their duties (*see Question 16 and Question 17*). Therefore, their liability can also be restricted in the same degree as the delegation. However, the delegation of duties does not absolve the director of liability if the director has failed to show reasonable care in the selection of the assignee officers. Also, a restriction does not eliminate liability towards third parties acting in good faith, unless both of the following apply:

- The power of representation is restricted to the affairs of the company headquarters or branch or is restricted to joint signatures of members of the BoD.
- This restriction is duly registered and published.

A company can indemnify a director against liabilities. The general assembly can also decide to release directors from liability. The approval of the balance sheet results in the release of the members of BoD, unless indicated otherwise in the general assembly decision. However, if the balance sheet is not properly provided or intentionally obscures the company's real conditions, the approval does not result in a release (Article 424, CC).

26.Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

It is possible to obtain insurance against directors' personal liability arising from the performance of their duties. The company can pay the insurance premium.

In public companies, if the damage is insured at a price exceeding 25% of the company's capital and the company is secured, this must be announced in the *Capital Markets Board Bulletin*. In addition, if the shares of the company are listed on a stock exchange, this must also be announced in the stock exchange bulletin (Article 361, CC).

27. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

The CC sets out a special liability for companies controlling other companies in its group:

- Shareholders and creditors of an affiliated company can initiate a compensation action against a dominant company and/or its directors where there is abuse of dominance by the controlling company that:
    - damages the affiliated company, for example, directing the affiliated company to engage in transactions that reduce or transfer its profits, assets or receivables, and so on; and
    - fails to compensate losses of the affiliated company or grant a right equivalent to the losses to the affiliated company within the same fiscal year.

- If a merger, demerger, acquisition or issuance of securities takes place in the affiliated company, with the use of dominance and without a justified reason, shareholders who voted against the relevant general assembly decision or who objected to the relevant resolution of the BoD can:
    - initiate an action against the controlling company for indemnification of their losses; and
    - request the controlling company to purchase their shares.

Transactions with Directors and Conflicts

28. Are there general rules relating to conflicts of interest between a director and the company?

Article 369 of the CC sets out a duty of care and duty of loyalty for members of the BoD. The CC requires the members of the BoD to act as cautious directors while performing their duties and to protect the interests of the company in accordance with the principle of good faith.

The CC provides certain restrictions concerning the relations of the members of the BoD with the company in light of the duty of care and duty of loyalty:

- Directors are prohibited from participating in the relevant BoD' meeting in cases of conflict of interest between the company and the directors or their relatives by blood or marriage (Article 393, CC). This prohibition also applies in circumstances where the director must not participate in the discussions due to the principle of good faith.
- Directors cannot conclude any transaction with the company on behalf of themselves or a third party without the general assembly's approval (*Article 395, CC*). If they do so, the company can claim the transaction to be invalid. In addition, directors who are not shareholders, and certain relatives of theirs, cannot incur any cash debt to the company.
- In parallel with the CC provisions, the CG Principles also set out certain requirements in relation to related-party transactions, and require a BoD' resolution and general assembly approval under certain circumstances.

- Directors cannot conclude a transaction falling in the company's scope of activity on behalf of themselves or a third party without the general assembly's approval or cannot become unlimited partners in a company that has similar scope of activity (Article 396, CC).

29. Are there restrictions on particular transactions between a company and its directors?

There is a general prohibition on transactions between directors and the company (*see Question 28*). This restriction applies for all types of transactions.

30. Are there restrictions on the purchase or sale by directors of the shares and other securities of the company they are directors of?

There is no restriction in the CC on the purchase or sale by a director of the shares and other securities of the company of which they are a director. However, Article 106 of the Capital Markets Law restricts the purchase or sale of such shares and other securities by a director. Directors can be subject to a prison term of between three and five years, or a judicial fine, if they:

- Give, change or cancel purchase or sale orders for capital market instruments.
- Provide a benefit to themselves or someone else.
- Do either of the above based on information that can affect the prices of the capital market instruments, or the decisions of investors, and that has not been declared to the public.

Disclosure of Information

31. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

Companies that are subject to independent audit (*see Question 39*) must:

- Have a website.
- Dedicate a part of their website for information society services.
- Announce certain issues on their website.

(Article 1524, CC.)

If a company fails to do so, the resolutions will be void and the relevant directors are subject to judicial fines for delays of between 100 and 300 days at TRY20 to TRY100 per day.

Article 2.1 of the CG Principles also requires certain issues to be disclosed on the website of the company.

In addition, certain documents such as annual reports and financial statements must also be disclosed in the Public Disclosure Platform, which is founded by the Communiqué of Public Disclosure Platform.

The Capital Markets Board also requires companies quoted on the stock exchange to disclose their financial reports, special conditions and other certain issues on the Istanbul Stock Exchange and Central Securities Depository.

Shareholder Rights

Company Meetings

32. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

The general assembly of shareholders can hold ordinary or extraordinary meetings (*Article 409, CC*). The ordinary GaMs must be held within three months following of the end of each fiscal year. Extraordinary GaMs can be convened when required.

The person who calls the general assembly of the shareholders for a meeting decides on the agenda. Issues that are not included in the agenda cannot be discussed (Article 413, CC). The minimum agenda of the ordinary meeting must include:

- Appointment of company's bodies.
- Discussion and approval of financial reports.
- Annual report of the BoD.
- Use of profits.
- Determination of the amounts of dividend and profit shares.
- Releasing the directors.

- Other issues concerning operation of the company.

(Article 409, CC.)

The GaMs can also be held electronically. The right holders who have the right to attend the GaMs can also attend these meetings electronically (Article 1527, CC). The company can either:

- Establish the general assembly system that will enable the right holders to attend the GaMs in electronically, express their opinions, make suggestions and vote.
- Buy a service from the systems that are created for this purpose under the Regulation on the General Assemblies of Joint Stock Companies in Electronic Environments. For the GaMs, the right holders must be able to use the rights stated under the relevant legislation or the relevant system for which a support service is provided under the company's articles of association, and within the framework of the regulation.

The application of the system of electronic participation and voting in GaMs is mandatory for companies with shares traded on the stock exchange.

33. What are the notice, quorum and voting requirements for holding meetings and passing resolutions?

Under the CC, shareholders must be invited to the meeting as set out 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 GaM (*Article 414, CC*). The CG Principles require the notice to be made on the company website and on the Public Disclosure Platform at least three weeks in advance of the meetings (Article 1.3.1, CG Principles).

A notice must be sent by registered letter with return receipt to the shareholders who are recorded in the share ledger or who have proved their shareholding with share certificates or other documents in advance.

If all shareholders or their representatives are present in the meeting and no objection is raised, the GaM can be conducted without notice. If a meeting is convened without notice, an item can be added to agenda with the unanimous votes of the shareholders (Article 416, CC).

Participation via teleconference is not possible.

The meeting and voting quorum requirements are regulated under the CC. In principle, the GaM can be convened with at least one-quarter of the shareholders or their representatives, and a majority of the votes present is needed for a resolution (Article 418, CC). If this meeting quorum is not reached during the first meeting, no meeting quorum is provided for the second meeting.

However, there are aggravated quorum requirements for certain issues:

- Unless otherwise provided in the law or in the articles of association, the meeting quorum for amendments to the articles of association (for example, capital increase or decrease) requires the shareholders representing at least half

of the company's capital to be present. The amendment is approved with the majority of the votes of the shareholders present at the meeting.

- If the meeting quorum cannot be reached during the first meeting, the second meeting's quorum is one-third of the shareholders.
- Resolutions to create obligations and secondary obligations for compensation of balance sheet losses, and to transfer of the company's registered office abroad require unanimous shareholder approval.
- Amendments to the company's scope of activity, creation of privileged shares, and restriction of registered shares' transfer require both a meeting and resolution quorum of at least 75% of the shareholders.

(Article 421, CC.)

34. Are specific voting majorities required by statute for certain corporate actions?

There are aggravated quorum requirements for certain resolutions (*see Question 33*).

35. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

Generally, the BoD can call a meeting. If the BoD cannot be gathered to call the general assembly for a meeting, a shareholder can also call the general assembly for a meeting with a court order (Article 410, CC). In addition to this general right for all shareholders, minority shareholders (shareholders holding at least 10% of the company's share capital for non-public companies, or at least 5% for public companies) can request the BoD to call the general assembly for a meeting. If the general assembly is called for a meeting, minority shareholders have a right to request certain issues to be included in the meeting agenda.

If the BoD refuses a minority shareholder's request for a meeting or an issue to be included in agenda or does not provide a positive response to this request within seven days, minority shareholders can apply to the commercial court for enforcement of their request.

Minority Shareholder Action

36. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

Minority shareholders have a right to receive information and to investigate certain financial documents of the company (Article 437, CC) (*see Question 12*). If this right for information and investigation is exhausted, shareholders can request a special audit from the general assembly even it is not covered in the agenda of the GaM (Article 438, CC).

Internal Controls, Accounts and Audit

37. Are there any formal requirements or guidelines relating to the internal control of business risks?

The BoD of companies with shares traded on a stock exchange must set up a committee for early detection of risks related to the existence, development and continuance of company, and for applying required measures and remedies in this regard (Article 378, CC). In other companies, this committee is set up if it is deemed necessary by the auditor.

In addition, Article 4.5.12 of the CG Principles also requires a committee to be formed for early detection of such risks.

38. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The BoD is responsible for the preparation of balance sheets and financial reports, and their submission to the general assembly for approval. Unless otherwise provided in the general assembly resolution, approval results in release of directors, managers and auditors from any associated liability (Article 424, CC) (*see Question 25*). However, if there are missing issues in the balance sheet, or the balance sheet deliberately includes issues which conceal the real situation of the company, the approval does not result in release and the directors can be subjected to criminal liability.

39. Do a company's accounts have to be audited?

The conditions for determining the companies subject to independent audit are set out by the Decision of Council of Ministers (Article 397, CC). According to the Decision on the Determination of Companies Subject to Independent Audit, the companies in List (I) in the annex for the decision are subject to independent auditing.

From 1 January 2023, the companies whose capital market instruments are not traded on a stock exchange or other organised markets but are deemed publicly listed under the Capital Markets Board are subject to an independent audit if they have at least two of the following (either itself or together with its affiliates) in two subsequent fiscal years:

- A total assets value of at least TRY30 million.
- A net sales revenue of at least TRY40 million.
- At least 50 employees.

The companies specified in List (II) are subject to independent audit if they have at least two of the following (either itself or together with its affiliates) in two subsequent fiscal years:

- A total assets value of at least TRY60 million.
- A net sales revenue of at least TRY80 million.
- At least 100 employees.

Companies that do not meet at least two of the criteria set out in List (I) and List (II) must retain independent auditors if they have at least two of following (either itself or together with its affiliates) in two subsequent fiscal years:

- A total assets value of at least TRY75 million.
- A net sales revenue of at least TRY150 million.
- At least 150 employees.

The audit must be made according to Turkey Auditing Standards, which are established by the Public Oversight Accounting and Auditing Standards Authority.

40. How are the company's auditors appointed? Is there a limit on the length of their appointment?

The company's auditor must be appointed by the general assembly. In a company group, the group auditor must be appointed by the general assembly of the controlling company.

The auditor must be appointed in every fiscal year and before the end of the fiscal year. After the appointment, the BoD must register the relevant general assembly resolution with the Trade Registry and announce it on the *Trade Registry Gazette* and company's website immediately.

If there is a justified reason, especially in case of a doubt concerning auditor's impartiality, the court can assign another auditor at the request of BoD or minority shareholders. For a minority shareholder to request the assignment of an auditor:

- The shareholder must have opposed the appointment of that auditor during the GaM.
- That opposition must have been recorded in the appointment resolution of general assembly.
- The shareholder must have become a shareholder of the company at least three months before the auditor's appointment.

If the auditor is not appointed within the first four months of the fiscal year the BoD, directors and every shareholder can request the court to appoint an auditor.

If an auditor cannot be appointed until the fourth month of the activity period of a company for which the Savings Deposit Insurance Fund has been appointed as a guardian, the auditor will be appointed by the Minister to which the Savings Deposit Insurance Fund relates to. The Minister can delegate this authority to Fund Board.

An auditor can terminate the auditing contract only if there is a justified reason or a court action is filed for removal of the auditor (Article 399, CC).

41. Are there restrictions on who can be the company's auditors?

Company auditors must be either:

- Persons who are certified or independent public accountants that are licensed by Public Oversight Accounting and Auditing Standards Authority.
- Corporations whose shareholders are persons who are certified or independent public accountants that are licensed by Public Oversight Accounting and Auditing Standards Authority.

(Article 400, CC.)

A person cannot be appointed as an auditor if they:

- Were a director or employee of the company to be audited three years before the appointment as an auditor.
- Are:
    - a shareholder, director or an employee of the company to be audited;
    - a representative or legal representative, or member of the BoD of a company that is linked to the company subject to audit;
    - a director or owner of a company that has a connection with the company to be audited;

- a shareholder holding more than 20% shares of that company;
- a spouse, or someone with lineal kinship with a director or manager of the company to be audited, including third degree relatives by blood or marriage;
- working in a company with a connection to the company to be audited, or in an enterprise that has more than 20% shares of the company, or that provides services to a real person who has more than 20% shares of the company to be audited;
- involved in or contributing to the keeping of commercial books and preparation of the financial statements of the company to be audited (other than providing audit services);
- a representative, legal representative, employee, director, shareholder or owner of a natural or legal person who cannot be an auditor under the above paragraph;
- working for a person who cannot be an auditor as above;
- a person who has received at least 30% of their income within the last five years by providing auditing and consultancy services to the company, or to companies which have more than 20% of the shares of the company to be audited.

In addition, an auditor who has been appointed as an auditor for seven years in a ten-year period, cannot be appointed again for at least three years (Article 400, CC).

42. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

The company's auditor or its affiliates cannot provide consultancy services to the company other than the tax consultancy and tax audit services (Article 400/3, CC).

43. What is the potential liability of auditors to the company, its shareholders, and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

If the auditors who audit the company's year-end and consolidated financial statements, reports and accounts act with fault while performing their legal duties, they are responsible to the shareholders and the company's creditors for damages caused by them (Article 554, CC).

There is no provision related to limitation or exclusion of liability.

44. What is the role of the company secretary (or equivalent) in corporate governance?

There are no provisions relating to company secretaries under Turkish law.

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