YAZICILEGAL

NEWSLETTER

www.yazicilegal.com
A. Levent Mah. Yasemin Sok. No.13 Beşiktaş 34340 İstanbul **T**. +90 212 269 02 27 **F.** +90 212 269 02 28 **E.** info@yazicilegal.com

CORPORATE GOVERNANCE OVERVIEW OF PUBLICLY HELD COMPANIES

I- Introduction

Governance in any context reflects the value system of the society in which it operates. Corporate governance is a system of law and sound values based on principles of fairness, transparency, accountability and responsibility. By adopting principles of good corporate governance, especially in developing countries, companies can often reduce their vulnerability to financial crises, command higher valuations, improve their profitability, and gain better access to foreign capital than their poorly governed peers, as demonstrated by the World Bank.

We at Yazici Legal believe that global financial realities on the one hand, correspondingly increasing local awareness prompted by legislative actions and family succession issues on the other, will make corporate governance more relevant for all, privately or publicly held, Turkish companies in the foreseeable future. In particular, gradual withdrawal of the ultra-accommodating monetary policies by developed countries is likely to increase competition among developing countries for foreign capital, rendering good corporate governance policies a tangible competitive advantage. In view of these developments, we have decided to place special emphasis on this field in anticipation of our clients' prospective demands, and have also reinforced our team with Mr. Mert Engindeniz as "of counsel" to the firm, a senior corporate and securities lawyer specialized in corporate governance. Hereby, we have launched this effort with a legal overview on publicly held companies, with the intention that more in-depth coverage on specific corporate governance topics will ensue in the future.

II- Corporate Governance Events' Chronology

The theoretical foundations of corporate governance date all the way back to *Adam Smith*'s criticisms of the *East India Company* in the 18th century. Corporate governance debates in the US had started in 1932 when *Berle and Means* published their book, *the Modern Corporation and Private Property*. In 1982, the American Law Institute published its *Principles of Corporate Governance and Structure*. By the 1990s, corporate governance had already emerged as a new legal discipline.

We have placed the *Cadbury Report* on top of our events' chronology as it stands out as a high profile effort which marks the beginning of an accelerated era, perhaps somewhat incidentally, after which the corporate governance debate became really heated internationally:

- In 1992, in the UK, the "Cadbury Report", Financial Aspects of Corporate Governance, was issued by "The Committee on the Financial Aspects of Corporate Governance".
- In 1995, the International Corporate Governance Network ("ICGN") was established, an investor led organization.
- In 1999, OECD ministers endorsed the OECD Principles of Corporate Governance (subsequently communicated in Turkish by the Association of Turkish Industrials and Businessmen, "**TÜSİAD**", in 2000).
- Between 2001 and 2002, massive corporate frauds were unveiled in the US in Enron, WorldCom and Tyco, paving the way for the enactment of the Sarbanes-Oxley Act in July 2002.
- In December 2002, TÜSİAD published a report titled "The Corporate Governance Best Practice Code: Composition and Functioning of the Board of Directors".
- In May 2003, the European Commission presented an Action Plan on Company Law and Corporate Governance, the main aims of which were strengthening shareholders rights, reinforcing protection for employees and creditors and increasing the efficiency and competitiveness of business.
- In July 2003, Capital Markets Board of Turkey ("**CMB**") issued its first Corporate Governance Principles, adopting a "**comply or explain**" approach.

- In December 2003, the Parmalat corporate scandal was uncovered in Italy.

- Also in 2003, the Corporate Governance Association of Turkey ("**TKYD**") was founded.

- In 2006, OECD published a 160 page report titled "Corporate Governance in Turkey: A Pilot Study".

- In 2007, the Istanbul Stock Exchange created a Corporate Governance Index.

- In 2011, Turkey shifted towards a mandatory approach, the CMB requiring large listed companies to comply with some of the provisions of the Corporate Governance Principles.

- In 2012, the new Turkish Commercial Code No: 6102 (the "**TCC**") and the new Capital Markets Act No: 6362 (the "**CMA**") became effective, representing a landmark shift in the corporate governance paradigm. One day before the effective date of the new TCC, in response to reactions from the business community, a decree with force of law was adopted that curtailed the independent audit requirement from all joint stock companies to large companies only, reducing its impact by 99%.

- In 2013, CMB appointed three independent board members in Turkcell Iletisim Hizmetleri A.S. ("**Turkcell**"), the largest mobile phone operator in Turkey.

- On June 2014, after series of amendments in its previous communiqués since 2011, the CMB issued its latest version of Communiqué on Corporate Governance (Series: II, No. 17.1) (the "**CG Communiqué**").

- In 2015, latest G20/OECD Principles of Corporate Governance were published ahead of the G20 meeting in Antalya, Turkey.

III- Corporate Landscape in Turkey

The majority of listed companies are **family controlled groups**, with a high degree of cross ownership. **Ownership is concentrated**, with hardly any take-over attempts having been initiated by local or foreign investors. **Free float ratios**, quantity of shares available to public, **are often low** in global standards, currently standing at an average of c. 30%. It is widely accepted among researchers that companies with higher floating ratios may be associated with better governance as the largest shareholder has less influence while other shareholders are more inclined to exercise their rights.

Also generally, a large shareholder base is directly related to the willingness of large and sophisticated investors to hold their shares. What may appear to be in contrast in Turkey is, in spite of its low free float, that foreign institutional investors' ownership is 65%; yet their involvement in corporate governance enforcement is negligible.

As of November 2015, total market capitalization of all listed companies in Turkey is c. USD 220 billion, which represents c. 25% of GDP. The same ratio exceeds 100% in most developed markets, with various emerging markets like Brazil hovering around 50%, South Africa 150%, Russia 45% and Malaysia 160%. The ratio of market capitalization over GDP is merely one measure in gauging the magnitude of publicly traded companies in a country's overall economy. In Turkey, only 12% of the 1.000 largest companies are listed, with their share in country-wide employment standing merely at 3%. The foregoing snapshot is to provide some context in assessing the economic scope of the legislation dealing with publicly-held companies.

IV- Corporate Governance Framework:

Most countries have "national codes or principles" under the "**comply or explain framework**" while a few jurisdictions mainly address these issues through "**laws and regulations**". The former approach is based on **voluntary compliance** whereas the latter refers to a **mandatory** one. In the "comply or explain framework", companies are either required to comply with the corporate governance rules <u>or</u> explain/announce the reasons causing any non-compliance. The United States and India, for instance, belong to the latter group. The dynamic nature of business activities often induce countries to re-visit the right balance between the two main approaches. In that respect, deviating from its comply or explain approach carved into its 2003 corporate governance rules, Turkey took its first steps towards a mandatory approach in 2011, requiring large listed companies to adopt the CG Principles, reinforced by subsequent laws and regulations until 2014 in the same direction.

At present, the main elements of the Turkish corporate governance regulatory framework are: (i) the TCC; (ii) the CMA and (iii) CMB Communiqués. Among the CMB Communiqués, the most relevant ones are the CG Communiqué and, to some extent, CMB's Communiqué on "Significant Transactions and the Retirement Right" (Series: II, No. 23.1) (the "ST Communiqué").

In addition, there is peripheral corporate governance legislation in respect of banks, included in the Banking Act No: 5411, Regulation on Banks' Corporate Governance Principles dated 2006 and Regulation on Banks' Internal Systems dated 2006. These are applicable irrespective of a bank's publicly or privately held status. The BRSA is in charge of enforcing CMA's corporate governance provisions on listed banks, in co-ordination with the CMB. Moreover, the Public Oversight, Accounting and Auditing Standards Authority ("KGK"), established in 2011, has set forth the duties of independent audit firms in relation to corporate governance. The Borsa Istanbul ("BIST") has not been assigned any specific responsibility in enforcing corporate governance on its listed companies.

In countries like the United States and Hong Kong "the stock exchange" is the primary custodian for setting forth codes and principles, whereas it is the "securities regulator", the CMB in the case of Turkey, who holds nearly all the responsibility. The United Kingdom, Netherlands and Germany have, for instance, mixed initiatives between the exchanges and regulators. Of the 40 countries surveyed by the OECD in 2015, 12 function with the securities regulator assuming the main responsibility, 8 with the stock exchange, and in the remaining 20, private associations undertaking this function (in Switzerland, Sweden and Brazil).

Article 1529 of the TCC and **Article 17 of the CMA** have furnished the CMB as a public regulator with explicit legal authority to impose its Corporate Governance Principles (the "Principles") on all publicly held companies. The Principles are comprised of both compulsory and non-compulsory ("comply or explain" type) provisions.

The CMB has evidently imposed a self-restraint, through its CG Communiqué, by exempting non-listed publicly held companies (also the ones listed on some subordinate markets) from all of the provisions of the Principles. There are also certain qualifications for Banks and listed companies associated with public service or public authority. Moreover, the CG Communiqué sets forth a three tier classification (namely the **First Group, Second Group** and **Third Group**) among listed companies based on their market capitalizations and free float, and applies the Principles at varying degrees on each group.

There are over 600 publicly held companies, 363 of which are listed on major indices of BIST. In the First, Second and Third Groups, there are 28, 30 and 305 companies, respectively. Their share in the aggregate market capitalization of listed companies are, 68%, 13% and 19%, in the same order. The 6 banks in the First Group represent %47 of the same total.

Those sections of the **CG Communiqué** containing substantive provisions are: "**Section (II) the Principles**"; "**Section (III) Related Party Transactions**" and "**Section (IV) Other Requirements relating to Investor Relations' Unit and Creation of Security Interests**". Non-listed publicly held companies, which are approximately 200, are only required to comply with a sub-segment of Section IV, merely the one regarding Investor Relations' Unit. Companies listed on subordinate markets, however, have to comply with only the latter two sections, rendering the Principles inapplicable in respect thereof.

V- Selected Corporate Governance Topics

A) VOTING:

The effective exercise of the ownership function is a key element of corporate governance. In achieving this task, many jurisdictions concentrate on issues such as shareholder notifications, shareholder rights to request a meeting and to place items on the agenda, thresholds for fundamental resolutions, issuance of shares with limited rights, preferred shares and voting caps, voting practices and communication of voting results.

Under the CMA, publicly-held companies are required to invite their shareholders at least three weeks prior to the meeting, with an announcement published also on their corporate websites and the Public Disclosure Platform ("PDP"). The TCC provides that shareholders who hold 5% are entitled to call a meeting or add an agenda item. To pass resolutions on restriction of preemptive rights, capital reduction and significant transactions listed on Article 23 of the CMA, affirmative votes of two-thirds of shares present at the meeting is required. If the quorum of the meeting corresponds to at least half of the share capital, such resolutions can be adopted simply with the majority of the votes cast. Issuing a class of shares with limited voting rights, without voting rights, without preferential rights to dividends, multiple voting rights and voting caps is allowed. Article 479 of the TCC sets forth a fifteen vote cap per share, whereas super-voting is not permissible on matters relating to articles' amendments and board members' liabilities. In respect of preferred shares, the CMB is authorized by virtue of the CMA to remove certain privileges on super voting and board nomination in case where a company posts losses in five consecutive financial years, unless the nature of its activities renders it reasonable or inevitable.

Notably, a **mandatory electronic general meeting system** ("**e-GEM"**), was introduced in Turkey in 2012 that enables meetings with physical and electronic attendance in all publicly held companies with shares represented in dematerialized book-entry form.

Finally in Turkey, formal vote counting and disclosure of voting results "immediately" after the meeting are required. While shareholder meetings are generally supervised by private means in many jurisdictions, formal vote casting and counting are conducted, only in certain cases pursuant to the TCC, under the supervision of a government official from the Ministry of Customs and Trade. The CMB has also been authorized by the CMA to send a representative to shareholder meetings, an authority which it uses regularly. Undoubtedly, the implementation of e-GEM will facilitate the supervisory role of the CMB considerably.

B) BOARD OF DIRECTORS:

In line with the majority of jurisdictions in the corporate world, Turkey also has a one-tier board structure as envisaged in the TCC. Some jurisdictions, like Germany, Austria, Poland and Indonesia, have two-tier boards that separate the supervisory and management function into different bodies. Some EU countries like France, Hungary and Netherlands offer the choice of the two systems.

In almost all of the OECD countries, there is a requirement or recommendation relating to a minimum number or ratio of **independent directors**. While the United States, India and Hungary have imposed a majority independent board, most countries embrace a "comply or explain" approach. As such, the CG Principles state a general rule that the ratio of "independent directors" on the board should be **no less than one-third of all the board seats** (fractions to be rounded up); and in any case should be no less than two. The minimum board size is five. **The majority of the board should consist of "non-executive members"**.

The definition of independence and maximum tenure is of great significance and varies considerably among jurisdictions around the world. In Turkey, the general rule is that all independent members must be independent of significant shareholders, the shareholding threshold being 5%. As for the maximum tenure for an independent director, independence status would be lost after having served for six years in the preceding ten years.

In short, the **number of independent board members for**: (i) Banks is three; (ii) non-banks in the First Group and all in the Second Group is one-third of the board and (iii) the Third Group is two.

The **independent director's rule is qualified in five cases**: for (i) Banks; (ii) the Third-Group, (iii) companies where control is shared by at least two independent shareholder groups, (iv) companies operating with a license or concession in providing public services and (v) companies where a public institution holds preferred shares. However, granting exemptions for cases (iii), (iv) and (v) is within the discretion of the CMB based on its review of the relevant application. As for Banks, while they should have no less than three independent board members, definitions of "independence" and "non-executive" are relaxed in certain cases (depending on whether or not an independent board member also serves on the audit committee). For cases in (ii) and (iii), it is sufficient to have only two independent board members.

The existing **independence measure of the CMB, consisting of ten objective and subjective (qualitative) criteria**, appears to be adequate in comparison with global standards. This is of particular relevance since the role of independent directors serves as one of the main pillars of the Turkish corporate governance system. Nevertheless, the Principles also contain an extraordinary provision, by virtue of Article 17 (2) of the CMA, which **grants the CMB the right to disapprove a nominee based on lack of independence, hence to practically veto his/her membership in reference to the qualitative criteria, applicable to all independent members of the First Group's non-banks and at least one independent member of the First Group's banks**.

The power vested upon the CMB through Article 17 had extended to such degree that (via Communiqué Series IV, No: 56, then revoked in 2014 by the CG Communiqué) the CMB at the time could make *ex officio* nominations to boards or could remove existing board members from duty while enforcing its corporate governance rules. In fact, the CMB used its authority thereunder in March 2011 in the case of Turkcell, by removing three of its directors and appointing CMB's own independent members (two of which were former ministers), thereby giving rise to a policy debate. Today, while the foregoing Communiqué has been repealed, the CMB still maintains its interventional powers arising out of Articles 17 (2) and 92 (1-c) of the CMA.

Like in many jurisdictions with one-tier board systems, the **combination of the function of board chair and CEO** is permitted in the CG Principles while it is required in such cases that a disclosure with a specific explanation should be filed with the PDP. Fortunately, in leading listed Turkish companies, the market practice is that most of the chairmen do not hold the CEO position concurrently while, instead, one board member generally holds the CEO position.

Under the Principles, there is also a "comply or explain" type, a non-compulsory provision that each company should determine a target ratio for **women participation** in their boards which should be no less than 25%. Boards are required to evaluate the progress in this respect and also explain any non-compliance in their annual **Principles' Adherence Reports**.

Finally, CG Principles do not impose any requirement for any **employee representation on the board**. It may be worthwhile to note that ten EU countries have established requirements in respect of the same, whereas no jurisdiction outside of Europe requires employee representation.

C) BOARD-LEVEL COMMITTEES:

In all OECD and its peripheral countries, board-level committees are either required or recommended. Audit committee, nomination committee and remuneration committee are the most common forms. Among them, audit committee, in three-quarters of jurisdictions, is a requirement and a key component of corporate governance regulation, according to the OECD data. It is commonly accepted that the audit committees can play a critical role in achieving the integrity of financial reporting, promoting audit quality, as well as overseeing general compliance.

Similarly, the Sarbanes-Oxley Act directed the Securities and Exchange Commission to adopt regulations that require the stock exchanges to prohibit the listing of any security of a company that does not have an audit committee that meets its requirements. In the US, every member of the audit committee must be independent. The audit committee must have authority over hiring, compensating and retaining the company's independent auditor and for overseeing the work of the auditor in preparing any audit report. In Europe, the relevant EU directive of 2006 has also prescribed the role of the audit committees.

Inspired by these developments, the CG Principles define a similar structure comprised of the following committees: (i) audit committee; (ii) early detection of risks committee; (iii) corporate governance committee; (iv) nomination committee and (v) compensation committee. Nomination and compensation committees may be merged under a corporate governance committee "in the event that a company's board composition" is not conducive to forming these two committees. **In any event, independent directors are expected to assume a vital role in the efficacious functioning of these committees**.

Minimum size of the committees is two. In case there are two members, both of them, and in case there are more than two, the majority of them shall be comprised of non-executive members of the board. Yet all members of the audit committee shall consist of independent members. A non-compulsory provision in the CG Principles provides that at least one audit committee member should have a minimum experience of 5 years in audit/accounting and finance. The Chairman of each committee shall be elected from among the independent members of the board. A CEO or General Manager cannot be a member in any committee.

Banks, in contrast, under the CG Principles are not required to establish an audit committee but only are required to establish a corporate governance committee and nomination committee. Nonetheless, the banking regulation requires all banks, privately or publicly held, to have an audit committee which operates through a different set of rules than those of the CG Communiqué. Likewise, the TCC requires all listed companies to have an Early Detection of Risks Committee.

Audit Committee is responsible for the supervision of the company's accounting system, disclosure of financial information, independent audit process, and the efficiency of internal control and audit systems. The engagement process of the independent audit firm shall also be undertaken by the audit committee. The company must provide appropriate funding for the audit committee. It is required that the audit committee convene at least four times annually, with its activities disclosed in the company's annual report.

Corporate Governance Committee oversees the level of adherence to the CG Principles; and in cases where such Principles are not complied with, it determines the reasons and the resulting conflicts of interest, if any, related to such non-compliance. It also supervises the work of the Investor Relations Department.

Nomination Committee is responsible for forming a transparent system on identification, evaluation and training of suitable candidates for board membership and high level officers for the company.

Early Detection of Risks Committee is responsible for detecting, and attending to, risks that pose a threat "to the existence, development and continuation" of the company. It is required that the committee review the risk management systems annually. The distinctiveness of this committee derives from the fact that it is a provision explicitly stipulated in the TCC, also that the KGK requires independent audit firms to issue an assessment of a particular company's early risk detection system on an annual basis in their audit reports.

Compensation Committee sets the criteria and standards for compensation structures applicable to board members and high level executives, having regard to the long term objectives of the company. It also submits specific proposals to the board preceding actual payments to the same, by taking into account their rate of success in meeting such criteria.

D) Related Party Transactions:

Related party transactions are of particular relevance in jurisdictions where family control and concentrated ownership are of prevalence. Article 17 (3) of the CMA has introduced a critical provision pursuant to which all publicly held companies are required, prior to engaging in a related party transaction (to be defined by the CMB), to pass a board resolution approving its terms. Most notably, such a resolution **cannot be adopted without the approval of the majority of independent members, assigning an *ex ante* involvement duty upon them**. In cases where a related party resolution is not approved by the independent board members, the matter must be submitted to shareholders with a specific public disclosure on the PDP containing the independent members' dissent. The fact that the same provision precludes voting by conflicted shareholders who may benefit from the relevant related party transaction makes it particularly difficult for a company to pursue a related party transaction in the face of independent members' opposition in Turkey.

The CMB, through Section (III) of CG Communiqué, have defined the nature of certain related party transactions for which companies must adhere to a specific internal process. These rules **are applicable on all listed companies**. Basically, if the value of the transaction is greater than **5%** of certain financial gauges listed in the Communiqué (such as book value, total assets, market capitalization of the company), an **independent valuation report** must be obtained. If the transaction value is greater than **10%, then also a board resolution** (to be adopted with the affirmative votes of the independent members' majority) becomes a requirement. However, it is worthwhile to note **that if a company is subject to Section (II), the Principles, then the independent board members' approval for any transaction of this magnitude is a prerequisite, irrespective of its related or unrelated party feature**.

A special form of related party transaction is defined in Article 10 of the CG Communiqué: **common and continuous transactions**. When a particular group of related party transactions are of common and continuous nature, the board is required to intervene and regulate their terms and conditions. In cases where it is foreseen by the management that the value of these transactions in aggregate are expected to amount to more than 10% of the company's total turnover or cost of sales, whichever is applicable, as announced in its latest annual financial statements, the board also needs to prepare a report in advance, benchmarking the terms of the relevant related party transaction against those comparable and prevailing in the market. This report is then publicized on the PDP together with the dissent, if any, of independent board member(s). The CG Communiqué also determines the content of such report in great detail, including a requirement to provide a competitive pricing analysis.

Finally, **as to disclosure**, in line with the prevalent global practice, Turkey has internalized the International Financial Reporting Standards whereby all listed companies disclose their related party transactions annually in their financial statements. In addition, publicly held companies are required: to disclose material events; to secure and disclose a fairness report in certain related party transactions; to disclose the reasoning of dissenting independent members in related party transactions; and to prepare a special report on relations with group companies.

E) Significant Transactions:

Article 23 of the CMA specifies certain transactions which shall be deemed significant. In turn, the qualification as significant for a transaction causes Articles 24 and 25 to become applicable, hence the **retirement right and take-over bids**. A few examples on significant transactions set forth in Article 23 are **mergers, large asset sales, issuance of preferred shares, significant change of activity and de-listing**. While these are not provided in an exhaustive fashion, the CMB has been conferred some discretion to expand this definition. Correspondingly, **the ST Communiqué**, **applicable to all publicly held companies**, **enhances the definition of significant transaction** on a qualitative basis, while it also conceives a quantitative criterion in several cases. In brief, when a transaction involves the sale or lease of assets or the creation of an *in rem* right, it shall be qualified as significant if the transaction value exceeds 50% of company's total assets or market capitalization. When qualified as significant, the ST Communiqué imposes certain special disclosure and quorum/voting requirements, as well as the retirement right and mandatory take-over bid. Being qualified as significant, *per se*, does not bring about the question of independent board members' approval in all publicly held companies; while it may, only if it constitutes a related party transaction at the same time. These serve without prejudice to the requirements of the Principles which are applicable to a narrower group of publicly held companies.

F) Board and Key Executive Compensation:

In Turkey, there has not been much debate in respect of executive compensation, unlike the case in developed markets elevated by the 2008 financial crisis. Yet the

CMB has prescribed certain standards in its CG Communiqué in that respect.

Under the CG Principles, a compensation policy relating to board members and key executives **must be in writing**. By way of a discussion on the specific agenda item, shareholders must be presented an opportunity to comment on this matter at the shareholders' meeting. The policy must be disclosed at the corporate website. As it can be inferred, CMB has not set forth any requirement for shareholder approval on compensation policy. Moreover, the Principles merely recommends disclosure of any remuneration payable to senior management on an individual and named basis.

As to independent board members, companies cannot grant stock options, and their compensation cannot be linked to corporate performance. Nonetheless, their compensation must be at a level conducive to "preserving their independence".

VI- Implementation:

In Turkey, the system **relies heavily on public enforcement by the CMB**. It is empowered by the CMA to impose administrative fines, initiate civil or criminal proceedings and force any non-complying entity into specific remedial action. For instance, the CMB is mandated to initiate criminal proceedings in abusive related party transactions pursuant to Article 21 of the CMA and Article 155 of the Turkish Criminal Code, calling for imprisonment.

Based on our review of CMB's weekly bulletins since 2011, we have only identified five cases where the CMB exercised its authority directly in relation to corporate governance. However, between 2005 and 2011, the CMB operated with 400 annual sanctions on average in a wide range of topics; in our view, some must certainly have served towards bolstering corporate governance. Additionally, between 2004 and 2009, number of occasions that the CMB applied to public prosecutors for criminal sanctions were over 400 during that period.

Many jurisdictions have established a formal mechanism in which the national regulators or stock exchanges **regularly analyze and publish a report regarding compliance**. Although the CMB had also employed this practice, the fact that its latest report was in 2007 did not enable us to assess how it perceived overall compliance, emanating from the recent regulatory reform.

In terms of communication of compliance on a company-by-company basis, the **Principles' Adherence Report** is a very detailed template, classified by twenty seven headings, laid out by the CMB; and it is seemingly observed by all companies albeit in varying quality. The CMB's licensing requirement imposed on managers of Investor Relations Unit is an effective measure aimed at improving corporate governance culture in each publicly held company.

While some jurisdictions oblige or encourage **institutional investors to exercise their voting rights**, the issue is not regulated yet in Turkey.

Finally, having reviewed the available decisions of the Turkish Court of Appeals (*Yargıtay*) since 2012, we could not identify any jurisprudence directly addressing a civil claim under the new regime, depriving us of fresh **juridical contribution**. There had been, however, a few court cases immediately prior to this period, mainly relating to mergers, tender offers and their relevant bid prices, where the claimants had been able to achieve substantially beneficial results with judicial involvement.

VII- Conclusion

It is reasonable to maintain that the Turkish corporate governance legislation is largely adequate, **in terms of content,** in comparison to its peers; and certainly represents a major step in the right direction. The new TCC and CMA have strengthened the role of the CMB and have also enshrined several new features, embracing the *zeitgeist*, which may well serve as a solid foundation for market-induced (private) enforcement.

In particular, it is envisaged that **independent members** play a **central role**, especially with their involvement in **related party transactions** and **audit committees**. This can be an effective mechanism provided that there is an ample pool of professionals who are qualified and incentivized to perform their duties thoroughly, clear of controlling shareholders' influence. One certain characteristic, however, which remains dominant in spite of recent reforms, is the practice by controlling shareholders to nominate and elect independent board members singe-handedly. It is debatable whether granting the public authority the right to intervene in board nominations is the ultimate panacea in dealing with this reality, aside from the other risks inherent in such authority.

Contributions by private associations like TUSIAD or TKYD are valuable in communicating the message that good corporate governance is not just a trend, but a value set taking root, and that it can help deliver improved economic results for all stakeholders. Creation of the Corporate Governance Index by the Borsa Istanbul is also a positive step. While all these may have limited impact for the time being, continuation of parallel efforts is essential in stimulating awareness in the business community for the corporate governance culture, and its internalization thereof.

Given the present state of tepid private enforcement and the absence of shareholder activism, enforcement will be predominantly undertaken by the regulator in the near future. While the empirical data suggests that CMB is yet to fully weigh in on its corporate governance **enforcement**, we need to view more tangible evidence or actions by the CMB to judge which rules are fully, broadly, partly or not at all implemented at present in the relevant business community. It is nevertheless understandable for a public regulator to allow a grace period for transition following a series of landmark enactments, although its end may be around the corner.

BIBLIOGRAPHY

- Corporate Governance, Fourth Edition, 2008, Robert A. G. Monks and Nell Minow.
- Compliance and Conviction, 2007, Curtis J. Crawford.
- What is Sarbanes-Oxley, 2004, Guy P. Lander.
- Principles of Contemporary Corporate Governance, Second Edition, 2011, du Plessis, Bagaric, Hargovan.
- Corporate Governance in Turkey: A Pilot Study, OECD, 2006.
- OECD Corporate Governance Factbook, OECD, 2015.
- OECD (2013), Supervision and Enforcement in Corporate Governance, Corporate Governance.
- CMB, Weekly Bulletins, www.cmb.gov.tr.
- Capital Markets Board of Turkey, 2007, Corporate Governance Compliance Reports of Listed Companies.
- Borsa Istanbul, Indices and Data, www.borsaistanbul.com

* * *

This newsletter has been prepared only for information purposes. Please do not hesitate to contact us if you need assistance or more detailed information.

Yours faithfully,
YAZICILEGAL