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 the main forms of corporate entity used; the corporate governance legal framework; board composition and restrictions; directors' remuneration; management rules and authority; directors' duties and liabilities; transactions with directors and conflicts; and internal controls, accounts and audits.

Corporate Entities

1. What are the main forms of corporate entity used?

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

- Limited liability company (LLC).

- Joint-stock company (JSC).

The LLC and the JSC are the preferred company forms in Turkey for both foreign national and Turkish entrepreneurs.

The minimum capital requirement were recently increased and from 1 January 2024, the minimum capital amount for:

- An LLC is TRY50,000.
- A JSC is TRY250,000.
- A non-public joint stock company that adopted the registered capital system is TRY500,000.

(Presidential Decree No. 7887 of 2023 (published in the Official Gazette dated 25 November 2023).

These new amounts are valid for new companies established as of 1 January 2024.

LLCs and JSCs whose capitals are currently below the new minimum capital amounts, are now obliged to adjust their capitals in line with the new minimum capital amounts before 31 December 2026 (Law 7511 Amending the Turkish Commercial Code and Certain other Laws (published in the *Official Gazette* dated 29 May 2024, No. 32560) (Amendment Law)).

Otherwise, companies that have not adjusted their capitals as of the aforementioned date shall be deemed to have dissolved.

The answers in this Q&A relate to JSCs unless otherwise indicated.

Legal Framework

2. What is the main corporate governance legislation? What are the authorities that enforce it?

The main corporate legislation includes the:

- The Turkish Commercial Code (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) (Capital Markets Law).
- 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.

3. 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 materially 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*.

Board Composition and Restrictions

4. What is the management/board structure of a private 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 of 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).

5. 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).

6. 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.

7. Are the roles of individual board members restricted?

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

8. 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 (GaM) 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).

9. 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 unless otherwise specified in articles of association.

Directors' Remuneration

10. Must directors 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.

11. 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 authority to represent the company (*see Question 6*).

12. How is directors' remuneration determined, and must it be disclosed? 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 GaM determines directors' remuneration, and this is one of the non-transferable duties of the GaM.

Disclosure

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

Shareholder Approval

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

Management Rules and Authority

13. How is a company's internal management regulated?

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.

14. 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 GaM by law or the articles of association.

Under the CC, the following issues are non-transferrable powers of the GaM (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.

> 15. 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

> 16. 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.

17. Can a director's liability be restricted or limited? Can the company 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 GaM 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 GaM 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).

18. 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).

19. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though they have 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 an 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 GaM 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 of Interest

20. 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 GaM'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 GaM 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 GaM's approval or cannot become unlimited partners in a company that has similar scope of activity (Article 396, CC).

21. 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 to all types of transactions.

22. Are there restrictions on the purchase or sale by a company director of the shares and other securities of the company?

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.

Internal Controls, Accounts and Audit

23. 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.

24. 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 GaM for approval. Unless otherwise provided in the GaM 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.

25. 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) of the annex to 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 alone 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 alone 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 alone 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.

26. 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 GaM. In a company group, the group auditor can be appointed by the GaM 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).

27. 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).

28. 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).

29. 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.

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