Shareholders' rights in private and public companies in Turkey: overview

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Country Q&A | Law stated as at 01-Oct-2020 | Turkey

A Q&A guide to shareholders' rights in private and public companies law in Turkey.

The Q&A gives a high-level overview of types of limited companies and shares, general shareholders' rights, general meeting of shareholders (calling a general meeting; voting; shareholders' rights relating to general meetings), shareholders' rights against directors, shareholders' rights against the company's auditors, disclosure of information to shareholders, shareholders' agreements, dividends, financing and share interests, share transfers and exit, material transactions, insolvency and corporate groups.

To compare answers across multiple jurisdictions, visit the shareholders' rights in private and public companies *Country Q&A tool*.

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Types of companies with share ownership and limited liability

1. What are the main types of companies with limited liability protections and shareholders or members? Which is the most common? Which type do foreign investors most commonly use?

Under the Turkish Commercial Code (Commercial Code), companies are classified into capital companies and personal companies. The capital companies consist of:

- Joint stock corporations (JSC).
- Limited liability partnerships (LLP).
- Limited partnerships divided into shares.

The personal companies consist of:

- Unlimited partnerships.
- Limited partnerships.

The liability of shareholders of capital companies is limited to the share capital to which they subscribe. Conversely, the liabilities of the partners in personal companies are regulated in a much broader manner in comparison to capital companies.

The types of capital companies most commonly used by domestic and foreign investors are JSCs and LLPs. A JSC is defined as a company whose capital is fixed and divided into shares (*Article 329, Commercial Code*). An LLP has some characteristics of a personal company. The fields of activity, operations, and other corporate matters of both types of companies are governed by their articles of association (articles), within the parameters set out under the Commercial Code.

From a practical perspective, a JSC is generally better suited for larger operations. The legal framework applicable to the corporate governance of a JSC is better developed and more flexible (although sometimes more bureaucratic). The corporate governance rules for an LLP require a strong harmony among the partners for it to function. In addition, a public company can only be incorporated as a JSC.

2. What are the minimum share capital requirements for companies?

The share capital required to establish a JSC is TRY50,000 and TRY100,000 for non-public JSCs that adopt the registered capital system. The registered capital system allows the board of directors (board) to increase the JSC's share capital up to the registered capital amount, without convening a general meeting of shareholders (general meeting).

The minimum share capital required to establish an LLP is TRY10,000. There is no minimum share capital requirement for limited partnerships divided into shares, or for personal companies.

3.Briefly set out the main types of shares typically issued by a company and the main rights they provide. Set out the other main financial instruments (for example, bonds) and participation instruments that can be issued by a company.

The share capital of JSCs is divided into shares represented by share certificates, each conferring equal rights, except for any special privileges prescribed under the articles. A JSC's shares can be grouped into different classes, whereby certain share classes enjoy certain privileges (for example, class A shareholders being able to nominate more directors than class B shareholders). Having at least one share in a JSC provides certain equal rights to a shareholder, regardless of the shareholder's shareholding ratio in the company (for example, the right to attend

general assembly meetings, the right to be provided with information rights and the right to request a special audit). However, certain rights are granted based on the shareholder's shareholding percentages in the relevant JSC (that is, dividend rights, pre-emptive rights and so on) (*see Question 6*).

In JSCs, there are two types of shares: registered shares and bearer shares. For registered shares, a share transfer is completed with the endorsement and delivery of the share certificates (if any) and adoption of a board resolution to register the transfer in the company's share ledger. For bearer shares, delivery of the relevant share certificate without an endorsement is sufficient to complete the transfer.

Article 463 *et seq* of the Commercial Code regulates a conditional capital increase system. This allows a conditional increase of share capital, by granting a right to receive shares through an option or conversion right to the holders of bonds or similar debt notes, who may be creditors of the company or the corporate group, or employees of the company. The share capital will be increased without further action, at the time and to the extent that the conversion or option rights are exercised, and the subscription obligations will be fulfilled through set-off or payment. This method of capital increase grants to the holders of the bonds or debt notes the right to convert the bonds to shares or an option over shares. To increase the capital in this way, a shareholders' resolution is necessary.

4. What is the minimum number of shareholders in a company?

JSCs can be established with one or more shareholders. The shareholders of JSCs can be individuals, legal entities, or a combination of both.

An LLP can be established with at least one and at most 50 partners. Partners of an LLP can be individuals, legal entities, or a combination of both.

General shareholders' rights

5. At the formation of a company, what level of government defines the rights and obligations of the company?

A JSC is incorporated with the registration of the entity with the relevant local trade registry that operates at the city level. The trade registries are affiliated with the Republic of Turkey's Ministry of Trade.

The incorporation of certain companies (such as banks, financial leasing companies, holding companies and so on) is also subject to the approval of the Ministry of Trade and certain other regulatory authorities (for example, the Banking Regulation and Supervision Agency, or the Energy Market Regulatory Authority).

6. What are the general rights of all shareholders? How can shareholders' rights be varied (for example, attaching additional rights or limitations to a class of shares, or waivers of shareholders' rights?) Are such variations generally provided in the company's bye-laws, shareholders' agreements or by statute?

The shareholders rights under the Commercial Code can be examined in two main ways: financial rights and personal rights.

Financial rights

The Commercial Code provides that shareholders have the right to receive dividends, repayment on liquidation, pre-emption rights to obtain new shares, and so on. The most important are summarised below.

Dividends and repayment on liquidation. Each shareholder has the right to receive dividends, distribution of which is agreed in accordance with the articles and by law (*Article 507, Commercial Code*). Unless otherwise agreed in the articles, if the JSC is terminated, every shareholder has the right to receive liquidation profit pro rata to its shares following the liquidation. Due to the protection measures that have been taken against the 2019 novel coronavirus disease (COVID-19) pandemic, dividend distribution is limited to 25% of a capital company's net profit for the 2019 financial year. This regulation will be applicable until 30 December 2020 and this period may be extended or shortened by three months by a decision of the President (*Provisional Article 13, Commercial Code*).

Pre-emption rights. Shareholders have pre-emption rights to acquire new shares following a capital increase (*Article 461, Commercial Code*). A shareholder's pre-emption right can only be limited or removed for justifiable reasons, and with the approval of shareholders representing at least 60% of the capital. A shareholder who seeks to acquire new shares following the capital increase must pay the value of the shares.

Right to interest in the preparatory period. According to Article 509 of the Commercial Code, in principle, shareholders will not be paid interest on the capital they have contributed. However, Article 510 of the Commercial Code states that payment of interest in the preparatory period can be set out in the articles, in accordance with Turkish accounting standards.

Personal rights

Participation in general meetings. The Commercial Code stipulates that every shareholder has the right to participate personally in general meetings, or through a representative. The representation of a legal entity shareholder is maintained through its competent body or independent representative. In addition, shareholders have the right to:

- Express their opinions.
- Vote.
- File an annulment lawsuit against decisions taken, if certain conditions are fulfilled (*see Question 16*).

Voting rights. A shareholder's voting rights are determined in accordance with the nominal value of his shares (*Article 434, Commercial Code*). Each shareholder has at least one vote. If a shareholder holds more than one share, his/her voting rights can be limited by the articles. The right to elect members of the board by cumulative voting is available for non-public companies. To have this voting right, the minimum share capital, determined by law or by the articles, must be paid up.

Right to information. Every shareholder has the right to receive information about the company. This right cannot be limited by a board decision or the articles (*Article 437, Commercial Code*).

Requesting a special audit. Every shareholder can request the appointment of an independent auditor in a general meeting, if it is necessary to exercise its shareholders' rights (*Article 438, Commercial Code*). This request can be discussed in a general meeting, even if it is not included in the agenda, provided that the information or evaluation right has already been exercised. If the general meeting does not accept a special audit request by a shareholder, the shareholder can request the appointment of a special auditor by a court.

7. Briefly set out the rights of minority shareholders and the minimum shareholding required to exercise such rights.

Shareholders of a JSC representing at least 10% of the share capital (5% for a publicly owned JSC) are deemed a "minority" (*Article 411, Commercial Code*). A minority shareholder who alone (or acting with other shareholders) owns shares representing 10% or more of the share capital can exercise the following rights (this threshold is 5% for public JSCs).

Under the Commercial Code, minority shareholders' rights can be classified into positive rights and negative rights.

Positive rights of minority shareholders

Postponement of balance sheet discussions. Minority shareholders can request postponement of balance sheet discussions for one month (*Article 420, Commercial Code*). The postponement is notified to other shareholders. The minority shareholder can request postponement of the balance sheet discussions for a second time if the minority shareholder is not provided with satisfactory explanations of the issues objected to.

Right of board representation. Provided that it is set out in the articles, minority shareholders, and a certain group of shareholders, can be provided with a right to be represented on the board (*Article 360, Commercial Code*). The articles can provide for a right to be appointed as a board member, or to nominate a board member to represent a group of shareholders, certain share classes, and minorities. This nominee or shareholder must be appointed as a board member, unless there is just cause not to do so. This representation right cannot exceed one half of the board in public companies.

Calling a general meeting and including an item on the agenda. Minority shareholders can request an extraordinary general meeting to be convened, or include an item on an agenda of a general meeting (*Article 411, Commercial Code*).

Appointing an independent auditor. Every shareholder can request the appointment of an independent auditor during a general meeting, if necessary to exercise its shareholder rights, even if it is not included on the agenda, provided that the relevant minority shareholder has exhausted its rights of receiving information and evaluation (*Article 438, Commercial Code*).

The Commercial Code also provides that minority shareholders can request the replacement of the independent auditor (*Article 399, Commercial Code*).

Issuance of shares. Minority shareholders can request issuance of registered shares in a JSC (*Article 486, Commercial Code*). Upon such a request, registered share certificates must be issued and delivered to the holders of the registered share certificates.

Dissolution of the JSC. If there are just causes, minority shareholders can request dissolution of the JSC by filing a lawsuit before the commercial court of first instance with jurisdiction over the headquarters address of the JSC (*Article 531, Commercial Code*). Instead of dissolution, the court can order:

- Payment to the claimant shareholders of their shares' market value at the date closest to the court decision and termination of their shareholding.
- Any other appropriate and acceptable solution.

Negative rights of minority shareholders

Responsibilities of the board, the auditors, and the incorporators with respect to the incorporation and a capital increase of the JSC cannot be settled or released unless four years have passed since the incorporation. After then, a settlement or release must be approved by a general meeting. However, a settlement or release cannot be granted if minority shareholders vote against it (*Article 559, Commercial Code*).

> 8. How effective are institutional investors and other shareholder groups in monitoring and influencing a company's actions (for example, corporate governance compliance)? List any such groups with significant influence in this area.

In Turkey, private equity funds, acting as financial investors, are quite influential in monitoring the company's actions. They have certain contractual and corporate rights and have a significant effect on monitoring the company's actions, especially improving practices involving corporate governance, information rights, and so on.

Meetings of shareholders

Calling a meeting

9. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved at a general meeting? Which decisions must be approved by the shareholders in a general meeting?

The general meeting consists of the JSC's shareholders and is the highest decision-making body of a JSC. Resolutions of the general meeting bind all shareholders, including those not present at the meeting and those present who vote against items on the agenda.

Under the Commercial Code, there are two types of general meeting: ordinary and extraordinary. According to the Commercial Code, ordinary general meetings must be held within three months of the end of each activity period (*Article 409, Commercial Code*). Therefore, for companies whose activity period is based on the calendar year, meetings will be held within the first three months of the year. For companies whose activity period is based on a specific accounting period, meetings will be held within the first three months following the last day of the accounting period.

Extraordinary general meetings are convened whenever needed.

An ordinary general meeting agenda must contain:

- Opening ceremony and constitution of a meeting presidency.
- Discussion and negotiation of annual activity reports.
- Discussion of audit reports.
- Discussion, negotiation and approval of financial statements.
- Release of the board members.
- Determination of dividend distribution rates.
- Determination of board member's financial rights such as remuneration, bonus and salaries.
- Approval of new board members' appointment within the relevant financial year.
- Election of new board members whose terms of office have expired, and determination of their terms of office, if required.
- Determination of an auditor.
- Other issues that the board determines are necessary to be discussed and approved by a general meeting.

10. Can a company hold extraordinary or special meetings of shareholders? If so, what and how often? What issues can be discussed and approved by the shareholders in an extraordinary or special meeting?

Extraordinary general assembly meetings are convened whenever needed, providing that the board duly calls for an extraordinary meeting. Other than those issues which fall within the scope of the board's non-transferrable duties and powers under the Commercial Code, any issues can be included in the agenda of the extraordinary general assembly meeting.

Under Turkish law, the principles of the equal treatment of shareholders and the protection of their rights is adopted. Nevertheless, this does not mean that all types of shares will be treated with absolute equality, but rather it means that the shares that belong to the same category or classification will receive equal treatment.

Depending on what contractual provisions have been inserted to the articles of association, particular shares, or groups of shareholders, may be privileged and given more favourable status than other groups of shareholders concerning the nature and content of their rights and duties. As a consequence of such a differentiation in shareholding rights, privileged shares that are created provide shareholders with wider rights compared to ordinary shares. The Commercial Code regulates that certain general assembly resolutions that may infringe the rights of privileged shareholders will not be applicable unless they are approved by a resolution adopted in a special meeting held by privileged shareholders. Those resolutions are the general assembly resolutions on:

- The amendment of the articles of association.
- The grant of authorisation to the board regarding a capital increase.
- The board resolution on a capital increase.

These resolutions cannot be adopted unless approved by the privileged shareholders' special committee (*Article 454, Commercial Code*).

11. Can a general or special meeting be held by telecommunication means or written/electronic approval?

The Commercial Code provides for general meetings to be held in an electronic environment. To do this there must be a specific provision in the articles to hold general meetings in an electronic environment (*Article 1527, Commercial Code*). It is also necessary to register for online general meetings in the Central Registry Agency's Electronic General Meeting System (EGKS).

Companies holding general meetings in an electronic environment must invite Ministry representatives to them (*Regulation on the Procedures and Principles of General Meetings of Joint Stock Companies and Attendance of Representatives of the Ministry of Customs and Trade*). In addition, these companies must have the technical equipment to hold general meetings in an electronic environment.

General meetings can also be held abroad, provided that it is expressly stipulated in the articles. In such an event, the Ministry representative must be present at the relevant general meeting.

As a result of the measures taken against the COVID-19 pandemic, the Ministry has announced that companies can hold electronic general assembly meetings even if there is not a specific provision in their articles of association allowing for these meetings to be held electronically. The relevant announcement does not indicate any specific time limit for this provision's application.

12. What are the notice, information, and quorum requirements for holding general and special meetings and passing resolutions?

According to the Commercial Code, the board must adopt a resolution to invite shareholders to the general meeting. If the board is absent, or permanently unable to convene or meet the required quorum for the resolution, any shareholder of the company can invite shareholders to the general meeting, upon obtaining an order from the competent court. The call for a general meeting is of particular importance, as agenda items are specified in the resolution and these agenda items can be discussed during the meeting.

The invitation to the general meeting must be announced on the company's website if applicable, and in the *Trade Registry Gazette*, in compliance with the articles, at least two weeks prior to the meeting, excluding the date of announcement and of the meeting.

In addition, the date of the meeting, the agenda, and gazettes where the announcement of the meeting will be published must be notified to shareholders who:

- Are registered in the share ledger.
- Notified their address to the company together with documents evidencing their shareholding.

If the invitation does not comply with the procedures set out under the Commercial Code and the articles, the general meeting and resolutions adopted may be deemed void.

If all shareholders or representatives will be present, and if none of them object, a general meeting can be convened without invitation (*Article 416, Commercial Code*).

The quorum for general meetings is the presence of shareholders holding at least one quarter of the share capital, or their representatives (*Article 418, Commercial Code*). If this quorum cannot be met in the first meeting, no quorum is required for the second meeting.

The board must prepare an internal regulation in respect of the principles and procedures for the functioning of general meetings (*Article 419, Commercial Code*). This regulation is subject to the approval of a general meeting, and must be registered with the relevant trade registry and announced in the trade registry gazettes. The meeting chairmanship or the chairman must manage the meeting according to this regulation.

The Commercial Code regulates that certain general assembly resolutions that may infringe the rights of privileged shareholders will not be applicable unless approved by a resolution adopted in a special meeting held by privileged shareholders (*see Question 10*). A special committee of the privileged shareholders must be called for a meeting by the board within one month following the announcement date of the general assembly resolution that negatively affects the privileged shareholders. If the board does not call the special committee meeting, any privileged shareholder can request the competent court to invite the special committee for the meeting within 15 days as of the last call date by the board. A special committee's meeting quorum is 60% of the privileged shares, and the decision quorum is the majority of shares represented in the relevant meeting. In addition, the Ministry representative must be present in the special committee meeting (*Article 454, Commercial Code*).

Voting

13. What are the voting requirements for passing resolutions at general and special meetings?

The shares of JSCs generally confer equal rights to shareholders (except in case of special privileges under the articles) in proportion to their nominal value. It is also possible to create preferred shares under the articles of a JSC with more than one voting right. However, one share cannot have more than 15 voting rights. Such a preferred voting right cannot be exercised for decisions to amend the articles and to file a lawsuit for release and responsibility.

The right to vote in a general meeting is only possible if the minimum share capital, determined by law or in the articles of a JSC, is paid up. The voting can be conducted by a show of hands and/or a poll vote.

In a general meeting, shareholders of a JSC can be represented by proxy or power of attorney. However, at least one board member must physically attend the meeting. The general meeting must take its decisions in writing, even if there is only one shareholder. The general assembly minutes must be signed by the meeting presidency and the Ministry representative (if any).

Cumulative voting is allowed only for the election of a board member, provided that:

- The company's articles contain an explicit provision that allows cumulative voting.
- The company's articles do not contain any provisions regarding the group of shareholders' rights to be represented at the board and/or any right to nominate board members.
- There are no privileged shares which have a preferred voting right.
- The number of board members is determined as a certain number and, in each case, amount to at least three.

(*Communiqué on Principles Regarding Cumulative Voting at Shareholders' Meetings of Joint Stock Corporations.*)

14. Are specific shareholder approvals/resolutions required by statute or an applicable stock exchange for certain corporate actions? What voting requirements and majorities apply?

In principle, a majority of votes present is required to adopt a resolution at a general meeting. There are exceptions to this. According to the Commercial Code, unless a higher quorum is provided by law or the articles, resolutions amending the articles must be approved by a majority of the votes represented at the meeting. Provisions of the articles providing a lower quorum or relative majority are not valid.

Resolutions concerning the burden of additional obligations to cover the company's losses or moving the registered office of the company abroad must be taken unanimously.

Resolutions regarding the following must be approved by the votes of shareholders representing at least 75% of the share capital:

- Change of the company's purpose.
- Issuance of privileged shares.
- Restriction of transferability of registered shares.

The following general assembly resolutions must be approved by the majority of shareholders representing at least 25% of the total share capital in the companies whose share certificates are traded at the stock exchange, unless otherwise set out under the articles (*Article 421, Commercial Code*):

- Article amendments regarding a capital increase, and/or an increase of the registered capital's upper limit.
- Resolutions regarding a merger, demerger and/or conversion of the company type.

Shareholder rights relating to meetings

15. Can a shareholder require a general or special meeting to be called? What level of shareholding is required to do this? Can a shareholder ask a court or government body to call or intervene in a general meeting?

Minority shareholders can request the board to call an extraordinary general meeting or to add an item to its agenda (*see Question 7*). These requests must be submitted to the board by a notary public. If the board accepts the request, the general meeting must be convened within 45 days. If the board does not accept the request within seven business days, the shareholders can apply to the competent court. If the court deems it necessary, a general meeting must be held. The court can also appoint a trustee, who is responsible for the agenda and the conduct of the meeting.

If the board cannot convene a general meeting on a continuous basis, or there is no possibility that the quorum for a board meeting will be met, a shareholder can invite the general meeting to convene a meeting, by obtaining permission from the competent court.

Any privileged shareholder can request the competent court to invite the special committee to a meeting within 15 days as of the last call date by the board (*see Question 12*).

16. Can a shareholder require an issue to be included and voted on at a general meeting? What level of shareholding is required to do this? Can a shareholder require information from the board about the meeting's agenda?

Minority shareholders can request the board to add an item to the agenda of a general meeting. If a shareholder demands to add a further item to the agenda during a general meeting which is held without invitation, this item can be discussed provided that all shareholders are present at the meeting and vote on the matter.

The invitation to the general meeting must be announced on the company's website and in the *Trade Registry Gazette*, in compliance with the articles, at least two weeks prior to the meeting, excluding the date of announcement and of the meeting (*Article 414, Commercial Code*). Additionally, the date of the meeting, its agenda, and gazettes where the announcement for the general meeting will be published must be notified to shareholders who:

- Are registered in the share ledger.
- Notified their address to the company together with documents evidencing their shareholding.

17. Do shareholders have a right to resolve in a general or special meeting on matters which are not on the agenda?

In principle, at general meetings, the shareholders can only discuss and resolve the issues specified in the agenda. However, there are exceptions to this. If a shareholder demands to add a further item to the agenda during a general meeting which is held without invitation, this item can be discussed provided that all shareholders are present at the meeting and vote on this matter (*see Question 14*).

In addition, board members can be dismissed even if there is no relevant item on the agenda of the meeting, if there are reasonable grounds for dismissal of the board member (*Article 364, Commercial Code*).

A special committee of the privileged shareholders can only adopt a resolution on certain matters as specified under the Commercial Code (*see Question 10*).

18. Can a shareholder challenge a resolution passed at a general meeting? Is a certain shareholding level required to do this? What is the time limit and procedure to challenge a general meeting resolution?

General meeting resolutions which are against the Commercial Code or the articles and principles of good faith can be legally challenged (*Article 445, Commercial Cod*e). The following can file a lawsuit for annulment of the relevant resolution before the commercial court at the place of the company's registered office, within three months following adoption of the resolution:

- Shareholders who attended the meeting, opposed the resolution and recorded their opposition in the meeting minutes.
- Shareholders (whether or not they attended the meeting or voted against the resolution) who allege that one of the following breaches has occurred and had an effect on adoption of the resolution:
    - the call for the general meeting was not duly made;
    - the agenda was not announced in accordance with the Commercial Code;
    - individuals not authorised to attend the meeting or their representatives attended the meeting and voted for the resolution; or
    - he/she was unlawfully not allowed to attend the meeting and to vote for the resolution.
- The board.
- Each board member (if execution of the resolution results in him or her incurring liability).

Shareholders' rights against directors

19. What is the procedure to appoint and remove a director?

The power to manage the business and affairs of a JSC is vested with its board. In a JSC, board members must participate in all management activities, follow and observe the company's management, and supervise the day-to-day course of business. Under the Commercial Code, companies must have a board consisting of one or more

members appointed through the articles or elected by the general meeting for a maximum period of three years at a time. However, board members can be re-elected, unless otherwise provided under the articles.

Board members can only be dismissed if there is a relevant item on the agenda of the general meeting, unless there are reasonable grounds for the dismissal (*Article 364, Commercial Code*) in which case the board members can always be dismissed by the general meeting. However, a dismissed board member can claim compensation from the company.

20. Can shareholders challenge a resolution of the board of directors? Is there a minimum shareholding required to do this?

The Commercial Code provides the following as examples of invalid board decisions, which can be challenged by a shareholder:

- Violating the principle of equality.
- Conflicting with the essential character of the company and principle of maintenance of capital.
- Violating or limiting the exercise of the fundamental rights of the shareholders.
- Violating non-assignable powers of other corporate bodies.

This list is not exhaustive. Any shareholder can request the competent court to determine that a board resolution is invalid.

21.Briefly set out the main directors' duties to the company and its shareholders. What is the potential liability of directors to the shareholders? Can their liability be limited or excluded? On what grounds can shareholders bring legal action against the directors?

Duties and obligations of board members

The board has authority to represent the company to third parties. Unless otherwise agreed in the articles or unless the board only has one member, the JSC is represented and bound by the joint signatures of two board members.

The Commercial Code enables the delegation of management authority to one or more board members or third parties. The articles must include a provision allowing this delegation. Additionally, an internal regulation needs to be issued by the board.

The board can also delegate its representative authority to one or more board members or to third parties as company directors. To delegate representative authority, in addition to the provisions in the articles, at least one board member must preserve his representative authority. It is important to specify which powers are delegated, since just the delegation of management does not include delegation of representative authority. The directors are liable for their delegate's actions if they do not act with full diligence and care when choosing the delegate.

While allowing the delegation of powers, the Commercial Code prohibits the assignment of certain matters to the general meeting or to committees and commissions. Accordingly, certain decisions regarding the JSC's business must be taken only by the board. These are:

- High level management of the company and the power to give instructions in relation to high-level management.
- Determining the company's management organisation.
- Establishing the necessary systems for financial planning to the extent required for management, accounting and financial audit.
- Appointment and dismissal of managers and authorised signatories.
- High level supervision of individuals in charge of management, whether they act in accordance with law, articles, internal regulations and written instructions of the board.
- Keeping a share ledger, resolution book and book of a general meeting and discussion, preparation of the annual report and corporate governance disclosure and submission of it to the general meeting, the organisation of general meetings, and enforcement of general meeting resolutions.
- Notifying a court if the company's liabilities exceed its assets.

Along with the duties and powers of company's representation and management, members of the board have the following obligations:

- Not entering into transactions with the company and not to become indebted to the company.
- Non-compete obligation.
- Duty of care.
- Confidentiality obligation.
- Inviting shareholders to hold a general meeting.

Liabilities of board members

General liabilities. Board members are liable to the company, the shareholders and creditors of the company for losses that occur due to breach of their obligations and duties arising from law or the articles (*Article 553, Commercial Code*).

If the board delegates its powers and duties to a specific person or persons, it will not be liable for the fault of the person who receives the powers and duties, provided that the board acted with care while choosing that person. The

Commercial Code further states that the board cannot be liable for breach of law or the articles or fraudulent acts that are beyond its control, and release from such liability cannot be prevented based on the board's duty of care.

If more than one person is liable for compensating the same loss, each of these persons, depending on their level of fault and to the extent the loss can be personally attributed to the person, is jointly liable for compensation of the loss (*Article 557, Commercial Code*). Accordingly, the joint liability of the board members (and/or other persons acting on delegated authority) will be apportioned in accordance with the fault of each board member (and/or other persons acting on delegated authority). The Commercial Code allows companies to insure against possible damage caused by the board members.

The company' s website, books and records. Companies which are subject to independent auditing must have a website and allocate a specific section of the website for the announcement of relevant information required under the Commercial Code (*Article 1524, Commercial Code*). Board members are liable if this requirement is not fulfilled.

Under Articles 64/1 and 64/5 of the Commercial Code, the commercial books of JSCs must be kept in accordance with the Tax Procedure Law. JSCs must keep a share ledger including the:

- Names/titles and addresses of the shareholders.
- Number of shares held by the shareholders.
- Share transfers.
- Nominal value of shares.
- Share groups (if any).
- Encumbrances over the shares, and information regarding the beneficiaries of such encumbrances.

In addition, all JSC companies must keep a resolutions book, in which board resolutions must be recorded. Board members are liable if the company does not properly keep the statutory books.

The Tax Procedure Law and public receivables. Under Article 10 of the Tax Procedure Law, board members are responsible for paying all taxes of the company. If the company's tax obligations cannot be fully or partially collected as a result of the board members' failure to fulfil this duty, the board members can be personally liable for any unpaid tax. The board members who pay the tax have a right to recourse to the legal entity taxpayer. The relevant tax office will first initiate the collection procedure against the legal entity taxpayer, and if such tax cannot be collected, it will initiate the collection procedure against the board members. In this case, if the relevant legal representative can prove that he/she fulfilled his/her duty, he/she will not be liable for the unpaid taxes of the legal entity.

Further, as per the Law on Collection of Public Receivables (LCPR), board members and other legal representatives of JSCs are liable for payment of public receivables (for example, social security premiums of the employees) that cannot be fully or partially collected from the JSC. If the relevant official collection authority believes that collection of public receivables from the JSC is not possible, it can initiate collection procedures against the board members (even if all legal collection means against the JSC are not exhausted). In this case, even if the relevant legal representative proves that he/she fulfilled his/her legal duties, he/she will be liable for the unpaid taxes of the legal entity. However, a legal representative who pays the relevant tax will have a right to recourse against the legal entity taxpayer.

The Penal Code. The Penal Code imposes penalties on board members that breach certain duties and obligations. Some circumstances that are considered crimes under the Penal Code are:

- Breach of confidentiality.
- Breach of trust.
- Fraud.
- Intentional or negligent bankruptcy.
- Provision of misleading information to the public, a general meeting, and so on.

Liabilities under the Competition Act. The Competition Act imposes administrative fines on companies and, in certain cases, on their board members and/or its employees, where an infringement of the following occurs:

- Article 4 (agreements and concerted practices).
- Article 6 (abuse of dominant position).
- Article 7 (concentrations creating or strengthening a dominant position in the market).

Fines imposed on companies can be up to 10% of the annual gross revenue of the company in the Turkish market, as of the end of the fiscal year preceding the final decision of the Competition Board. Where a company is fined, its board members and/or its employees who have had a decisive impact on the infringement can also be fined up to 5% of the fine imposed on the company.

22. Are directors subject to specific rules when they have a conflict of interest relating to the company? Are there restrictions on particular transactions between a company and its directors? Do shareholders have specific rights to bring an action against directors if they breach these rules?

Board members must act as cautious executives and protect the interests of the company while performing their duties in accordance with the principle of good faith. A cautious executive must make business judgments in accordance with the principles of corporate governance.

Board members are not allowed to enter into transactions with the company, either on behalf of themselves or another individual, without the general meeting's permission. If the board member enters into a transaction with the company without the general meeting' permission in breach of the relevant rule, the transaction can be held invalid. In addition, board members are not allowed to compete with the company without the general meeting's permission. In the absence of the general meeting's permission, the company can claim compensation or disgorgement of all benefits that the relevant board members have gained from their competing acts.

A board member is not permitted to participate in discussions regarding his own interests and personal interests of his or her spouse's relatives, up to the third degree (*Article 393, Commercial Code*). This prohibition will also apply in circumstances where acting in good faith requires the board member not to participate in discussions. During

these discussions, the member cannot vote. If the conflict of interest is not known by the board, the relevant board member must declare the potential conflict and comply with the prohibition.

Board members who do any of the following will be liable for any damages incurred by the company:

- Act contrary to this provision.
- Do not object to participation of the relevant board member while the conflict of interest exists and is known.
- Decide in favour of the participation of the member in the meeting.

23. Does the board have to include a certain number of non-executive, supervisory or independent directors?

There is no such requirement under Turkish law for non-public JSCs.

Under the Corporate Governance Communique No. II-17.1, in public JSCs that are not traded:

- The total number of board members in the company cannot be less than five.
- The majority of the board members must be non-executive board members.
- The number of independent board members cannot be less than one third of the total number of board members in the company, and in any event there cannot be less than two independent board members.

In addition, companies must establish the following committees consisting of at least two members, the majority of which must be non-executive board members:

- Audit committee (excluding banks).
- Early risk determination committee (excluding banks).
- Corporate governance committee.
- Nomination committee.
- Remuneration committee (excluding banks).

24. Do directors' remuneration and service contracts have to be disclosed? Is shareholder approval of directors' remuneration required?

In non-public JSCs, if the amount is determined by the articles or a general meeting resolution, board members can be paid an honorarium, salary, bonus, a premium and a portion of the annual profit. Board members' service contracts do not have to be disclosed.

Under the Corporate Governance Communique, in public but not traded JSCs, remuneration principles of the board members and the executive directors must be determined in writing and included as an agenda item in a general meeting to inform the shareholders, and the remuneration policy must be announced on the official company website. In addition, if the chairman of the board is also the chief executive officer of the company, this must be disclosed on the public disclosure platform.

Shareholders' rights against a company's auditors

25. What is the procedure to appoint and remove the company's auditors? What restrictions and requirements apply to who can be the company's auditors?

A (non-public) JSC satisfying at least two of the following conditions (determined for the year 2018) in two consecutive fiscal years, by itself or together with its affiliates, is subject to an independent audit:

- Total asset value is TRY35 million or more.
- Annual net sales revenue is TRY70 million or more.
- Employing 175 or more employees.

JSCs which do not satisfy the above requirements can still appoint an independent auditor.

The auditor is appointed by the general meeting for each fiscal year and before the end of the fiscal year in which he/she will perform his/her duty. The appointment of the auditor must be registered with the Trade Registry and announced in the *Trade Registry Gazette* and on the website of the JSC, if required.

Minority shareholders also have the right to request the replacement of the auditor. A court can replace the auditor if there is just cause (for example, if there is doubt about the auditor's impartiality). A lawsuit to replace an auditor must be filed within three weeks following the announcement of the auditor's appointment in the *Trade Registry Gazette*. For minority shareholders to file this action, they must have voted against the election of the auditor at the general meeting, had their opposing votes recorded in the minutes and been a shareholder for at least three months prior to the date of the general meeting.

If an auditor has not been appointed within the first four months of the fiscal year, an auditor must be appointed by the court, on the request of the board, a board member or a shareholder.

In addition, every shareholder can request the appointment of a special auditor at a general meeting, even if this is not included in the agenda, and provided that the information or evaluation rights have already been exercised. If the request is accepted at the general meeting, each shareholder or the company itself can request from the commercial court the appointment of a special auditor, within 30 days. If the general meeting rejects this request the minority shareholders, or shareholders whose total nominal value of shares is at least TRY1 million, can request the appointment of a special auditor from a court within three months. The court will grant the appointment of the special auditor if the requesting shareholders put forward a convincing explanation that the incorporators or bodies have caused damage to the company or shareholders, through their acts in breach of the law or the articles.

An auditor performing an independent audit must be an individual or legal entity consisting of individuals authorised by the Oversight, Accounting and Auditing Standards Board, and who are either a licensed sworn financial adviser or an independent accountant financial adviser. Individuals who cannot be the auditor are listed in Article 400 of the Commercial Code, for example:

- Shareholders of the company to be audited.
- The managing director or an employee of the company to be audited, or someone who has held this title within the three years before being appointed as auditor.

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

The liability of auditors is governed under Article 404 and Article 554 of the Commercial Code.

As per Article 404 of the Commercial Code, the auditors are under a confidentiality obligation. They cannot disclose the company's confidential information. Under the relevant Article, a breach of this obligation intentionally or through negligence creates liability. Individuals who are in breach of this obligation will be subject to pay compensation up to TRY100,000 for each audit in non-public companies, and between TRY217,795 to TRY653,394 respectively for the year 2020 for JSCs listed on the stock exchange. This compensation liability cannot be lifted or limited through contractual arrangements.

In addition, the auditors are liable to the company, the shareholders, and the creditors of the company based on their fault. The company, its shareholders or the creditors can request compensation of damage they incur, provided they prove that they have incurred damage.

Disclosure of information to shareholders

27. What financial or other information about the company do the directors have to provide and disclose to its shareholders? What information and documents are shareholders entitled to receive?

In JSCs, each shareholder has a right of information about the company. This right cannot be abolished or restricted through the articles or a board resolution. The financials and consolidated financial accounts must be kept accessible for the shareholders for a term of one year, in the headquarters and branches of the company.

In addition, financials, consolidated financial accounts, the board's annual operational report, audit reports and the board's suggested dividend distribution must be kept accessible in the headquarters and branches of the company, for 15 days prior to the general meeting. Further, each shareholder can request a copy of the balance sheet and the income statement. Requests for information can only be rejected due to a risk of disclosure of corporate secrets, or any other risks to the company's corporate benefit.

28. What information about the company do the directors have to disclose under securities laws (where applicable)?

The information that must be disclosed for a public JSC is governed under the Corporate Governance Communique and the Communique on the Public Disclosure Platform. Companies must publicly disclose:

- Financial reports.
- Any material events.
- Any other news or events required to be publicly disclosed by the Capital Markets Board.

29. Is there a corporate governance code in your jurisdiction? Do directors have to explain to shareholders in the company's annual report if they have not complied with it (comply or explain approach)?

The Corporate Governance Communique determines the corporate governance principles applicable to publicly traded companies and rules and procedures for related party transactions. JSCs that are public but not traded are

not subject to the corporate governance principles. Publicly traded companies are subject to different mandatory corporate governance principles. The Corporate Governance Communique classifies publicly traded companies in three groups given their systemic importance and based on their market value. Accordingly, application of mandatory corporate governance principles varies.

As per the Corporate Governance Communique, publicly traded companies must specify the corporate governance principles they are complying with, and explain why they are not complying with others in their annual reports. The companies must also prepare a corporate governance compliance report.

30. What information can shareholders request from the board about the company? On what grounds can disclosure of company information be refused? Are shareholders entitled to inspect the company's books and similar company documents?

In JSCs, each shareholder has the right to be kept informed about the company (*see Question 25*).

Further, each shareholder can request a copy of the balance sheet and the income statement. Requests for information can only be rejected due to a risk of disclosure of corporate secrets, or any other risks to the company's corporate benefit.

Shareholders' agreements

31. Briefly set out the main provisions of a typical shareholders' agreement.

Shareholders' agreements are not specifically dealt with under Turkish law. However, they are commonly used in practice, when establishing a partnership or joining an existing partnership. Shareholders' agreements differ from the articles. A shareholders' agreement can be deemed a constitution, governing the principles, terms and conditions of the relationship between the shareholders.

Shareholders' agreements generally contain provisions that cannot be inserted in the articles, such as relating to:

- The company's financing.
- Grounds for termination.
- Put options and call options.
- Non-compete undertakings.

- Loyalty obligations.
- Redemption rights.
- Personal, investment and profit policies.

These agreements are not specifically dealt with by law. They do not fall within the scope of corporate law, but are deemed agreements in line with the principle of freedom of contract, in accordance with obligations law.

32. Are there circumstances where shareholders' agreements can be enforceable against third parties?

Under Turkish corporate law, the articles must be registered in the Trade Registry and announced in the *Trade Registry Gazette*. Shareholders' agreements are executed between the shareholders and cannot be enforced against third parties (*see Question 29*).

33. Do shareholders' agreements have to be publicly disclosed or registered?

If the company is not a party to the shareholders' agreement, the shareholders' agreement does not have to be registered with the Trade Registry and announced in the *Trade Registry Gazette*.

Shareholders' agreements to which the company is a party to and which qualify as a dominance agreement (*hakimiyet sözleşmesi*) under the applicable legislation must be registered with the Trade Registry. Contracts related to the incorporation, signed by the company to be incorporated, the founders and other individuals of the company, are included in the registration file for the company kept with the Trade Registry (*Article 336, Commercial Code*).

Dividends and distributions

34. What are the most common forms of distributions?

Each shareholder has the right to receive a dividend, which the company agrees to pay to shareholders under the articles and by law (*Article 507, Commercial Code*). According to the Commercial Code, a non-public JSC's dividends can be distributed either from the net profit of the relevant fiscal year or from the free reserve funds.

The Commercial Code does not specify any requirement in terms of the dividend distribution's form and does not prohibit the distribution of a non-cash dividend. However, in practice, most companies distribute dividends in cash and do not make any non-cash distribution. In contrast to non-public JSCs, under the Communique No. II-19.1 on Dividends, public JSCs whose shares are not traded must distribute dividends in full and in cash.

In addition to the above, instead of distributing dividends, a JSC [can] increase its share capital by using its internal resources and converting its accumulated dividends into the share capital. In such a case, the relevant JSC converts its dividends into capital (that is, into shares) and distributes those shares to each shareholder in proportion to their existing shareholding ratios.

35. How can dividends be paid to shareholders and what procedures and restrictions apply? Is it possible to exclude or limit the right of certain shareholders to dividends? Is the payment of interim or special dividends allowed?

In principle, each shareholder is entitled to receive a dividend pro-rata to its shareholding in the company, provided that the general meeting resolves to distribute profit. Dividend can be distributed from the net profit of the respective fiscal year.

The net profit of the company is calculated by subtracting expenses from income made in a balance sheet term. 5% of the net profit is set aside as legal reserves.

The dividend is calculated in proportion to the payments made by the shareholder to the company for his/her shares. The remaining net profit is distributed in line with the method determined by the general meeting. After 5% of net profit is distributed to the shareholders as dividends, 10% of the total amount which will be distributed to the individuals granted a share of the net profit will be added to the legal reserve.

In addition, unless otherwise agreed in the articles, if the JSC is terminated, every shareholder has the right to acquire liquidation profit, in proportion to its shares following the liquidation.

Article 509 of the Commercial Code governs interim dividends for both private JSCs and LLPs. Based on this, the Ministry issued its Communique on Interim Dividend Distribution (Interim Dividend Communique). The Capital Markets Law and the Communique regarding the Principles on Interim Dividend Distribution prepared by the Capital Markets Board (CMB Communique) regulates the distribution of interim dividends by public companies.

Under the CMB Communique, public JSCs can distribute interim dividends based on the profits stated in their independently audited quarterly interim financial statements for the respective fiscal year. The public JSC's general meeting must adopt a resolution to distribute interim dividends.

According to the Interim Dividend Communique, a general meeting must resolve to make interim dividend distributions. The general meeting is also mandated to clarify specific items while adopting this resolution (for example, remedies for cases where there is no sufficient year-end profit). In principle, for a company to distribute interim dividends, the company must make profits and this must be identified in its quarterly interim financial statements (at three, six or nine months). The losses of former years, as well as taxes, funds and financial reserves, statutory reserves and ancillary items, if any, are taken into consideration when calculating the interim dividends to

be distributed. The sum of these items is deducted from the profit earned in the interim period to calculate the net profit. The maximum amount of interim dividend to be distributed is 50% of the net interim profit. Shareholders are entitled to interim dividends pro rata to their shareholdings in the company.

Under the Commercial Code, the payment of interest in the preparatory period can be set out in the articles, in accordance with Turkish accounting standards (*Article 510, Commercial Code*).

Financing and share interests

36. Can shareholders pledge or grant security interests over their shares? If so, what effect does it have on the shareholders' right to vote or receive dividends?

Debt instruments, bills of exchange and commercial bills, securities containing a right to purchase and to exchange, and every kind of security interest can be issued by the company's shareholders with a general meeting resolution (*Article 504, Commercial Code*). These resolutions must be approved by the votes of shareholders holding at least 75% of the capital, or their representatives. If this threshold is not reached in the first general meeting, the same threshold must be obtained in subsequent meetings. However, a provision to the contrary can be put into the articles.

Such a pledge or security established by a shareholder over his/her shares only affect the relevant shareholder's financial rights (that is, the right to receive dividends, repayment on liquidation, pre-emption rights to acquire new shares and so on) arising from the pledged or secured shares. In other words, the shareholder's personal rights (such as information rights or right to attend a general assembly meeting) are not affected due to the establishment of any pledge or security.

In addition, a person holding a bearer share certificate based on a right of pledge or lien, escrow agreement or lending agreement for usage, or other similar agreements, can only exercise the shareholding rights arising from such shares if the respective shareholder authorises him/her to do so in writing (*Article 427, Commercial Code*).

37. Are there restrictions on loans or other financial assistance for the purchase of a company's shares?

Article 380 prohibits a JSC from granting any advance payment, monetary loan or security to a third party for the purpose of that third party acquiring the company's shares, unless either:

- The transaction falls within the scope of activity of credit and financial institutions.

- An advance payment, monetary loan or security is granted to the employees of the company or to the employees of the company's affiliates, for the purpose of facilitating the acquisition of company shares by these employees.

Share transfers, issues of new shares and exit

38. Are there any restrictions on the transfer of shares by law? Can the transfer of shares be restricted? What are the rights of shareholders in the case of an issue of new shares (pre-emption rights)?

In JSCs, there are two types of shares: registered shares and bearer shares. For registered shares, a share transfer is completed by the endorsement of the share certificates (if any). To perfect the share transfer, a board resolution is required to register the share transfer in the company's share ledger.

For bearer shares, delivery of the relevant share certificate is sufficient to complete the share transfer. For both registered and bearer shares, there is no need for registration with the trade registry. However, the share transfer must be recorded in the company's share ledger.

Article 492 of the Commercial Code regulates restrictions in the articles concerning share transfers. The company's approval can be set out as a condition in the articles to the transfer of registered shares.

Shareholders have the right to acquire new shares issued through a capital increase, in proportion to their shareholding in the company issuing new shares, in return for paying the share value. Shareholders' pre-emption rights can only be restricted or abolished for justifiable reasons and with the approval of shareholders representing 60% of the company's capital. The acquisition of a business, part of a business or participation in a business, as well as the granting of a participation to employees, are some examples of justifiable reasons.

Further, the Commercial Code states the general condition that no-one can be favoured or disfavoured in an inappropriate manner through limitation of pre-emption rights. This provision especially covers a violation of the principle of equal treatment of shareholders.

39. Can minority shareholders alter or restrict changes to the company's share capital structure?

The Commercial Code does not provide for a statutory right for minority shareholders to alter or restrict changes to the company's capital structure.

40. When are shareholders required to notify changes to their shareholding to a regulatory authority?

If an entity directly or indirectly holds 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% of the shares of a capital company, or its shares fall below such percentages, the entity must notify the company and the relevant authorities of the situation within ten days following completion of the relevant transactions. The company must explain the relevant transactions under the annual activity and audit reports as well as announce the relevant transaction on its website (*Article 198, Commercial Code*). This notification also needs to be registered with the trade registry and announced in the *Trade Registry Gazette*. All rights, including any voting rights arising from the acquisition of shares, will be suspended until this is done.

Depending on the nature of the transaction and the scope of the company's activity, a share transfer can be subject to the relevant regulatory authority's approval/permission. For example:

- JSCs must obtain the Competition Board's authorisation if the turnover of parties to the transaction exceeds certain thresholds.
- If the JSC's sector is regulated, the relevant regulatory authority's approval must be obtained (for example, the Banking Regulation and Supervision Agency for banks, the Undersecretariat of the Treasury for insurance companies, and the Energy Market Regulatory Authority for companies generating and distributing energy).

41. Can companies buy back their shares? Which limitations apply?

Under Article 379 of the Commercial Code, a JSC is allowed to acquire or accept a pledge over its own shares, provided that both:

- The total nominal value of such shares does not (or, as a result of a transaction, will not) exceed 10% of the company's initial or issued capital.
- The general meeting authorises the board regarding the acquisition or pledge of the shares.

This authorisation can be valid for a maximum term of five years and must indicate the nominal value of the shares to be acquired or accepted as a pledge, and the lower and upper limits of the consideration payable for the acquisition/pledge. The board must state in each of its proposals for permission that the legal requirements have been met. These provisions also apply to the acquisition of shares of a JSC by its subsidiaries.

Under Article 379 of the Commercial Code, following payment for the acquisition, the remaining net assets of the JSC must be equal to at least the total sum of the non-distributed mandatory reserve funds and the JSC's share capital.

Under the Commercial Code, only shares that have been paid in full can be acquired.

Under Article 382 of the Commercial Code, the company can, however, acquire and buy back its own shares without being subject to the limitations under Article 379, if and when:

- It is applying the law's provisions allowing the reduction of its initial capital or issued capital.
- It is a requirement of the principle of universal succession.
- The transaction arises from a legal purchase obligation.
- Subject to payment of full price of the shares, it aims to recover and collect an outstanding debt owed to the company through the execution proceedings.
- The company is trading securities.

42. What are the main ways for a shareholder to exit from the company? Can shareholders require their shares to be repurchased by the company? Can shareholders be required to exit the company in certain circumstances? How are the shares valued in this case?

In a JSC, a shareholder can exit from the JSC through selling his/her shares. The exit mechanisms can be determined by the shareholders in the shareholders' agreement.

In addition, under Article 141 of the Commercial Code, a merger agreement can provide the shareholder with an option to choose to have shares in the surviving company or to exit and receive compensation (*ayrılma akçesi*).

Share capital

43. Can shares be cancelled after issue?

A company's general assembly can cancel a portion of its shares by decreasing its capital to either:

- Return the capital to its shareholders.

- Recover its losses (if it has lost two-thirds of its share capital).

In order to do so, the company must amend the relevant provisions under its articles. The board must prepare a detailed report that includes the reasons for such capital decrease and submit this report to the general assembly. Following the approval of the capital decrease by the general assembly, the board must announce this resolution in *Trade Registry Gazette* three times in each seven days to notify such capital decrease to the company's creditors. The respective announcement must state that the creditors of the company can notify its receivables in two months following the *Trade Registry Gazette* announcement date by requesting to be paid or guaranteed their receivables. However, if the company decreases its capital to recover its losses, the board may waive to call the creditors and pay or guarantee their receivables (*Article 474, Commercial Code*).

Material transactions

44. What rights do shareholders have in the case of material transactions, such as a sale of all or substantially all of the company's assets, and a company reorganisation such as a merger or demerger?

The Commercial Code allows a squeeze-out of the minority shareholders in a merger.

In a merger agreement, the legal entities involved in the merger can compel the shareholder(s) of the dissolving company to sell its/their shares merely by providing compensation through payment (without the shareholders being offered a choice) (*Article 141, Commercial Code*). In this case, the minority shareholders of the dissolving entity are not entitled to obtain shares in the surviving entity, but instead are paid squeeze-out compensation. The amount of the compensation and the reasons why only compensation is paid, instead of granting equity and membership rights, must be explicitly stated in the merger report.

However, the very high threshold in Article 151 of the Commercial Code narrows the scope of the squeeze-out procedure (that is, provision of compensation only payment). Accordingly, if the shareholders of the merging entity are given no choice, forcing the minority shareholder(s) of the dissolving entity to accept the compensation payment, shareholders holding 90% of the voting rights of the dissolving entity must approve the merger agreement. According to the reasoning of Article 151, the shareholders who are to be squeezed out, whose names are set out in the approved merger agreement, are not entitled to raise any objection against the squeeze-out resolution of the general meeting. This authority to eliminate minority shareholders aims to give internal certainty to the surviving entity. A minority shareholder who cannot stop the respective general meeting is still entitled to oppose the amount of the compensation payment.

In addition, according to the reasoning of Article 141 of the Commercial Code, the compensation payment can be made in cash or in assets, and/or other shares. If the compensation is paid in cash, the amount must be set aside from legal reserves that can be disposed of by the company without any restriction, and cannot be paid out of the company's share capital.

45. What rights do shareholders have if the company is converted into another type of company (consider if applicable, a European Company (SE))?

Shareholders of a company participating in a merger, division or conversion, who have not voted for the resolution to approve it and recorded this in the minutes, can file an action for cancellation within two months from the date of announcement of the resolution in the *Trade Registry Gazette* (*Article 192, Commercial Code*). If an announcement is not required, this period starts from the date of registration of the resolution. This lawsuit can also be filed if the resolution is adopted by a management body.

Insolvency

46. What rights do shareholders have if the company is insolvent?

Under Article 376(1) of the Commercial Code, if the board concludes from the annual balance sheet for the previous year that the company's share capital and statutory reserves have lost one half or more of their value, the board must call an extraordinary general meeting immediately, with a proposal for remedial measures for the general meeting's approval to strengthen the company's financial status.

Under Article 376(2) of the Commercial Code, if the board concludes that the sum of the company's share capital and statutory reserves have lost two-thirds or more of their value, the board must immediately call an extraordinary general meeting and present a proposal for remedial measures. In this meeting, the shareholders must resolve on either:

- Replacing the lost part of the share capital through a cash injection.
- Continuing with the remaining share capital.

If any of the above resolutions are not adopted at the general meeting, or if a meeting is not convened at all, the company is deemed dissolved under the Commercial Code and the Enforcement and Bankruptcy Law. In this situation, if the board does not take any of the above required actions, the board will be jointly liable to the company, the shareholders and the company's creditors for their losses and damages arising from this omission.

Under Article 376(3) of the Commercial Code, if there are significant signs that the company is over-indebted (for example, in the results of the year-end balance sheet or other financial information), the board must prepare an interim balance sheet, where the value of the company's current assets is recalculated at fair (current) market value (not at book value). If the interim balance sheet indicates that the company's assets are not sufficient to cover its

debts, the board must notify the competent commercial court and file a claim for the bankruptcy of the company. Even in this case, the shareholders can immediately recover the financial insolvency without filing for bankruptcy. The courts also provide the applicants with a cure period for recovery of the financial insolvency. The shareholders can inject cash into the company to replenish the company's capital funds through creating a special fund (loss remedy fund).

47. Can shareholders put the company into liquidation? What is the procedure to do this?

A general meeting can resolve to put the company into liquidation. The general meeting can resolve the following:

- Whether the company should be liquidated.
- The commencement of the liquidation procedure.
- An amendment of the company's trading name.
- The appointment of the liquidator(s) and determination of its authority.

The required threshold for the general meeting resolution is the approval of shareholders holding at least 75% of the company's capital.

Corporate groups

48. Is the concept of a corporate group recognised under specific legislation?

Under the Commercial Code, a group of companies is formed by:

- A controlling commercial company (parent company).
- At least two commercial companies, directly or indirectly controlled by the parent company.

The Commercial Code determines the instruments granting control to the parent company, and sets out obligations for the members of the group of companies.

49. Does a controlling company have any duties and liability to the shareholders of the company it controls? What are the rights of company shareholders if the controlling company carries out actions that are prejudicial to the shareholders?

Under Article 202 of the Commercial Code, a controlling company cannot exercise its control over its subsidiary in a way that would make its subsidiary incur a loss, unless the loss is compensated in that trading year, or a right to claim equivalent value is granted to the subsidiary by the end of that year specifying how and when the loss will be compensated.

If the loss has not been compensated in that trading year, or if a right of equivalent claim has not been granted in that period, each shareholder of the subsidiary can claim that the loss incurred by the company is compensated by the controlling company and its board members who caused the loss. A judge can order that shares of the claimant shareholders be acquired by the controlling company, or decide another solution.

Shareholders who have voted against a general meeting resolution and had them recorded in the minutes, in connection with transactions (such as a merger, division, conversion, termination, issue of securities and an important amendment to the articles) initiated through application of control without any clear reasonable grounds concerning the dependent company, or who have objected in writing to the board resolution on the same and similar subjects, can request from a court that either their:

- Damage be compensated by the controlling enterprise.
- Shares be purchased at least at the stock exchange value if possible or, if there is no such value or if the stock exchange value is not just, at the actual value or at a value determined under a generally accepted method.

The data available at the date nearest to the date of the court order is the basis of the valuation. An action for claim of compensation or purchase of shares becomes statute barred after two years of the date of the resolution of the general meeting, or of the date on which the board resolution is announced.

If a commercial company directly or indirectly holds 100% of the shares and voting rights in a capital company, the board of the controlling company can give instructions regarding the management of the subsidiary, even if they have a nature which may cause results that could lead to a loss, provided that it is a requirement of the specified and concrete policies of the group. The bodies of the dependent company must comply with these instructions.

In this case, the board members of the subsidiary and its managers cannot be liable to the company and its shareholders due to compliance with these instructions.

50. What are the limitations on owning reciprocal share interests in companies?

Under Article 197 of the Commercial Code, cross-shareholding is defined as when capital companies own at least 25% of each other's shares. Article 201 of the Commercial Code governs restrictions on the use of voting rights in

cross-shareholding situations. Capital companies, which intentionally enter into a cross-shareholding relationship, can use only one-quarter of their shareholding rights, including the voting rights attached to the shares subject to cross-shareholding. However, this restriction will not apply if a subsidiary acquires the shares of its controlling (parent) entity, or both companies control each other.

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Recent transactions

- Advising Vitol, one of the world's largest companies trading in energy and commodities, in its acquisition of 100% of the shares in Turkey's leading fuel products distributor.
- Advising iyzico and its shareholders, in connection with the transfer of majority shares in iyzico to PayU, which was the largest Fintech deal in Turkey in recent years with a deal value of USD165 million.
- Advising Elif Holding's shareholders regarding the sale of 100% of Elif Plastic's shares, which was the largest deal in the packaging sector with a deal value of approximately USD320 million.
- Advising team.blue on the direct sale of Çizgi Telecommunication, and indirect sale of Nics Telecommunication; both Turkey's outstanding hosting and domain name registration service providers.

Languages. Turkish, English, German

Professional associations/memberships

- Board Member of Türk Traktör AŞ.
- Board Member of Boyner Holding.
- Member of the Board of Trustees of Türkiye Girişimcilik Vakfı.
- New York Bar Association.

- Istanbul Bar Association.
- International Bar Association (IBA).
- Turkish Corporate Governance Association (TKYD).
- Turkish-British Chamber of Commerce and Industry (TBCCI).
- German-Turkish Chamber of Industry (AHK).

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Recent transactions

- Advising Vava Cars, a Turkish subsidiary of Vitol, in connection with various corporate, commercial, data privacy and regulatory matters, as well as employment law related matters.
- Advising Gucci on a retainer basis, in connection with a wide range of Turkish employment law matters.
- Advising Duracell's Turkish subsidiary on its compliance with Turkish personal data privacy legislation and the preparation of its personal data privacy compliance package.

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Areas of practice. M&A; corporate and commercial law.

Recent transactions

- Advising Vitol, one of the world's largest companies trading in energy and commodities, in its acquisition of 100% of the shares in Turkey’s leading fuel products distributor.
- Advising Mediterra Capital, a prominent Turkish private equity fund, in connection with: the acquisition by Logo of 100% stakes in various software companies including Sempa and Vardar, the acquisition of a 100% stake in Terra Pizza (formerly known as Pizza Pizza) and Glasshouse (an IT company); the sale of Hassas İş and ACP Insurance; the acquisition of a majority stake in Tavuk Dünyası (a fast-food chain); and the acquisition by Glasshouse of a 100% stake in C2E Technologies, by way of merger.
- Advising a British multinational distribution and outsourcing company listed on the London Stock Exchange FTSE100 Index, in connection with the acquisition of 80% shares in two companies active in plastics packaging sector and remaining shares in the same companies in two separate transactions.

Languages. Turkish, English, French

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