Corporate Governance

Contributing editor
Holly J Gregory

2018

GETTING THE DEAL THROUGH

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Corporate Governance 2018

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Holly J Gregory
Sidley Austin LLP

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For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

Law Business Research

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
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Corporate Governance 2018

Seventeenth edition

Getting the Deal Through is delighted to publish the seventeenth edition of *Corporate Governance*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Australia, Bermuda, Hungary, Kenya, Malaysia, Mexico, Norway, Spain and Thailand.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Holly Gregory, of Sidley Austin LLP, for her continued assistance with this volume.

GETTING THE DEAL THROUGH

London
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Turkey

Pelin Baysal and Görkem Bilgin
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Sources of corporate governance rules and practices

1 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) (TCC) 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 laws, communiqués and principles governing corporate rules and practice are as follows:

- Law No. 6335 amending the TCC (the Amendment Code);
- the Capital Markets Law (CML) dated 6 December 2012 (Law No. 6362) entered into force on 30 December 2012 replacing the former Capital Markets Law dated 30 July 1981 (Law No. 2499);
- the Capital Markets Communiqués (the CMB Communiqués); and
- the Corporate Governance Communiqué (CGC) dated 3 January 2014, serial II, No. 17.1 and Corporate Governance Principles (CGP) that are listed as annex 1 of the CGC.

According to the CGC, publicly held companies that have shares traded on the 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 CGC, 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 National Market, Second National Market and Collective Products Market) and two board members are sufficient for third-group corporations.

There are also some listing requirements that are applied on a 'comply or explain' basis. For example, article 4.2.5 of the CGP stipulates that the responsibilities of the chairman of the board of directors and the chief executive officer or general manager must be explicitly separated; however, if it has been resolved that the roles of chairman of the board of directors and the chief executive officer or general manager are considered the same, this decision (and grounds for this decision) must be disclosed at the Public Disclosure Platform (PDP) (CGP, article 4.2.6).

2 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 groups or proxy advisory firms whose views are often considered?

The Ministry of Customs and 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 CML, CMB Communiqués and the CGP are enforced by the Capital Markets Board (CMB). The CMB is the regulatory and supervisory authority in charge of the securities markets in Turkey. The CMB is entitled to hand out administrative sanctions to companies or individuals in the event of non-compliance. In the event the conditions set forth under the CML and the relevant legislation occur, the public prosecutor may prepare an indictment upon the written request of the CMB.

As regards the associations whose views are often considered, two associations, namely the Capital Market Investors' Association (BORYAD) and the Turkish Industry and Business Association (TUSIAD), can be mentioned. 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.

The rights and equitable treatment of shareholders

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

Article 408 of the TCC similarly determines the authority of the GA to appoint and dismiss board members. Accordingly, the GA is authorised to make decisions as set forth under the law and the AOA. The same article also stipulates the non-transferable duties and authorities of the GA. 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 meeting of the GA to question the company's management and request that additional items be added to the agenda (TCC, article 411);
- ask the GA to appoint a special auditor to investigate and clarify certain issues even if it is not on the agenda. In order for shareholders to use this option, they must first exhaust their rights of information and examination. If the GA 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;
- request the board to issue registered share certificates. If made, such request of the minority shareholders must be accepted and registered share certificates must be delivered to owners (TCC, article 486); and

- request the company to be dissolved, if there is a 'just cause' in that regard. The TCC does not define what a just cause would be, but it is accepted among scholars that there would be a just cause to request the dissolution of the company if the GA was called to numerous meetings contrary to the law, if the rights of minority shareholders are violated, especially the right to examine and demand information, if the company constantly loses its assets and does not generate any profit etc (TCC, article 531).

Further, all shareholders are entitled to request information and examination. Pursuant to article 1.2.1 of the CGP, which is applicable to public companies, this right cannot be limited or cancelled by the AOA or by a decision of the company.

In addition, any shareholder has the right to ask the GA 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. Shareholders may also request from courts, if there is a just cause, that the managers' right to manage the company be limited or completely abolished (TCC, article 630).

The shareholder vote required to elect and dismiss directors is the simple majority of the votes represented in the GA meeting, unless provided otherwise by law or the AOA. The necessary quorum for the GA meeting 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).

4 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, the GA has exclusive authority over:

- amending the AOA;
- 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 the auditor except for the cases set forth under the law;
- taking decisions regarding the financial statements, the annual report of the board of directors, savings on the annual profit, determination of the dividend and gain margin and including the injection of the reserve fund into the capital or into the profit to be distributed and deciding on the use of the reserve fund;
- deciding on the dissolution of the company except for the cases set forth under the law; and
- sale of a substantial part of the company.

In the event the conditions stated under the CML and the related legislation are met, some exclusive powers of the GA 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 the board of directors' resolution. Also, when it is permitted by the AOA, the board of directors may restrict the pre-emptive rights of shareholders (CML, article 18/5).

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

5 Disproportionate voting rights

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

As regards disproportionate voting rights, it should be noted that the TCC adopts the '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 be increased only by a court decision for the sake of institutionalisation or because of a just cause. Thus, under the TCC regime, it is no longer possible to block a capital increase through the use of privileged shares. Further, privileged votes do not extend to resolutions regarding the amendment of the AOA of a company, or filing of discharge or liability suits.

6 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 CGP stipulates that the announcement regarding GA meetings should be made at least three weeks in advance of the meeting on the company's corporate website and on the PDP.

According to the TCC, shareholders are invited to the meeting as stipulated under the AOA, 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 GA 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, regulating the right to examine and demand information, financial statements, consolidated financial tables, annual reports of the board, audit reports and suggestions of the board regarding the method of distribution of dividends shall be made available to the shareholders at least 15 days before the meeting.

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

The following requirements have to be met in order to vote online:

- the company must have a website allocated for this purpose;
- shareholders who wish to participate in the online GA 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 Customs and Trade issued the Regulation on General Assembly Meetings of Joint Stock Companies held electronically, regarding the procedures of online GA meetings, published in Official Gazette No. 28481 of 28 November 2012. The companies shall have integrated in their AOA the sample article stating that the meetings can be held electronically. The said article can be found in the Regulation published by the Ministry of Customs and Trade. The company shall integrate the article as is because it is not possible to amend the article while adopting it.

Electronic meetings are mandatory for publicly listed companies.

The shareholders acting by written consent without a meeting can be realised by meetings that are held electronically, as explained above.

7 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 and for public companies, shareholders holding at least 5 per cent of the company's capital may request a general meeting. If such a meeting has already been convened, then they have the right to request 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, such 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 GA meeting to grant shareholders a right to claim invalidity of such decisions.

8 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, it should be noted that 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 on the subsidiary (eg, instruct the subsidiary to be the guarantor of a loan), unless such 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 the creditors of the same may claim the indemnification of the loss of the subsidiary company from the dominant company by filing a lawsuit.

9 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 (LLCs). There is an exception for LLCs as concerns governmental debts. Accordingly, shareholders of a LLC are liable with their personal assets for the governmental debts and the responsibility should be calculated over the shareholding ratio in the company capital. Other than this, 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.

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

At present, share transfer restrictions are not permitted except for legal grounds determined under the TCC. However, the TCC introduces specific provisions regarding the restriction of share transfers through the AOA separately for LLCs and joint-stock companies (JSCs). Article 492 of the TCC requires JSCs to include in their AoA the specific reasons why share transfers may be rejected. Reasons related to the nature of the shareholders' composition or the scope of the company's activities or the economic independency of the company are deemed as important grounds for rejection as per the TCC. This is not an exhaustive list, therefore shareholders will need to select and predetermine the grounds for share transfer rejections and be very specific about it, if they want this protection to be reflected in the AOA. 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 JSCs 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 JSCs, the TCC explicitly allows LLCs to limit share transfers based on pre-emptive purchase rights, call options or other ancillary or additional obligations by so providing for them in their AOA. Such limitations may also be subsequently included into the AOA by a decision of the GA. In this regard, the positive vote of two-thirds of the GA is required (TCC, article 621).

In LLCs, share transfers are subject to the approval of the GA and may be rejected without a just reason, unless otherwise stipulated in the AOA (TCC, article 577).

Given the differences between LLCs and JSCs, investors aiming to reflect the provisions of the shareholders' agreement to the AOA may prefer to incorporate an LLC, provided that the regulations in their field of activity allow this.

Any agreement between the JSC and a third party for the acquisition by that third party of the JSC's shares in lieu of the JSC itself or its affiliate or the 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 a JSC, a third party or the JSC's subsidiary acting for the JSC, or the JSC's subsidiary promising shares in its parent company, from undertaking to sell treasury shares (TCC, article 380/2).

11 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 JSCs 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 GA meeting, in the presence of just causes 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 JSCs, which was previously available only for public companies. A private JSC can adopt the registered share capital system by a provision to this effect in its AOA. The AOA 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 GA meeting up to a predetermined ceiling (TCC, articles 459 and 460). The minimum capital requirement for a JSC adopting the registered capital system is 100,000 Turkish lire (TCC, article 332).

Second, as a financing method for JSCs, the TCC brings a conditional capital increase system, through which the company's creditors (such as 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).

12 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 CMB prohibits the restrictions on the transferability of shares of a public company. Accordingly, the transfer of the shares must not be limited and other restrictions must not be imposed on the shareholders to prevent them from going public.

Further, pursuant to article 8(ç) of the Quotation Directive issued by Borsa Istanbul, a company is prohibited from including any share transfer restrictions in its AOA regarding the securities to be listed on Borsa Istanbul.

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 AOA. The transfers of bearer shares are subject to the transfer of possession.

13 Compulsory repurchase rules

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

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

- authorisation of the board of directors by a GA meeting;
- acquisition and pledge may be accepted on 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 GA meeting can only delegate such authority for a maximum period 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. 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 such 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 buybacks in LLCs as well. An LLC may acquire its own capital shares with 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 CMB entered into force on 3 January 2014. According to the Communiqué, the board of directors must be authorised by the GA in order 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 GA authorisation, if such repurchase is necessary for the purpose of avoiding 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 lost value over 20 per cent. Unless such circumstances are present, the only way for a listed company to repurchase its shares without a GA authorisation is to obtain the approval of the CMB (Communiqué, subparagraphs 4 and 5 of article 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 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 (Communiqué, article 7).

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

14 Dissenters' rights

Do shareholders have appraisal rights?

The TCC also provides categories of important reasons that allow JSCs to reject the transfer of registered shares under their respective AoAs. The company may choose not to approve the share transfer by claiming an important reason stated under the AOA, or to acquire the shares to be transferred on its or a shareholders' or any third party's behalf by offering 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 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 such value within one month of its acknowledgment, 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 24 December 2013 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, change in the type of company or termination, along with other important transactions listed in article 5, require GA approval.

This communiqué details the provision regarding the retirement right in article 24 of the CML and determines the circumstances where the retirement right does not arise. In this respect, shareholders who voted against a significant transaction at the GA 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 abandon significant transactions where the total cost of the exercise of retirement rights exceeds the predetermined cost of the same or where certain shareholders, whose qualifications are specified beforehand, exercise the retirement right. Similar provisions are recognised for mandatory tender offers arising from a significant transaction. With an amendment dated February 2015, pursuant to article 11/1, in order to protect the rights and interests of investors, it has been provided that in case of a non-public company acquiring a publicly listed company, the controlling shareholders together with those acting with the controlling shareholders shall make a mandatory tender offer.

The responsibilities of the board (supervisory)

15 Board structure

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

Under Turkish law, the board structure for both listed and unlisted companies is one-tier.

16 Board's legal responsibilities

What are the board's primary legal responsibilities?

The principal duties of the board members are as follows:

- 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 is in compliance with principles of good faith, and for 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 certain close relatives; and
- not to engage in transactions with the company unless the GA meeting authorises the board for a maximum period of five years regarding the repurchase of shares.

In addition to the above, the 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 top-level management of the company and giving instructions in this regard;
- establishing the necessary system for financial planning to the extent required, and for accounting and finance audit;
- appointing and dismissal of managers and persons performing the same function and authorised signatories;
- high-level supervision of whether the persons in charge of management act in accordance with the law, the AOA, internal regulations and written instructions of the board;
- keeping the share book, resolution book of the board and the GA meeting and discussion register, preparation of the annual report and corporate governance disclosure and submission thereof to the GA, organisation of GA meetings and enforcement of GA resolutions; and
- notifying the court regarding the company's state of excess of liabilities over assets.

It must be noted that neither of these duties and authorities of the board of directors can be delegated to a duly authorised representative, the company management, a committee or the managers (TCC, article 367). The GA meeting cannot seize or deprive these duties and authorities of the board of directors, or transfer them to the GA meeting or the committees established under the provisions of the AOA. Similarly, the board of directors cannot waive such duties and authorities.

17 Board obligees

Whom does the board represent and to whom does it 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, in the event that the board is liable owing to their own faults arising from the law and the AOA, then the board will owe legal duties to the company, to the shareholders and to the company's creditors.

18 Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?

According to the TCC, the company, its shareholders and its creditors are entitled to file indemnification actions against the board members to indemnify the damages that occurred owing to their faults. Shareholders may initiate actions against the 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 has been introduced by the 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 CMB, and if the shares are listed on a stock exchange this shall also be announced in the stock exchange bulletin, and such matter shall be taken into account in the assessment of compliance with the principles of corporate governance (TCC, article 361).

With regard to the civil and criminal liabilities of board members, unlike the previous TCC, the new TCC specifically regulates (in a separate article) the 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 under the AOA, they will be subject to civil and criminal liability.

19 Care and prudence

Do the board's duties include a care or prudence element?

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

20 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 chairman and at least one vice chairman be appointed among the board members (TCC, article 366). It should be noted that the board members do not have any special duty that should be performed individually except calling for board meetings. Also, under Turkish law, the board members do not have specific duties individually assigned to them. However, by inserting a relevant provision to the AOA 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 such distribution of duties, the duties and authorities of individual board members shall be disclosed in the activity report of the company (CGP, article 4.2.2). In the event the duties are not assigned, the management is performed by all board members (TCC, article 367).

21 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 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 party would have the same responsibilities that the board of directors had pre-transfer.

The CGP stipulates 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 has been 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 the aforementioned 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 and such internal directive shall be registered and announced. This amendment has enabled companies to impose different kinds of limitations or categorisations for their representative authorities.

22 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 CGP and in certain CMB communiqués. Pursuant to the CGP, 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 are independent board members (CGP, article 4.5.3), the audit committee comprises only 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 CGP, 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 CGP, 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 CGP sets 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. It should be noted that, as a general principle, all members of the board are jointly and severally liable to the company, the shareholders and the creditors of the company for damage occurring owing to their fault and owing to the non-fulfilment of the duties stated in the law or the AoA (TCC, article 553).

23 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 the board of directors to consist of just one member (real person or legal entity) assigned by the AOA or elected by the GA and the requirement that a member of the board of directors has to be a shareholder in the JSCs has been abolished. In the event that 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).

Both in the TCC and the CML, 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 in order 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). Regarding female members on the board, the company shall determine a target percentage no less than 25 per cent and a target time, and shall establish a strategy to reach these targets (CGP, article 4.3.9).

In LLCs, 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 of the shareholders must possess the right to management and representation of the company in the widest manner. If there is more than one manager of the company, one of these managers must be elected as the chairman of the management board by the GA.

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 presents it for the approval of the GA. The member chosen this way carries out their duties until the GA 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 CMB is entitled to appoint an independent board member (CML, article 128/1(k)).

24 Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chairman 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 chairman and CEO. According to the CGP, the duties and authorities of the CEO and the chairman of the board must be specifically distinguished from each other and stipulated under the AOA. In addition, if it is decided that the CEO and the chairman of the board are one person instead of two separate persons, then this should be published on the PDP with its reasons (CGP, articles 4.2.5 and 4.2.6).

25 Board committees

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

According to article 25 of CMB Communiqué, serial X No. 22 regarding the standards of independent audit in capital markets (as updated with the Communiqué serial X No. 28, published on the Official Gazette on 28 June 2013), it is required that, within the framework of the CGP, 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 CGP, an audit committee, a corporate governance committee, an early detection of risk committee, a nomination committee and a price committee must be formed. Regarding banks, only a corporate governance committee shall be formed. If the nomination committee and price committee cannot be formed, then the corporate governance committee will supersede the duties of such 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 the risks in advance. In the event the auditor of the company deems it necessary, such a committee must also be formed by companies other than the listed ones. The committee submits an evaluation report to the board every two months and informs the board of the problems and solutions. The report shall also be sent to the auditor (TCC, article 378).

26 Board meetings

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

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, in practice, the board convenes a meeting when it is deemed necessary, unless the AOA requires a minimum number of board meetings. The CGP states that the board of directors convenes the meeting on a regular basis in order to fulfil their duties effectively (CGP, article 4.4.1).

27 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 GA meetings and the minutes of GA 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) (see question 36).

28 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 TCC, provided that the amount is determined by the AOA or the GA resolution, directors can be paid a remuneration (TCC, article 394).

The CGP stipulates 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. 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 4.6.5).

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 and unless otherwise specified in the AOA of the companies, board members may be re-elected (TCC, article 362). The CGP also sets forth that the term for independent members is three years and that they may be re-elected (CGP, article 4.3.5).

Transactions between company and board members

In strengthening the arm's-length principle, the TCC prohibits a JSC from financing its shareholders and directors, aiming to preserve the company assets and protect the creditors of the JSCs. 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 GA, otherwise the company can claim that the transaction is 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).

Also, 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 LLCs, the same principles apply only for partners of the company (TCC, article 644).

In addition, according to article 1.3.6 of the CGP, majority shareholders, members of the board, managers having 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 GA about the transactions that may be conflicting with the interests of the company or its affiliates. Also, according to article 1.3.10 of the previous CGP, the approval of the GA 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 Istanbul. Unless the decision of a GA meeting is not required by the relevant board for the execution of such a transaction, affirmative votes from the majority of independent directors are required. If this is not achieved, the transaction will be submitted to the approval of the GA meeting. In such a case, the reasoning of the independent directors will be disclosed to the public, notified to the CMB and explained to the shareholders in the next general meeting. Article 1.3.9 of the current CGP provides the same rule, by elaborating the definition of 'significant transactions'. Accordingly, when the ratio between the value of the purchase or sale of assets and services, as well as the transfer of obligations and similar transactions, and the value of the company exceeds 10 per cent, the mechanism described above has to be implemented.

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

Also, as per article 21(1) of the CML, 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 JSCs, 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

As mentioned above, 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 such damages shall be compensated. Accordingly, damages that were incurred owing to the fault of board members can be compensated by the relevant board members.

29 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 CGP, 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 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.

30 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 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 CMB, and if the shares are listed on a stock exchange this shall also be announced in the stock exchange bulletin, and such matter shall be taken into account in the assessment of compliance with the principles of corporate governance (TCC, article 361). The CGP stipulates this point as a requirement (ie, states that the damage shall be insured at a price exceeding 25 per cent of the company capital and this shall be announced in the bulletin of the CMB) (CGP, article 4.2.8).

31 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 such indemnification claims are not common and have not been tested in the courts.

32 Exculpation of directors and officers

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

As stated in question 21, the liabilities of board members can be restricted by delegating his or her duties to other board members or managers. Such limitation can be realised through issuing an internal directive in accordance with article 367 of the TCC, and such internal directive shall 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 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 question 21, 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 damages caused by the commercial representatives with limited authority or other commercial assistants appointed pursuant to an internal directive.

33 Employees

What role do employees play in corporate governance?

According to the TCC, employees do not have a specific duty in terms of corporate governance. However, under the CGP, 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).

34 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 out of the company and declarations on independence of the members of 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, the evaluation of the board of directors regarding the working principles including the conducted activities and the efficiency of the committees; and
- number of meetings of the board of directors in a year and attendance of the members of board of directors to these meetings.

The annual report shall be published so that the public can access the 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 is also annually prepared by the board including information on management, activities of the company and related important developments, financial status, risk assessment, etc, and submitted to the GA 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).

Disclosure and transparency

35 Corporate charter and by-laws

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

The AOA 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 AOA of a company that is obliged to launch a website (see question 36) is also announced on the company website. According to the CGP, the AOA of a company must also be published on the company's website (CGP, article 2.1.1).

36 Company information

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

With the TCC, each capital stock company subject to independent audit is obliged to maintain a company website within three months following the incorporation of the company 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 19 December 2012 (the Decision Regarding the Determination of the Companies to be Subject to an Independent Audit (the Decision), which has been revised by the Council of Ministers decision dated 16 February 2016 and published in the Official Gazette on 19 March 2016).

As per 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 40 million or more Turkish lire; companies with annual net sale revenues amounting to 80 million or more Turkish lire; and companies with 200 or more employees.

In addition to the above, the Amendment Code 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 publication of the commercial papers and documents, which 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 of 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 of up to 100 days (see question 27) (TCC, article 562/12).

Hot topics

37 Say-on-pay

Do shareholders have an advisory or other vote regarding executive remuneration? How frequently may they vote?

According to the CGP, a written remuneration policy should be submitted to the shareholders during the GA meetings and discussed as a separate agenda article to give them the opportunity to air their views

Update and trends

Wide ranges of studies are being carried out for the improvement of investment environment. As to these studies, a new law called the Law on the Amendment of Certain Laws for the Improvement of the Investment Environment numbered 7099 (the Law) has been published in the Official Gazette on 10 March 2018 in order to: support the investors; speed up the investment process and establishment process of a company; reduce the costs; and boost the economy. There have been several changes made with respect to the regulations in Property Law, Law on Municipal Revenues, Customs Law, etc, including the ones that are stated below. These changes came into effect as of its publication in the Official Gazette (ie, 10 March 2018) unless otherwise mentioned below.

Amendments to the Turkish Commercial Code No. 6102
Pursuant to the amendments made in article 40/2, every merchant shall submit its business name and signature to be used during the transactions of the company to the relevant Trade Registry. If the merchant is a legal entity, the business name and the signatures of the signatories, which have the authority to sign on behalf of the legal entity, shall also be submitted to the Trade Registry. The signature specimen should be given in the presence of a designated officer of the Trade Registry by submitting a written statement and the procedures and principles as to the implementation of the same shall be regulated under a Communiqué to be issued by the Ministry of Customs and Trade. This amendment abolished the stage of notarisation of the business name and the signature before Notary Publics prior to submitting them to the relevant Trade Registry.

As to the changes made in article 64, during the registration of JSCs and LLCs, the opening approvals of the company books shall only be issued by directorates of the Trade Registry, so the authority of Notary Publics to carry out the opening approvals of the company books is cancelled. If the company books are kept electronically, there will be no need for the approval of Notary Publics or directorates of Trade Registry in their opening processes and in the closing process of the general journal and board of directors' resolution book.

Prior to the abolishment of articles 428, 430 and 431, in case the company shall recommend a person, related to the company in any way, for the shareholders to appoint as their representatives to vote and carry out other related actions in the general assembly meeting on their behalf, the company should also recommend another person being totally independent and neutral for the same position and should announce these two persons pursuant to the articles of association and publish in its website. However, in order to remove the additional obligations imposed for the small-scale JSCs, articles 428, 430 and 431 are abolished.

As introduced with the amendments in articles 575, 585 and 587, the authority of notaries public to approve the signatures of founders and articles of associations of companies are cancelled for LLCs. With the concerned amendments, the AOA will need to be signed by the founders in the presence of the designated officers of the directorates of the Trade Registry. As this amendment shall only be applicable for LLCs, the articles of association of joint stock companies may continue to be executed before notaries public or before the director or deputy director of the relevant Trade Registry. This amendment has been applicable as of 15 March 2018.

As a significant novelty introduced under article 585, the precondition of payment of at least one-quarter of the undertaken capital prior to the establishment is cancelled for LLCs. In this context, the founders of LLCs shall be no longer obliged to make an upfront payment of at least one-quarter of their undertaken capital prior to the establishment. This amendment has been applicable as of 15 March 2018.

Amendments to the Tax Procedure Law No. 213
As to article 223 of the Tax Procedure Law No. 123 (TPL), the opening approvals of company books kept physically by companies have to be conducted by the relevant directorates of the Trade Registry during the establishment process. This article is parallel to the amendment made in article 64 of the TCC, so the authority of notaries public to carry out the opening approvals of the company books is also removed. This amendment has been applicable as of 15 March 2018.

Amendments to the Social Security and General Health Insurance Law No. 5510
In accordance with the amendment made in article 11/3, during the establishment process of a company, the notification form shall be directly sent to the Social Security Institution (SSI) by the relevant Trade Registry so that the workplace registration will be conducted without any application to the SSI physically. This amendment envisages shortening the time spent in the process of establishment.

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).

38 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 TCC, shareholders have the ability to appoint directors provided that it is explicitly stipulated under the AOA of the company. Such 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.

39 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 GA meetings; companies engage with shareholders mainly within the scope of GA.

Under the TCC, the management of a company is generally conducted by the board of directors, but GA is also an essential organ of the company and has fundamental duties. Duties such as the amendment of the AOA, appointment and removal of the board members, appointment of the auditor, passing of decisions concerning financial tables, the annual report of the board of directors, determinations of annual income, profit share and revenues, inclusion of reserve fund to the capital and profit to be distributed to the shareholders etc, must be determined by the GA (TCC, article 408).

An ordinary GA shall be convened within three months of the end of each activity period. An extraordinary GA can be convened whenever required. The board of directors invites the shareholders to GAs. This invitation shall be made in the form provided in the AOA. The invitation to the GA shall also be published in the Turkish Trade Registry Gazette. The invitation shall be issued at least two weeks prior to the date of the GA 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.

40 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 Customs and 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, the companies are required to disclose the information on expenses in the annual activity report.

Further, article 2.2.2-g of CGP also stipulates the general content of the annual report by explicitly stating each clause 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 trainings 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.

41 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 Customs and 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 CGP, 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 the listed companies, the written remuneration policy should be submitted to the shareholders during the GA 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).

42 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.

Getting the Deal Through

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Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
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Risk & Compliance Management
Securities Finance
Securities Litigation
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