



GEN & TEMİZER | ÖZER

# RECENT DEVELOPMENTS IN TURKISH CAPITAL MARKETS

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The rules and procedures regarding corporate governance principles and related-party transactions for public companies are set forth in the Capital Markets Board's ("CMB") Communiqué on Corporate Governance numbered II-17.1 ("Communiqué")<sup>1</sup>.

## A. Corporate Governance Principles for Public Companies in Turkey

Within the scope of the Communiqué, the following are the essential obligations that public companies must comply with after a public offering:

- i. appointment of independent board members;
- ii. establishment of the required committees;
- iii. establishment of an investor relations department to ensure communication between investors and the company;
- iv. publication of compliance reports on corporate governance principles.

In the Communiqué, corporate governance principles are regulated under four main headings: shareholders; public disclosure and transparency; stakeholders; and board of directors. Some of the corporate governance principles are mandatory whereas rest of the principles as listed in the Communiqué are not.

Below we provide a list of the main corporate governance principles in Turkey that are mandatory for public companies:

### a. *Structure of the board of directors:*

- the board of directors must consist of at least five members;
- the majority of the members must not have any executive duty in the company other than being a member of the board of directors and must not interfere with the company's ordinary activities;
- the number of independent board members must not be less than one-third of the total number of members of the board of directors<sup>2</sup>;
- in any case, the number of independent board members must not be less than two.

The Communiqué also includes details regarding the qualification of the independent member to be appointed to the board of directors.

### b. *Committees:*

An audit committee, early detection of risk committee, corporate governance committee, nomination committee and compensation committee, each of which must have (i) at least two members, and (ii) an independent board member as the chairman, must be established within the board of directors<sup>3</sup>.

1. Public companies that do not trade shares on the stock exchange are exempt from the corporate governance principles stipulated in the Communiqué.

2. According to the Communiqué, having two independent board members is sufficient for companies that are going public for the first time.

3. If a separate nomination committee and compensation committee cannot be established due to the structure of the board of directors, the corporate governance committee shall assume the duties of these committees as well.

## 01 | Implementation of corporate governance principles

Public companies are categorised into three groups as described below, according to their market values and the market value of shares in free float and according to which they may be exempt from some of the mandatory corporate governance principles:

FIRST GROUP	SECOND GROUP	THIRD GROUP
Public companies with an average market value above TRY 3 billion and an average market value of shares in free float above TRY 750 million.	Public companies that are not in the first group with an average market value above TRY 1 billion and an average market value of shares in free float above TRY 250 million.	Public companies that are not in the first or second groups that have shares traded on the National Market, Secondary National Market and Corporate Products Market.

The CMB identifies to which group public companies belongs and announces this through its bulletins.

Companies that plan to offer shares in an initial public offering are in the third group until the CMB announces the groups of companies. Companies are obliged to comply with the mandatory corporate governance principles as of the date of the first general assembly to be held after its shares start trading on the stock exchange.

## 02 | Non-compliance with corporate governance principles

The CMB is authorised to make decisions and directly carry out the relevant procedures in case of non-compliance with mandatory corporate governance principles. In this regard, if a company does not comply with corporate governance principles, the CMB may:

- request an interim injunction for the determination or cancellation of the non-compliance; or file a lawsuit;
- directly appoint the necessary number of independent board members, if the board of directors or the general assembly do not take the required actions to ensure compliance with mandatory corporate governance principles.

## 03 | Prohibition of collateral, pledge, mortgage and sureties

According to the Communiqué, it is prohibited for a public company or its subsidiaries to give collaterals, pledges, mortgages or sureties in favour of third parties, with the following exceptions:

- collaterals, pledges, mortgages and sureties granted in favour of its own legal entity or corporations that are fully consolidated in its financial statements;
- collaterals, pledges, mortgages and sureties granted in favour of third parties for the purpose of conducting its own ordinary commercial activities;
- collaterals, pledges, mortgages and sureties granted in favour of subsidiaries and business partners in which there is a direct capital contribution by the company, in the proportion of the directly contributed capital.

In addition, the approval of the majority of independent members is required in the board of directors' resolution to grant collaterals, pledges, mortgages and sureties in favour of other third parties for the purpose of carrying out the public company's ordinary business activities.

## B. Related-party transactions

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Within the scope of the Communiqué, in the case of transactions that are (i) similar to the purchase of assets and services, (ii) obligation transfers, and (iii) similar to the sale of assets and services to be carried out by public companies and their subsidiaries with related parties, if the ratio of the transaction amount to the total asset or the amount of revenue or the value of the company is more than 5% according to the latest publicly disclosed financial statements, a board of directors' resolution determining the principles of the transaction is required before undertaking such a transaction.

If the above-mentioned ratio exceeds more than 10%, the approval of the independent members' majority is required in the board of directors' resolution.

In addition, (i) the scope of common and continuous transactions between a public company and its subsidiaries and their related parties; and (ii) the conditions related to these transactions are required to be decided by the board of directors with a resolution. Common and continuous transactions are defined as a public company's transactions having the same qualification and that is made or will be made at least twice in a yearly accounting period, within the scope of ordinary activities. In cases where it is foreseen that the ratio of a common and continuous transaction (i) to the cost of sales in a purchase transaction, or (ii) to the revenues in a sale transaction in the latest annual financial statements will exceed 10%, the board of directors, in addition to a resolution, must issue a report and publish it on the Public Disclosure Platform.





## Issuances approved by the Capital Markets Board of Türkiye: October 2022

SHARE ISSUANCES of PUBLIC COMPANIES		
COMPANY NAME	TYPE of SALE	SIZE of ISSUANCE
Creditwest Faktoring A.Ş.	Issuance Through Internal Resources	TRY 20,000,000
Hektaş Ticaret T.A.Ş.	Public Offering Through Issuance of New Shares and Issuance Through Internal Resources	TRY 1,670,000,000
Formet Metal ve Cam Sanayi A.Ş.	Private Placement	TRY 38,750,000
Penta Teknoloji Ürünleri Dağıtım Ticaret A.Ş.	Issuance Through Internal Resources	TRY 349,792,000
Smart Güneş Enerjisi Teknolojileri Araştırma Geliştirme Üretim Sanayi ve Ticaret A.Ş.	Issuance Through Internal Resources	TRY 153,000,000
Aksigorta A.Ş.	Public Offering Through Issuance of New Shares	TRY 1,000,000,000
Alkim Kağıt Sanayi ve Ticaret A.Ş.	Issuance Through Internal Resources	TRY 131,250,000
SASA Polyester Sanayi A.Ş.	Private Placement	TRY 15,830,245

## DEBT INSTRUMENTS ISSUANCES

COMPANY NAME	TYPE of SALE	ISSUANCE LIMIT
Arena Finans Faktoring A.Ş.	Qualified Investor	TRY 60,000,000
Bilkom Bilişim Hizmetleri A.Ş.	Qualified Investor	TRY 800,000,000
Marka Mağazacılık A.Ş.	Private Placement / Qualified Investor	TRY 425,000,000
Hedef Araç Kiralama ve Servis A.Ş.	Private Placement / Qualified Investor	TRY 2,000,000,000
Aktif Yatırım Bankası A.Ş.	Public Offering / Qualified Investor	TRY 6,000,000,000
Vakıf Faktoring A.Ş.	Qualified Investor	TRY 1,117,000,000
Tüpraş Türkiye Petrol Rafinerileri A.Ş.	Qualified Investor	TRY 5,000,000,000
Ak Faktoring A.Ş.	Private Placement / Qualified Investor	TRY 60,000,000
Global Menkul Değerler A.Ş.	Private Placement / Qualified Investor	TRY 160,000,000
Türkiye Vakıflar Bankası T.A.O.	Private Placement / Qualified Investor	TRY 3,000,000,000
Pasha Yatırım Bankası A.Ş.	Qualified Investor	TRY 1,000,000,000
	Overseas	USD 25,000,000
Sümer Varlık Yönetimi A.Ş.	Qualified Investor	TRY 405,000,000
Çelik Halat ve Tel Sanayi A.Ş.	Qualified Investor	TRY 405,000,000
Türk Traktör ve Ziraat Makineleri A.Ş.	Private Placement / Qualified Investor	TRY 500,000,000
Şeker Finansal Kiralama A.Ş.	Qualified Investor	TRY 970,000,000
Coca-Cola İçecek A.Ş.	Qualified Investor	TRY 1,000,000,000
Oyak Çimento Fabrikaları A.Ş.	Private Placement / Qualified Investor	TRY 2,000,000,000
Nurol Yatırım Bankası A.Ş.	Private Placement / Qualified Investor	TRY 3,000,000,000
Birikim Varlık Yönetim A.Ş.	Qualified Investor	TRY 500,000,000
Mavi Giyim Sanayi ve Ticaret A.Ş.	Qualified Investor	TRY 5,000,000,000
Koç Fiat Kredi Finansman A.Ş.	Private Placement / Qualified Investor	TRY 450,000,000
Gübre Fabrikaları T.A.Ş.	Private Placement / Qualified Investor	TRY 3,000,000,000
AG Anadolu Grubu Holding A.Ş.	Private Placement / Qualified Investor	TRY 2,500,000,000
Kent Finans Faktoring A.Ş.	Private Placement / Qualified Investor	TRY 165,000,000
Yapı Kredi Yatırım Menkul Değerler A.Ş.	Private Placement / Qualified Investor	TRY 3,000,000,000
Tam Finans Faktoring A.Ş.	Private Placement / Qualified Investor	TRY 288,000,000

## OTHER ISSUANCES

COMPANY NAME	ORIGINATOR / FUND USER	TYPE of CAPITAL MARKETS INSTRUMENT	TYPE of SALE
<b>Aktif Bank Sukuk Varlık Kiralama A.Ş.</b>	Aktif Yatırım Bankası A.Ş.	Lease Certificate Based on Purchase and Sale	Qualified Investor
<b>Halk Varlık Kiralama A.Ş.</b>	Toprak Mahsulleri Ofisi A.Ş.	Lease Certificate	Qualified Investor
<b>Emlak Katılım Varlık Kiralama A.Ş.</b>	Türkiye Emlak Katılım Bankası A.Ş.	Lease Certificate Based on Green/Sustainable Management Agreement	Private Placement / Qualified Investor
<b>Değer Varlık Kiralama A.Ş.</b>	Qua Granite Hayal Yapı ve Ürünleri Sanayi Ticaret A.Ş.	Lease Certificate Based on Management Agreement	Private Placement / Qualified Investor
<b>Vakıf Varlık Kiralama A.Ş.</b>	Vakıf Katılım Bankası A.Ş.	Lease Certificate Based on Management Agreement	Private Placement / Qualified Investor

For more information, please contact your  
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