

OBLIGATIONS OF COMPANIES SUBJECT TO INDEPENDENT AUDIT

The new Turkish Commercial Code (the "TCC"), which entered into force back in 2012, put an end to the old-style internal and external audit procedures of capital companies and introduced a whole new external audit system that exceeds certain thresholds. The applicable thresholds, as amended last year, are as follows:

- company's assets shall be at least TRY 35 million,
- company's net annual sales revenue shall be at least TRY 70 million, and/or
- at least 175 people shall work in the Company

Capital companies which exceed at least any two of the above thresholds for two consecutive years become subject to independent audit as from the beginning of the next financial year.

According to the TCC, independent auditors can be qualified certified public accountants, independent accountants or financial advisors, or capital companies founded by these accountants. An independent auditor audits the relevant company's financial statements; and examines the accuracy of and the consistency between these financial statements and the financial information contained in board of directors' annual activity reports. In addition, a company's independent auditor attends the general assembly meetings.

If a joint stock corporation, subject to independent audit, has not appointed an independent auditor or its financial statements and annual activity reports have not been duly audited, such documents will be deemed as "not issued". In such event, the general assembly will not be able to review and discuss these financial statements or the board's annual activity report during the ordinary general assembly meeting. Moreover, the general assembly will not be able to adopt certain resolutions, such as releasing the board members, making a profit distribution, or increasing or reducing the company's capital. In addition, such financial statements may not be

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submitted to banks, other financial institutions and funding institutions (*e.g.* loan institutions), and consequently the company will not be able to take loans. Finally, sanctions may be imposed on any capital company which does not fulfill the internal audit obligation triggering the liabilities of the members of its board of directors.

1. HOW TO APPOINT AN INDEPENDENT AUDITOR

Capital companies appoint independent auditors through a general assembly resolution that is subject to registration and announcement. Upon becoming subject to independent audit, a capital company must appoint its independent auditor by the fourth month of the year, or at the latest by the end of the respective activity year. If the company's general assembly fails to appoint an independent auditor by the fourth month, each member of the board of directors or each shareholder may apply to the competent commercial court and request the appointment of an independent auditor.

2. LEGAL OBLIGATIONS OF COMPANIES THAT ARE SUBJECT TO INDEPENDENT AUDIT

(a) Implementing Turkish Accounting Standards

Capital companies subject to independent audit are required to implement the Turkish Accounting Standards published by the Public Oversight, Accounting and Auditing Standards Authority, together with the theoretical accounting principles and the commentaries, while preparing their financial statements (or consolidated financial statements, in the group of companies).

(b) The Auditor's Information Rights and the Board of Directors' Obligation to Provide Documents and Information

The board of directors of a company that is subject to independent audit, is required to share the company's financial statements and the annual activity reports with the independent auditor, immediately upon such documents' issuance and the board of directors' approval. Besides, the board of directors must keep the company's books, correspondence, documents, assets, debts, safe, valuable papers, and inventory accessible to the auditor at all times. The auditor is entitled to request any further information and document that it deems necessary for a legal and diligent audit from the relevant company's board of directors.

(c) Setting up a Company Website

Capital companies that are subject to independent audit are required to: (i) set up a company website and register it with the trade registry, and (ii) devote a section in this website to "Information Society Services", and make the statutory announcements in this section in line with Article 1524 of the TCC and the applicable secondary legislation.

Such requirements must be fulfilled within three months from becoming subject to independent audit. Otherwise, a judicial fine corresponding to 100 to 300 days may be imposed on the members of the company's board of directors, as well triggering their legal liabilities, and such failure will constitute grounds for the cancellation of the resolutions adopted by the Company's general assembly or the board of directors.

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The details of how to establish a company website and the content to be published therein is regulated under the Regulation on Websites to be Established by Capital Companies (the "**Regulation**"), which entered into force on 1 July 2013. According to this Regulation, capital companies can perform the website requirements by themselves or procure support from a Central Database Service Provider that is authorized by the Ministry of Customs and Trade.

The Regulation states which information and documents are to be published on the company website in detail. The Regulation requires capital companies to permanently publish the below information on their website, and immediately update them in the event of any change:

- MERSİS (central information system) number, trade name, registered address
- full names of the chairman and members of the board of directors (in the event that a legal entity is a board member, that legal entity's MERSIS number, trade name, registered address and its individual representative's full name)
- the amount of the committed and paid capital
- the company's independent auditor's trade name, registered address and branch offices (if any).

In addition to the above, Article 6 of the Regulation provides a list of documents and information that must be published in the company website for at least six months and in a way that is accessible to everyone. Such list includes documents and information relating to a merger, spin-off, capital increase or reduction, the company's representation and the general assembly meeting minutes.

A capital company's failure to publish such content on their website in line with the provisions under the TCC and the Regulation may result in the cancellation of the relevant resolutions. On the other hand, as explained in the above, such failure would trigger the board members' liability and may constitute grounds for the imposition of judicial fines.

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