



Turkey: Managing Public Companies & Corporate Governance Principles

Authors: Gönenç Gürkaynak, Esq. and Irmak Yetim, ELIG Gürkaynak Attorneys-at-Law

I. Introduction

Corporate governance principles are set of rules and practices introduced as preventive measures pursuant to corruptions and bankruptcies of publicly held companies occurred in 1980s, for protection of companies, shareholders and stakeholders and to avoid conflicts of interest. Under Turkish approach, the managing body, *i.e.* board of directors, is regarded as the pillar of corporate governance given that the problems relate to the management of the companies. Therefore, the principles are focused on the board of directors.

II. Development of Corporate Governance Principles in Turkey

Following US and European trends, corporate governance principles (“**principles**”) have been initially published in Turkey by the Turkish Industry and Business Association in 2002, followed by the Capital Markets Board (the “**Board**”) in 2003. The principles have been incorporated into Turkish Commercial Code No. 6102 (“**TCC**”). Under Article 1529 of the TCC, the Board is the authorized body regarding determination and application of the principles.

Pursuant to Article 17 of the Capital Markets Law No. 6362 (“**CML**”) the Board may oblige publicly held companies to comply with the principles, and may set the relevant procedures. The Board is further authorised to decide on the steps for compliance for each company and carry out the relevant actions *ex officio* including applying for interim injunction and bringing action.

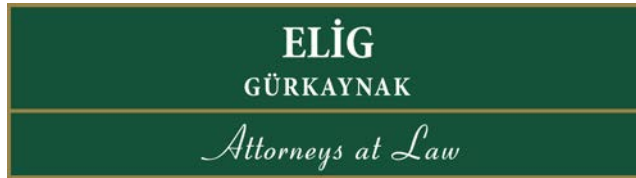
Upon prior approval from the Board, other public bodies and institutions may determine the details of the principles which are applicable only to their field.

III. The Corporate Governance Communique

Publicly held companies, or companies subject to the same provisions as publicly held companies, are required to comply with the corporate management principles contained in Article 5 of the Corporate Governance Communique II-17.1 (“**Communique**”). The complete list of the principles has been published as an attachment of the Communique. Although having a statutory basis, some of the principles are merely recommendations with no requirement to comply.

The Communique divides the companies into three groups based on average market value of their floating stocks. Applications of the principles differ depending on the groups.

- (i) First group: companies having average market value over TRY 3 billion and average value of floating stocks over TRY 750 million.



- (ii) Second group: companies not falling within first group, having market value over 1 billion Turkish liras and average value of floating stocks over TRY 250 million.
- (iii) Third group: companies not falling within first and second groups, having shares traded in National Market, Second National Market and Corporate Products Market.

IV. Corporate Governance Principles

The corporate governance principles are mainly based on the principles of fairness (equality), transparency (public disclosure), responsibility and accountability. More recently, the Communique have been amended to include sustainability matters on a voluntary basis.

The general principles which are required to be complied (if not, explained) are on general assembly and board of directors matters, as briefly set out below. Kindly note that companies that are operating in certain regulated sectors such as banks, would need to considered additional requirements as well.

a. General Assemblies

Companies are required to announce the date of their general assembly meetings and the documents which will be presented to the shareholders, including (i) current shareholding structure, any existing privileged shares, past and upcoming changes in management and activities of the company and its subsidiaries impacting the activities significantly, and the reasons for such changes, (iii) detailed information about board member candidates, (iv) shareholders' written requests regarding adding an item to the agenda which are rejected by the board and the reasons for rejection, (v) in case of amendment to articles of association, previous and amended versions of the amendments together with the board of directors' resolution, on company's website and public disclosure platform ("KAP") latest 3 (three) weeks before the general assembly meeting.

The chairman of the general assembly meeting shall explain the items on the agenda clearly, unbiased and in detail, allowing the shareholders to express their opinions and ask questions under equal conditions. All questions raised shall be answered during the meeting or if they are not related to the agenda or require some time, within 15 (fifteen) days at most, in writing. Moreover, all of the questions and answers discussed during the meeting shall be published in the website of the company within 30 (thirty) days.

Transactions where shareholders, board members, executive managers and their relatives carry out transactions potentially resulting in conflicts of interest with the company or its affiliates; or where the company joins another company as shareholder with unlimited liability, such transactions shall be discussed as a separate item.



Moreover, on transactions concerning asset and service purchase and sale, and transfer of obligations which may affect the financial status of the company based on the percentage of the transactions' value against companies' value, the companies are required to resolve with affirmative votes of majority of the independent board members and where applicable, publish the dissenting votes on KAP.

b. Board of Directors

Board of directors of the companies under the Communique are required to consist of minimum 5 (five) members and the majority of the members should not partake in executive matters. The non-executive board members shall involve independent board members who shall be capable of carrying out their duties without any influence. Such independent board members cannot be less than 1/3 of the board members and in any case less than 2 (two).

The qualifications of independent board members are set forth under Principle 4.3.6. to ensure that they possess the capability carrying out their duties unbiased and with necessary experience and qualities. The election of the independent board members is subject to the Board's final decision based on the written report of nomination committee and board of directors' resolution. Once the Board approves the list of candidates, the general assembly elects the board members among the approved list of the candidates.

In the case of an event impacting independence of an independent board member, the board of directors shall be immediately notified and the event shall be announced on KAP. The independent board member is required to resign from his duty where they can no longer be classified as "independent".

c. Board of Directors Committees

Under the general principles, board of directors shall include committees of Audit Committee, Early Detection of Risk Committee, Corporate Governance Committee, Nomination Committee, and Fee (Price) Committee. Each committee's scope of duties, working principles and members are determined by the board of directors and announced on KAP.

Committees are required to consist of minimum 2 (two) members and the majority of the members are required to be non-executive. In addition, CEO/general manager cannot be a member of a committee. Chairman of the committees are elected among independent board members. Persons who are not board members, who are experts in the relevant area, are allowed to be members of committees other than audit committee.

The scopes of committees are summarized below:



- (i) Audit committee: the audit committee oversees company's accounting system, public disclosure of financial details, independent audit, company's internal control and internal auditing. The committee is responsible for reviewing and resolving complaints concerning the foregoing matters. The committee is required to convene minimum 4 (four) times a year, once in every three months, and present their resolutions to the board of directors for approval.
- (ii) Corporate governance committee: the committee oversees implementation of corporate governance principles and detects conflicts of interest arising from lack of implementation and advises on enhancing corporate governance to the board of directors.
- (iii) Nomination committee: the committee is responsible from establishing a transparent method in determining candidates suitable to take on a managing position as member of the board of directors or executive responsibilities, their evaluation and their training and establishes policies and strategies.
- (iv) Early Detecting of Risk Committee: the committee detects risks which may jeopardise company's existence, development and continuity, takes necessary measures to prevent the risks spotted.
- (v) Fee Committee: the committee oversees remuneration of board members and executive managers, setting the principles and criteria.

V. Conclusion

Corporate governance principles serve an important role in continuity of publicly held companies and enhancing their successes while maintaining integrity. Although implementation of all the principles is not strictly mandatory, the requirement to publish explanations as to non-conformity under "report of compliance with corporate governance principles" in the annual activity reports, which are open to public access, increases the accountability. Moreover, the principles are evolving to reflect societies' changing values, such as sustainability, pushing large companies to adapt and reform.

Article contact: Gönenç Gürkaynak, Esq.

Email: gonenc.gurkaynak@elig.com

(First published by Mondaq on December 2, 2021)