Equity capital markets in Turkey: regulatory overview

by *Ömer Çollak* and *Nazlı Tönük Çapan*, Paksoy

Country Q&A | Law stated as at 01-Jul-2019 | Turkey

A Q&A guide to equity capital markets law in Turkey.

The Q&A gives an overview of main equity markets/exchanges, regulators and legislation, listing requirements, offering structures, advisers, prospectus/offer document, marketing, bookbuilding, underwriting, timetables, stabilisation, tax, continuing obligations and de-listing.

To compare answers across multiple jurisdictions, visit the equity capital markets *Country Q&A tool*.

This Q&A is part of the global guide to equity capital markets law. For a full list of jurisdictional Q&As visit *www.practicallaw.com/equitycapitalmarkets-guide*.

Main equity markets/exchanges

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

Main equity markets/exchanges
Borsa Istanbul A.Ş. (Borsa Istanbul) (*www.borsaistanbul.com*) is the sole exchange entity in Turkey, which takes the form of a joint stock company, combining all the exchanges operating in Turkey (that is, the former Istanbul Stock Exchange, the Istanbul Gold Exchange and the Derivatives Exchange of Turkey). Borsa Istanbul mainly consists of four markets, which are the:

- Equity Market.
- Debt Securities Market.
- Derivatives Market.
- Precious Metals and Diamond Markets.

Publicly-held companies from various sectors are traded on the Equity Market of Borsa Istanbul, and trading in the Equity Market is carried out in the following sub-markets:

- Star Market (*Yıldız Pazar*), on which the shares of large-sized companies with a market value of free-float shares of at least TRY100 million, and other companies listed on the BIST 100 index, are traded.
- Collective Investment Products and Structured Products Market (*Kolektif Yatırım Ürünleri ve Yapılandırılmış Ürünler Pazarı*), on which the shares of securities investment companies, real estate investment companies, venture capital investment companies, warrants issued by intermediary institutions and exchange-traded funds are traded.
- Main Market (*Ana Pazar*), on which the shares of mid-sized companies with a market value of free-float shares between TRY25 million and TRY100 million are traded.
- Emerging Companies Market (*Gelişen İşletmeler Pazarı*), on which the shares of emerging companies with a market value of free-float shares less than TRY25 million are traded.
- Pre-Market Trading Platform (*Piyasa Öncesi İşlem Platformu*), on which the shares of certain companies determined by the Capital Markets Board of Turkey (CMB) under its decision No 17/519 dated 3 June 2011 have been admitted to trading.
- Watch List Companies Market (*Yakın İzleme Pazarı*), on which the shares of companies under special surveillance and investigation due to extraordinary situations with respect to transactions on Borsa İstanbul, insufficient compliance with disclosure requirements, or other events that may necessitate a temporary or permanent suspension of trading, are traded.

- Equity Market for Qualified Investors (*Nitelikli Yatırımcı İşlem Pazarı*), on which the shares of companies that are both issued for direct sale to qualified investors as defined under the relevant legislation of the CMB (CMB qualified investors) without being publicly offered, and are traded only among CMB qualified investors, are traded.

Market activity and deals

In 2018, nine companies successfully launched initial public offerings (IPOs) in Turkey and collected approximately TRY5,419 million. Even though such IPOs were completed in 2018, the fate and success of Turkish IPOs remains inevitably tied to broader macroeconomic conditions, timing and investor sentiment. At a time of increased outflows from emerging markets and a strengthening US dollar, two IPOs in Turkey's fashion retail sector were cancelled, and one technology company was postponed in early May 2018, weeks after the announcement of snap elections in Turkey. While the market has remained volatile since then, it is expected that the postponed Turkish IPOs will come back to the markets at the first opportunity when the markets rebound. Generally, domestic companies tend to list their shares at home. Overseas companies do not tend to list in the Turkish market. During the first half of 2019, two companies managed to finalise their IPO processes.

2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

Regulatory bodies

The Capital Markets Board of Turkey (CMB), Borsa Istanbul, the Central Registry Agency (*Merkezi Kayıt Kuruluşu*) (MKK) and Istanbul Clearing, Settlement and Custody Bank A.Ş. (*Takasbank*) are the main regulators of the equity market in Turkey.

Legislative framework

The main regulations applicable to companies considering going public in Turkey are as follows:

- Capital Markets Law No 6362.
- Communiqué on Shares No VII-128.1.
- Communiqué on Prospectus and Issuance Document No II-5.1.
- Communiqué on Sale of Capital Market Instruments No II-5.2.
- Communiqué on Disclosure of Material Events No II-15.1.
- Communiqué on Corporate Governance No II-17.1.
- Communiqué on Exit Right and Significant Transactions No II-23.1.
- Borsa Istanbul Listing Directive.
- Relevant directives, general letters and announcements of the *Takasbank* and the MKK.

Equity offerings

3. What are the main requirements for a primary listing on the main markets/exchanges?

Main requirements
The issuer must prepare a prospectus used for domestic offerings and submit it to the CMB for approval. The issuer must apply to Borsa Istanbul to have the offered shares listed. The major requirements for launching an initial public offering and having the offered shares listed are as follows:

- The company's articles of association must be amended to comply with the CMB rules and regulations.
- There must be nothing that restricts the transfer or trading of the equity securities to be traded on Borsa Istanbul, or prevents shareholders from exercising their rights.
- The issuer's share capital must:
    - be fully paid in;
    - except for the funds specifically permitted by law, have been free from any revaluation funds or similar funds in the two years preceding the application for the public offering.

    The total amount of non-trade related party receivables cannot exceed 20% of the issuer's total receivables, and cannot exceed 10% of its total assets.

The issuer must pay to the CMB a fee that is equal to the sum of 0.1% of the difference between the nominal value of the offered shares and their offering price, and 0.2% of the nominal value of any shares that are not being publicly offered.

Listing requirements
The Borsa Istanbul Listing Directive (Listing Directive) regulates the listing and trading of securities through a public offering, through a private placement without a public offering, and to qualified investors. Under the rules of the CMB, only joint-stock companies can become public companies and list their shares on Borsa Istanbul. To list and trade securities on Borsa Istanbul, a company must have been incorporated for at least two calendar years in accordance with the relevant CMB regulations.

Minimum size requirements
The company must meet all the conditions of the group of the market to which it belongs. The groups are generally determined by the value of the shares offered to the public.

Star Market Group 1. All of the following rules apply:

- The market value of shares offered to the public must be at least TRY250 million.
- The total market value of the company must be at least TRY1 billion.
- Profit must have been earned in the past two years.
- The minimum ratio of publicly offered shares to paid-in capital must be 5%.
- The minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 0.75.

Star Market Group 2. All of the following rules apply:

- The market value of shares offered to the public must be at least TRY100 million.
- The total market value of the company must be at least TRY400 million.
- Profit must have been earned in the past two years.
- The minimum ratio of publicly offered shares to paid-in capital must be 10%.
- The minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.

Under an amendment made to the Listing Directive on 8 January 2018, companies that have not earned profit in the past two years and/or do not meet the shareholders' equity to the capital ratio requirement can still be listed on the Star Market of Borsa Istanbul provided certain conditions are met. In order to be listed, the usual requirements have been eased by allowing the addition of the proceeds to be obtained from the offering as well as the nominal value of the newly issued shares to the shareholder's equity amount under the latest audited financials in calculating the required ratio. From now on, a company is able to include the new funds from the offering in their shareholder's equity to capital calculations. However, this is only possible where the shareholder's equity to capital ratio of the relevant company is positive as per its latest audited financials and there is an operating profit as per its latest audited annual financials and relevant interim financials. In addition, this eligibility criteria is only applicable where there is an issuance of new shares, the other listing requirements of the Star Market of Borsa Istanbul are also met, and the board of Borsa Istanbul approves the listing application of the relevant company.

Main Market Group 1. All the following rules apply:

- The market value of shares offered to the public must be at least TRY50 million (there is no total market value requirement).
- Profit must have been earned in the past two years.
- The minimum ratio of publicly offered shares to paid-in capital must be 15%.
- The ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.

Main Market Group 2. All the following rules apply:

- The market value of shares offered to the public must be at least TRY25 million (there is no total market value requirement).
- Profit must have been earned in the past two years.

- The minimum ratio of publicly offered shares to paid-in capital must be 25%.
- The ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.25.

Other requirements

Under the Listing Directive, the following requirements also apply:

- Two calendar years must have elapsed since the company's establishment (this, however, is not applied to holding companies that have been established for less than two calendar years but that own a minimum of 51% in shares of a company that has been established for more than two calendar years).
- The exchange management must have had the corporation's financial structure examined and confirmed its ability to continue as an ongoing concern.
- The company must have obtained confirmation from Borsa Istanbul that its financial structure is sufficient for its operations.
- The shares must not contain any clauses prohibiting the shareholders from exercising their rights.
- The company's articles of association must not contain any clauses restraining the transfer or circulation of the shares.
- The company's articles of association must not include anything restricting the transfer or trading of the securities to be traded on Borsa Istanbul or preventing shareholders from exercising their rights.
- There must be no major or material legal disputes that may adversely affect the production, operation or commercial activities of the company.
- There must be an independent legal report confirming that the establishment and the operation of the company comply with the relevant laws.
- The company must not have done any of the following:
    - suspended its operations for more than three months during the past two years, except for the reasons accepted by the exchange management;
    - applied for liquidation or concordat (a concordat is a formal project regarding the liquidation of debts, prepared and presented by the debtor to the court for its approval, under which the debtor is released from his or her debts once the partial payments are completely made); and
    - taken part in any other similar activity specified by the Borsa Istanbul board without the board's permission.
- The company’s securities must comply with Borsa Istanbul's criteria on current and potential trading volumes.
- The company's legal status in terms of its establishment and activities and its shares must comply with the applicable law.

If an application is to be filed for an initial listing of shares, that listing application must be made for the whole amount of the capital of the relevant company.

Trading record and accounts

The company must submit financial statements and independent audit reports in accordance with the CMB regulations. The company must include those documents in the prospectus for a public offering, including: balance sheets; income statements; cash flow statements; and equity capital change statements for the previous three years prepared in accordance with the Turkish Financial Reporting Standards (which are virtually identical to the International Financial Reporting Standards).

Minimum shares in public hands (free float)
The Listing Directive classifies companies into markets and groups based on the minimum market value of the shares offered to the public, and the minimum ratio of publicly offered shares to paid-in capital of those companies respectively for each group (*see above, Minimum size requirements*).

Requirements for foreign companies
The requirements for the listing of securities of foreign companies operating abroad are the same as for Turkish companies. There is no requirement for ministerial approval for the initial listing of foreign capital market instruments other than the CMB application. In addition, there is no requirement for the foreign company to be listed in its home country. However, the CMB may ask for additional requirements or waive some of the conditions.

Foreign issuers must apply to Borsa Istanbul with the information and documents indicated in the Listing Directive for the listing of securities. There are special discounts relating to Borsa Istanbul Listing Fees applicable to foreign issuers.

4. What are the main requirements for a secondary listing on the main markets/exchanges?

Main requirements
Where either the existing shares of the shareholders of a public company which are not traded on the exchange are to be listed, or shares representing an increase in capital that are issued through a complete restriction of pre-emptive rights are intended to be offered to the public, an application for listing must be made to the CMB within 30 days following the date of the resolution permitting that secondary offering. The application must include all of the documents required under the Communiqué on Shares No VII-128.1. The Borsa Istanbul listing application must also be filed simultaneously with the CMB application.

The shares issued by the listed company as a result of the capital increase will start trading on the relevant market of Borsa Istanbul following the distribution of those shares to the investors or shareholders.

Minimum size requirements
There are no minimum size requirements.

Trading record and accounts
There are no trading record and accounts requirements.

Minimum shares in public hands (free float)
There are no minimum shares in public hands requirements.

Requirements for foreign companies
The requirements for the secondary listing of securities of foreign companies operating abroad are the same as for Turkish companies and, as a result, there are no secondary listing requirements specific to foreign companies.

5. What are the main ways of structuring an IPO?

The initial public offering (IPO) process can be structured in three ways:

- An offer of existing shares (called a shareholders' sale, where the shareholders sell their shares through a public offering and the company does not receive any cash but the shareholders generate income).
- An offer of shares resulting from a capital increase (by fully or partially restricting the pre-emptive rights of existing shareholders on newly issued shares on which the company obtains a financial gain).
- A combination of an offer of existing shares and a capital increase.

In addition, companies with over 500 shareholders (other than companies whose shares are already traded on the stock exchange, or companies raising capital from the public using crowdfunding) are deemed to be public companies and are subject to the Capital Markets Law No 6362 and its sub-regulations. Once a company reaches this threshold this constitutes another way to join the market without raising capital. In such cases, the company must apply to Borsa Istanbul within two years of becoming a public company to have its shares listed and traded. If the company fails to do so, the CMB is authorised to decide to either have the shares of that company listed and traded on Borsa Istanbul, or to take the company outside of the scope of the Capital Markets Law No 6362. If the company is taken outside the scope of the Capital Markets Law No 6362, it cannot continue to trade on the exchange as a listed company and it must therefore become a privately-held company.

6. What are the main ways of structuring a subsequent equity offering?

Subsequent equity offerings (or follow-on offerings) are commonly referred to as "secondary" offerings. In broad terms, a subsequent equity offering can take three forms:

- New shares of the public or listed company can be sold by a private placement or to qualified investors.

- New shares of the public or listed company can be sold through a public offering (known as a "secondary public offering").
- Existing shares of the shareholders of a public or listed company can be sold through a public offering (also known as a "secondary public offering").

A subsequent offering which includes a capital increase of the company can include a pre-emptive or a non pre-emptive offering. A pre-emptive offering is an offering made to existing shareholders pro rata to their existing holdings. In a pre-emptive offering, the offering of shares to existing shareholders is a right to acquire the new shares, and this right is tradable in itself. Shareholders who choose not to take up their entitlement to such issues are compensated to the extent that, if the shares not taken up can be sold in the market at a premium to the offer price, they receive the benefit of the premium.

Non pre-emptive offerings are offers of shares to potential or new shareholders. This requires a corporate resolution to wholly or partially restrict rights issues. The resolution required will be a directors' resolution where the company is in a registered capital system, and a shareholders' resolution where the company is in a principal capital system.

7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

Secondary public offerings are not typically exempt from the requirement to produce a prospectus. Similarly to IPOs, the prospectus and other documents listed in the Communiqué on Shares No VII-128.1 must be submitted to the CMB for its approval, and this requirement makes the deals more public and materially extends the timetable, as it can take several months to draft a prospectus and receive the approval from the CMB. The prospectus approval process takes the form of a series of filings with the CMB, reviewing and dealing with CMB comments before approval is granted. Further, unless the company has accepted an authorised capital system beforehand, capital increases of the company require the shareholders' consent, which, in turn, requires that a general assembly meeting be convened and held. This process further extends the timetable. In addition, the fees payable to Borsa Istanbul and CMB by public companies may also be considered to constitute financial disadvantage.

Conversely, the new shares of the public company can be sold by private placement or to qualified investors. Although this also requires the drafting of an issue certificate, and obtaining the CMB's approval, this route can be quicker (via an accelerated book-build transaction). However, such sales cannot be used for bigger capital raisings where the size of the issue is more than 10% of the existing class of shares currently traded on exchange, as this would also require a prospectus. The major advantages of a secondary public offering are the raising of additional cash from the public, and the strengthening of the company's reputation in the market.

8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

Procedure for a primary listing
As a main principle, the issuer must prepare a prospectus used for domestic offerings and submit it to the CMB for approval to conduct a primary listing of its shares. Additionally, the following steps are initially expected to be conducted by a company that is going public:

- Pre-IPO reorganisation.
- Amendments to the articles of association.
- Due diligence work for the IPO.
- Preparation of the prospectus.
- Selection of an intermediary institution and negotiation of the necessary legal documentation, such as the underwriting and consortium agreement, and the over-allotment and price stabilisation agreement.
- Selection of an independent auditor and preparation of financial statements.
- Agreement on comfort packages and legal opinions.
- Drafting of the marketing presentations, followed by marketing and bookbuilding.
- Pricing and allocation of shares.
- Simultaneous application to both the CMB and Borsa Istanbul.
- Approval of the CMB.
- Settlement.
- Commencement of trading on the relevant market of Borsa Istanbul upon its approval.
- Exercise of any over-allotment and price stabilisation.

Procedure for a foreign company
The procedure for primary offering of a foreign company in Turkey is the same as for Turkish companies.

Advisers: equity offering

9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

The main advisors in an IPO are generally overseen by an investment bank. The investment bank is primarily responsible for managing the IPO process and for co-ordinating the company's other advisers. In practice, the main external advisers are as follows:

- **Underwriter.** To the extent that new shares are being issued by the company, underwriting is compulsory in offerings where the market value of the shares offered to public is below the specified thresholds ascertained in the Communiqué on Shares No VII-128.1. The investment bank or intermediary institutions and one or more underwriters usually underwrite these. Large IPOs are underwritten by a syndicate of underwriters, with one acting as the global co-ordinator.
- **Financial adviser.** The investment bank provides advice on issues such as timing, structuring, corporate governance and valuation.
- **Research analyst.** The investment bank's research function publishes research on the company.
- **Intermediary institution.** The intermediary institution acts as the mediator between the company and the stock market.
- **Lawyers.** The legal advisers to the issuer must:
    - advise on the legal aspects of preparing the company to float;
    - satisfy the listing requirements by complying with both the CMB and Borsa Istanbul requirements;
    - carry out legal due diligence;
    - assist the company in the preparation of the prospectus and verify the accuracy of every statement of the fact in the prospectus;
    - negotiate the agreements between the company and the underwriters, accountants, and other parties.

    The role of the legal advisers to the underwriters is to:
    - advise on any legal agreements to which the underwriters are a party;
    - assist the company and its legal adviser in the preparation of the prospectus;
    - draft the legal comfort letters.

- **Accountants.** The reporting accountants must differ from the company's own auditors. However, a company's own accountants can play the role as a reporting accountant if they work in a separate team in the same firm. The reporting accountants must review the company's financial record for the benefit of potential investors. They usually prepare both a long-form and a short-form report. The long-form report provides a detailed financial and management history of the business. Much of this information is used when preparing the prospectus but the report itself is not published. The short-form report is published in the prospectus and contains:
    - profit and loss account;
    - balance sheet information;
    - cash flow statements;
    - accounting policies covering the latest three financial years; and

- audit report in respect of each year.

The accountants must also provide various comfort letters.

- **Public relations consultants.** Public relations consultants are crucial to attract as many investors as possible and can generate press interest and publicity before the IPO. They can also help monitor public statements and press releases during the IPO process. After the IPO, ongoing press interest in the company can help sustain awareness of the company and liquidity in its shares.

Equity prospectus/main offering document

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

Prospectus (or other main offering document) required
In public offerings, the issuer must prepare a prospectus and apply to the CMB to obtain its approval. In sales through a private placement without a public offering, the issuance certificate is prepared instead of a prospectus and it is submitted to the CMB for its approval.

Main publication, regulatory filing or delivery requirements
The prospectus or issuance certificate must be submitted to the CMB together with the other documents required under the relevant legislation in order for the CMB to approve the prospectus or issuance certificate. Even though documents to be submitted to the CMB are listed under the relevant legislation, the CMB has the right to ask for additional information and documentation. In addition, if certain information and/or documents are missing, or additional information or documents are required, the issuer is informed in writing or through e-mail and the issuer will have to rectify the deficiency in order to obtain the CMB's approval. The approved prospectus or issue certificate is published on the issuer's website, and on the underwriter's website and the Public Disclosure Platform (PDP) if the issuer is a member of the PDP.

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

The Communiqué on Prospectus and Issuance Document No II-5.1 sets out the main exemptions from the requirement to prepare a prospectus. The prospectus is not prepared in the following circumstances:

- In public offerings towards investors who purchase capital market instruments of a minimum value of TRY250,000 per investor, separately for each public offering.
- In public offerings of capital market instruments the per-unit nominal value of which is a minimum of TRY250,000.
- In the case of trading in the exchange among qualified investors of capital market instruments issued for sale to qualified investors.
- In the case of trading at the exchange of capital market instruments issued on a merger, acquisition, split-up, injection of assets as capital-in-kind, or an exchange of shares, in accordance with the CMB regulations relating to mergers and split-ups, and provided that the company publishes an announcement including relevant information in a format determined by the CMB.
- In sales of capital market instruments only to qualified investors.
- In a private placement of capital market instruments.
- In the case of shares that are subject to a combination or division of denominations so as not to change the capital of the company.
- In the case of an issuance on a merger, acquisition, split-up, injection of assets as capital-in-kind, or an exchange of shares, in accordance with the CMB regulations relating to mergers and split-ups, and provided that the company publishes an announcement including relevant information in a format determined by the CMB.
- In the case of an issue of shares which are offered free of charge to existing shareholders, which also includes dividends paid out in the form of shares.
- Where the consideration payable for a take-over bid is paid in the form of capital market instruments within the context of the CMB regulations pertaining to takeover bids for the shares.
- In the case of an issue of shares through conversion or exchange of, or through the use of, rights associated to capital market instruments issued within the context of the relevant CMB regulations, provided that the prospectus and other required documents are published beforehand, and the shares are in the same group with shares of the issuer traded on the exchange.
- Except for an initial public offering of shares, where the total consideration of the capital market instruments offered by issuers to the public is below TRY5 million (calculated on the offering price), the issuers may apply to the CMB to provide an exemption from the obligation to prepare a prospectus provided that a written announcement containing the required information, and issued in a format determined by the CMB, is announced for public disclosure purposes.

A prospectus must be prepared when capital market instruments issued under a prospectus exemption are re-offered for sale through a public offering.

In addition to the above, there is no requirement to produce a prospectus where a foreign company offers shares and foreign fund units to its employees in Turkey, provided that:

- The sale does not take place in Turkey.
- No transaction that can be defined as a public offering is conducted.
- The information provided to the employees does not contain any statement that gives the impression that this is a public offering.

The share sale will be subject to Turkish capital markets legislation and will require an application to the CMB, unless all of the foregoing applies.

12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

The prospectus must contain all the necessary information to enable investors to make an informed assessment of the following in relation to the company:

- Assets and liabilities.
- Financial position.
- Profits and losses.
- Prospects.
- Rights attaching to the securities.

The information in the prospectus must be:

- Presented in a form that is easy to understand and analyse.
- Prepared taking into account the specific nature of the securities and the issuer.

The issuer must prepare the prospectus in line with the standard format of the CMB which generally provides the minimum disclosure requirements for the prospectus. In general, the prospectus must include the following information:

- The persons responsible for the prospectus.
- The auditors and other experts involved in the preparation of the prospectus.
- Details of the company and its capital.
- Details of the group's operations and interests.
- The operating and financial review (providing a description of the company's financial position, changes in financial condition, and the results of operations for each financial year and interim periods reported covered in the prospectus).
- Recent developments and company prospects.
- Risk factors.
- The assets, liabilities, financial position and profits and losses (the prospectus must contain financial statements for the most recent three years and for the relevant interim period, as well as audited and/or limited review statements, if any). This must be prepared in accordance with Turkish Accounting Standards

and Turkish Financial Reporting Standards put into force by the Public Oversight, Accounting and Auditing Standards Authority.

- Details of the company's management and shareholders.
- Details of working capital and indebtedness.
- Information concerning the shares and the offer.

The CMB has the right to ask for additional information to be included in the prospectus during its assessment of the document. A supplementary prospectus is required if a significant new factor arises during the period between the later of either:

- Approval of the prospectus by the CMB.
- Closure of the offering.

13.How is the prospectus (or other main offering document) prepared? Who is responsible and/or can be liable for its contents?

Preparation
The company provides the information concerning its business and financials and generally the issuer's lawyers draft the prospectus. All the IPO and SPO advisers must contribute to its preparation, review it and sign it off. A formal verification exercise is undertaken to test the accuracy of key statements in the prospectus.

Liability
The issuer is primarily liable for the losses arising from inaccurate, misleading or incomplete information included in the prospectus. In addition to the issuer, in the case of a public offering, the underwriters, guarantors, if any, and members of the board of directors of the issuer are also liable in proportion to their fault and to the extent that losses can be attributed to them in the circumstances, when the loss cannot be compensated by the issuer or when it is clear that the loss cannot be compensated.

Based on the above principle determined under the Capital Markets Law No 6362 issuers are responsible for making sure that the information which the documents contain is a fair reflection of the facts. However, intermediary institutions, those conducting the public offering, guarantors (if any) and any board members of the issuer who have acted without due diligence can be held responsible for the part of the loss that cannot be indemnified by the issuers. Their liability is a secondary one and is based on their negligence.

In relation to offering documents that are not mandatory and are not subject to CMB approval, the parties must comply with the Turkish Code of Obligations. Criminal liability will only be based on fraud.

An issuer can be liable to investors in contract or tort. Underwriters and guarantors involved in an equity offering can also, in certain circumstances, be liable. Under statute, any person who has acquired securities to which the prospectus relates and has suffered loss as a result of the prospectus can claim compensation from those responsible for the prospectus if the prospectus:

- Contained any untrue or misleading information.
- Failed to disclose any material information.

Marketing equity offerings

14. How are offered equity securities marketed?

IPOs are marketed through the following:

- Company research reports produced by connected brokers.
- Early-stage "pilot fishing" pre-marketing discussions with potential investors identified by the investment banks.
- Roadshows and presentations following the publication of the intention to float announcement.
- For retail offerings, more general advertising in order to generate additional interest in the IPO.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Turkish capital markets legislation does not include explicit rules and regulations which cover the principles and procedure of preparing and distributing research reports by participating brokers or dealers. Liability to investors can arise in several ways for brokers or dealers:

- Under the Capital Markets Law No 6362:
  - in article 104 concerning conduct amounting to market abuse to which administrative penalties apply;
  - in article 106 concerning market abuse;
  - in article 107 concerning insider dealing.
- In contract, as if there is a contract between the investor and the broker, the investor may be able to claim contractual damages against the broker.

- In tort, where the investor may be able to claim damages against the broker if the investor can show that:
  - the broker owed the investor a duty of care;
  - the broker breached that duty;
  - the investor suffered loss as a result.

Brokers and dealers can minimise their liability through:

- **Disclaimers.** Disclaimers can state that any investment must only be made on the basis of the information contained in the prospectus.
- **Verification.** It is common for issuers to check the draft research for factual accuracy (without influencing the commentary or tone).
- **Research blackout.** A blackout period prior to publication of the prospectus helps distance the research from the prospectus.
- **Management of conflicts of interest.** Analysts must not promise issuers favourable coverage and must not participate in roadshows. Their reporting and remuneration arrangements must be structured to avoid conflicts.
- **Forecasts and projections.** Brokers should avoid providing these.
- **Independence.** The analyst writing the report must be independent from any parties in the organisation selling the securities.
- **Distribution.** Brokers should limit distribution to professionals.
- **Prospectus.** As soon as it is available, brokers should send the prospectus to the recipients of the research report.

Bookbuilding

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

The bookbuilding can be conducted using any of the following methods:

- At a fixed price.
- With price bids.
- With a price range.

Bookbuilding with a price range is commonly used on both IPOs and secondary offerings in Turkish capital markets. The book of demand is compiled after the prospectus has been published and the banks and other intermediary institutions running the book receive indications of the size and the price of the demand.

Both retail and institutional investors must transmit their demands by filling in a subscription form during the bookbuilding period. The banks and intermediary institutions must inform the consortium leader of the size of the demand on a daily basis.

After the bookbuilding period, the consortium leader produces:

- A final demand list.
- An allocation list.
- The price.

The consortium leader then submits those to the issuing company and to selling shareholders, if any, for their approval. Once approval is obtained, the orders of all the investors will be confirmed.

Underwriting: equity offering

17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

The underwriting for an equity offering is typically structured in following ways:

- **Underwriting the entire amount of unsold shares.** Purchasing the unsold shares after completion of the sale. This occurs after completion of the domestic bookbuilding.
- **Underwriting part of the unsold shares.** Purchasing part of the unsold shares after completion of the sale. This occurs after completion of the domestic bookbuilding.
- **Full underwriting.** Also known as a "firm commitment" underwriting. Purchasing the entire amount of the shares before commencement of the sale. This occurs on the commencement of the domestic bookbuilding.
- **Partial full underwriting.** Purchasing part of the shares before commencement of the sale. This occurs on the commencement of the domestic bookbuilding.
- **Intermediary services without underwriting.** Also known as "best efforts" underwriting. This only obligates the underwriters to use their best efforts to sell the shares on behalf of the company and to return the unsold shares to the sellers or the company without taking legal title to the shares or selling any unsold shares to third parties who had committed to purchase.

Almost all intermediary services in Turkish IPOs are fulfilled on a "best efforts" basis without an underwriting commitment. The underwriting agreement between the company and the banks should contain the following key clauses:

- Conditions precedent and termination rights.
- Indemnity from the issuer to the bank/intermediary institution.
- Warranties from the issuer (and the directors on an IPO).
- Lock-up terms.
- Over-allotment terms (on an IPO).
- Post-admission undertakings from the issuer.
- Commission to be paid, usually expressed to be a certain percentage of the total amount raised. Sometimes (and more commonly in recent deals), a discretionary separate success fee is also payable.

Timetable: equity offerings

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

Each deal is different, but an indicative timetable for an IPO is set out below (where "T" is the first day of trading on Borsa Istanbul):

- **T minus 6 months to T minus 3 months.** Preparation for the IPO, for example:
  - articles of association of the company must be amended to comply with the CMB;
  - requirements for public companies must be considered;
  - advisers must be appointed;
  - eligibility for an IPO and listing is discussed;
  - due diligence is started.

  After the preparation period, prospectus drafting commences.
- **T minus 3 months.** First submission of the prospectus to the CMB.
- **T minus 2 months to T minus 1 month.** First draft reports circulated and announcement of intention to float made.
- **T minus 5 weeks.** Connected brokers' research is published and the research blackout period starts.
- **T minus 4 weeks.** Borsa Istanbul approval of listing is received and the price range is set. The Turkish underwriting agreement is signed and the final valuation report is submitted to the CMB. Updated

prospectus with price range (subject to approval by the CMB) is made available on the issuer's and domestic underwriter's websites. There is a management briefing to syndicate sales. The preliminary international offering circular (IOC) with the price range (subject to approval by the CMB) is distributed. The management roadshow starts.

- **T minus 3 weeks**. Submission of final documents to the CMB. End of the period for informing investors of the IPO.
- **T minus 2 weeks.** Prospectus approved by the CMB. International bookbuilding starts and announcement of sales.
- **T minus 9 days.** Domestic bookbuilding starts.
- **T minus 6 days.** Pricing decision is made. Domestic and international bookbuilding ends.
- **T minus 4 days.** If requested, the distribution list is sent to the CMB. Announcement of offer price and allocations. New shares are created and shares can be sold or transferred.
- **T minus 1 day.** Settlement and publication of final IOC.
- **T.** First day of trading and start of price stabilisation (if any).

Stabilisation

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

Over-allotment is not related to or closely linked with stabilisation. Even if the shares are not over-allotted in a public offering, a stabilisation activity can still be carried out. This is done by using the monies in the stabilisation account funded by the selling shareholder, the issuer or both. The proceeds from the over-allotment are not necessarily used to buy back the over-allotted shares from the market in order to stabilise the price if that price falls below the IPO price. Therefore, it is available as a legally-permitted and risk-free means for an underwriter to stabilise the price within 30 days following an IPO (though only in cases where the share trade falls below the offering price). The requisite information for stabilisation must be included in the prospectus.

A Turkish lead manager or co-lead manager can engage in price stabilisation activities on its own account or on the account of the company or issuer. The proceeds gained by the company from the offering can be used to finance the price stabilisation, provided that the amount used does not exceed 20% of the gross offering proceeds gained by the company. Further, the nominal value of the shares to be purchased from the market to support the price cannot exceed 20% of the total nominal value of the offered shares, including over-allotted shares.

If there are secondary and primary shares, the proceeds of the secondary and any over-allotted shares will be used to finance the stabilisation activities. The fund which consists of 20% of the proceeds of the primary offering will not

be used before the proceeds of the current shareholder's secondary shares are exhausted. The selling shareholder is also entitled to provide unlimited additional funds into the account.

Under the stabilisation agreement, the stabilisation manager has exclusive discretionary authority to undertake stabilisation activities during the stabilisation period. During the stabilisation period, the stabilisation manager can (but will be under no obligation to do so) use the funds in the stabilisation account, to the extent permitted by the applicable laws, regulations and rules of Borsa Istanbul, to purchase shares, if the market price falls below the offer price, with a view to supporting the market price of the shares at a level higher than that which might otherwise prevail in the open market.

In public offerings involving price stabilisation transactions, the prospectus must include the following statements and information:

- Price stabilisation transactions aim to support the market price of the shares.
- No guarantee is given as to the performance of price stabilisation transactions.
- Transactions can be stopped before the end of the specified stabilisation period.
- Name and title of the intermediary institution carrying out price stabilisation transactions.
- Stabilisation period.

Stabilisation is carried out for the limited purpose of preventing or slowing down a decline in the price of the shares. Technically, stabilisation breaches the capital markets rules on market abuse. However, the CMB recognises the need for stabilisation to allow the market to operate more efficiently. Stabilisation must take place under the CMB and Borsa Istanbul rules which state that:

- Only prescribed stabilisation action is permitted.
- Only specified securities can be stabilised on Borsa Istanbul within specified time limits.
- Stabilisation transactions must only take place within specified price limits.
- The stabilisation manager must carry out adequate prior disclosure and maintain records of stabilising activities.

Breaches of the stabilisation rules can result in Borsa Istanbul and the CMB bringing proceedings against the stabilisation manager.

Tax: equity issues

20. What are the main tax issues when issuing and listing equity securities?

There are two regimes for the taxation of securities in Turkey:

- The declaration regime: the primary regime where taxes are declared by taxpayers in their annual tax return/ declaration.
- The provisional regime: a provisional regime that, although introduced as a temporary measure that was initially set to conclude at the end of 2015, has now been extended until the end of 2020.

Income tax is covered by the declaration regime. Capital gains (capital gains upon disposal of shares) and interest income derived mainly from listed securities are covered by the provisional regime.

Under the provisional regime, taxation is carried out through withholding, mainly by brokerage houses, banks and custody banks. The capital gains derived from a listing of equities on the stock exchange falls under the provisional system and will be subject to a 0% rate withholding tax. The Turkish Government is authorised to regulate and amend the applicable rates at any time.

In addition to the withholding tax above, any capital gains derived from listing will be subject to corporate tax at a rate of 20% (22% only for 2019 and 2020). Certain exemptions can apply to the corporate tax due. For example, there is a 75% capital gains tax exemption applicable provided that:

- The shares are held for more than two years.
- The seller does not engage in securities trading.
- The proceeds are collected within two years following the sale year.
- The exempted amount is kept under a special reserve account for five years and is not distributed to shareholders.

In addition, the transfer of shares is exempt from VAT and the documentation related to listing is exempt from stamp tax.

Continuing obligations

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

Public companies whose shares are traded on Borsa İstanbul must comply with the information and disclosure requirements of the CMB. There are two types of disclosure requirements, one relating to financial statements and the other relating to material events (including inside information and continuous information).

Disclosure of financial statements

Under the Communiqué No II-14.1 on the Principles Regarding Financial Reporting in Capital Markets and the Communiqué on Public Disclosure Platform No 128.6, financial statements must be presented on a quarterly basis in accordance with Turkish Financial Reporting Standards (TFRS):

- Annual results: audited year-end consolidated financial statements and reports prepared in accordance with the TFRS must be published on the Public Disclosure Platform within a period of 70 days following the end of the accounting period (if companies are not required to submit consolidated financial statements, the period is 60 days following the end of the accounting period).
- Second quarter: interim condensed consolidated six-month financial statements must be published on the Public Disclosure Platform within 50 days following the end of the accounting period (if companies are not required to submit consolidated financial statements, the period is 40 days following the end of the accounting period).
- First and third quarter: unaudited first quarter and third quarter consolidated financial statements must be published on the Public Disclosure Platform within 40 days following the end of the accounting period (if companies are not required to submit consolidated financial statements, the period is 30 days following the end of the accounting period). If the first and third quarter financial statements are independently audited, then such financial statements must be published on the Public Disclosure Platform within 40 days and 50 days, respectively, for companies preparing unconsolidated and consolidated financial statements.

Under the Communiqué on Disclosure of Material Events No II-15.1, companies may make public disclosures relating to future forecasts through a decision of the board of directors or the written consent of the persons authorised by the board of directors. Companies may disclose their future forecasts to the public at most four times in a calendar year by either making public disclosures on the Public Disclosure Platform or making relevant explanations under activity reports. If there is a material change within the scope of future forecasts, disclosure of the material change is required.

Disclosure of material events

Disclosure of material events by public companies is primarily regulated by the CMB's Disclosure of Material Events Communiqué No II-15.1 and the CMB makes a distinction between "inside information" and "continuous information". Rather than identifying each material event requiring disclosure in the Disclosure of Material Events Communiqué No II-15.1, the CMB leaves specific disclosure decisions regarding inside information to the companies' individual discretion on a case-by-case basis. However, disclosure guidelines published on 10 February 2017 clarify the events triggering a disclosure requirement by providing illustrative examples. In the event of the existence of any news or rumours relating to the issuer disclosed for the first time through media institutions or by other communication means which is likely to affect the value and/or the price of the issuer's shares, capital markets instruments or investors' investment decisions, issuers are obliged to make disclosures on the accuracy and adequacy of such news or rumours. Interpretations, analysis, assessments and predictions made on the issuer company based on the issuer's public disclosures do not fall within the scope of this principle.

In addition, under article 198 of the Turkish Commercial Code No 6102 persons becoming direct or indirect holders of 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% of the issued share capital of a Turkish company are required to notify that company of such an acquisition and, thereafter, to notify the company of their transactions in the shares of the company when the total number of the shares they hold falls below or exceeds such thresholds within ten days following completion of the relevant transactions. Information notified to the company must be registered within ten days upon receipt of this notification with the relevant trade registry and publicly announced in the *Turkish Trade Registry Gazette*.

In principle, publicly listed companies are required to make public disclosures in Turkish. However, the CMB requires certain publicly listed companies to make public disclosure in other languages along with Turkish disclosure.

Inside information. The Disclosure of Material Events Communiqué No II-15.1 defines "inside information" as any information or event not disclosed to the public which may impact investors' investment decisions, or is likely to affect the value and/or the price of the shares or relevant capital markets instruments of the issuer. If any inside information comes to the attention of any persons who hold (directly or indirectly) 10% or more of the share capital or the voting rights of the issuer company, or regardless of such threshold, who hold privileged shares which give their holders the right to nominate or elect members to the board of directors of such issuer (and which the issuer is not itself aware of), such persons must make a public disclosure regarding that inside information. Public companies may suspend the disclosure of inside information by taking full responsibility for any non-disclosure to protect its legitimate interests, provided that such suspension does not mislead investors, the company is able to keep any related inside information confidential, and the board of directors resolves on the necessary precautions to protect the interests of the issuer and to not mislead investors, or an officer authorised by the board of directors approves such precautions in writing.

Once the suspension conditions are eliminated, the issuer company must disclose the inside information on the Public Disclosure Platform, including disclosing the suspension decision and the reasons for the suspension. Inside information must be publicly disclosed if its confidentiality cannot be preserved.

Continuous information. The following changes in share ownership or management control in a company must be publicly disclosed under the Disclosure of Material Events Communiqué No II-15.1 by the persons conducting the relevant transactions:

- A person or persons acting together becoming direct or indirect holders of 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95% of the issued share capital or voting rights of a public company in Turkey must disclose such acquisitions on the Public Disclosure Platform and, thereafter, must disclose on the Public Disclosure Platform their transactions in the shares or voting rights of that company when the total number of the shares or voting rights they hold falls below or exceeds those thresholds. In the case where the direct shares of a person (real person or legal entity) in the public company exceed or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95%, this notification must also be made by the Central Registry Agency in lieu of such shareholders. In the case of persons exceeding or falling below the thresholds stated in this paragraph by acting in concert, or indirectly, or with voting rights (through voting agreements and so on), the disclosure obligation relating to a change in the shareholdings belongs to the relevant shareholder or persons acting in concert with such shareholder, rather than the Central Registry Agency.
- The founding shareholder must disclose on the Public Disclosure Platform any direct or indirect acquisition of 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95% of the issued share capital or voting rights of the company by investment funds belonging to a founding shareholder, as well as its transactions in the shares or voting rights of the company, when the total number of the shares or voting rights that it holds falls below these thresholds.
- Persons with managerial responsibility in a public company, persons with close relations to any such persons, or the majority shareholder in a public company must disclose their transactions relating to the shares or other capital markets instruments of that company as of the date when the aggregate value of the transactions performed by those persons reaches TRY353,868 (individually or together) in one calendar year.
- Companies must make necessary updates within two business days of any changes relating to the general information that the company disclosed on the Public Disclosure Platform. The Central Registry Agency is

responsible for updating the shareholding list, setting out a public company's natural person and legal entity shareholders who hold directly 5% or more of the shares or voting rights of that public company.

Any changes in rights attached to different classes of shares in public companies must be disclosed on the Public Disclosure Platform and changes relating to the voting rights must be notified to the Central Registry Agency.

Significant transactions and related party transactions

The CMB Communiqué on Corporate Governance No II-17.1 covers the principles and procedures applicable to related party transactions of public companies. That Communiqué provides that, prior to a transaction between a company and any related parties, the company's board of directors must pass a resolution to approve the principles of the transaction to be adopted. The courts have held that this is compulsory not only for listed companies, but also for their affiliates.

Transactions amounting to 5% to 10% of the total equity or the total gross sale revenues of the company. Prior to the transaction, the company must obtain a valuation report for the transaction from an authorised valuation company. The share sale must be on an arm's length basis in relation to both the market value of the shares and any other commercial terms of the transaction. Any transaction that is not on an arm's length basis and results in decreasing the profit or assets of the public company can trigger criminal liability under Turkish law. The company's board of directors must pass a board resolution to conclude such related party transactions. The company must announce the terms and conditions of the related party transaction through the Public Disclosure Platform.

Transactions amounting to more than 10% of the total equity or the total gross sale revenues of the company. The company must obtain a valuation report as well as the approval of the majority of the independent directors. If the majority of the independent directors do not approve the related party transaction, the company must disclose the reasoning behind the dissenting votes to the public and obtain the general assembly's approval. There is no meeting quorum for such general assembly meetings. The shareholders who are parties to the transaction, or are related to the parties to the transaction, will not have the right to vote in the general assembly meeting. The resolution must be adopted by the majority of the present shareholders able to vote.

Significant transactions. Under the Communiqué on Exit Right and Significant Transactions No II-23.1, the following acts and transactions constitute significant transactions, provided that the significance criteria set out in that Communiqué are met:

- Mergers, de-mergers, liquidation and changes of legal form.
- Disposal, lease or establishment of rights *in rem* over the whole or a substantial part of the company's assets.
- Changes in the scope of the company's activity, wholly or to a considerable extent.
- Creation of new preferred stock categories or changes to the scope or subject matter of existing preferred stocks.
- De-listing.
- Acquiring or renting a considerable number of assets from related parties.
- Where the amount of a capital increase exceeds the amount of the current share capital, and the capital increase amount is to be used for the partial or full payment of due obligations arising from the acquisition of non-cash assets from related parties (as defined in the relevant CMB regulations).

In addition, the CMB can consider that the following constitute significant transactions:

- Any act or transaction that leads to considerable changes in relation to promises or commitments made, or material circumstances observed before the public offering.
- Even if there is no promise or commitment, any act or transaction that may have a considerable effect on the activities and commercial life of the company.

The Communiqué states that there is no required meeting quorum for a general assembly meeting for decisions concerning a significant transaction. The resolution authorising the significant transaction must be adopted by two-thirds of the present shareholders who have voting rights, unless the company's articles of association state otherwise. If the shareholders who hold half of the voting shares are present at the general assembly meeting, the resolution must be adopted by the majority, rather than two-thirds, of the present votes, unless the company's articles of association state otherwise. The Communiqué prohibits any shareholder who is a party to the material transaction from voting in a general assembly meeting convened for the approval of the transaction if the transaction results in a direct personal benefit for the shareholder. This rule applies regardless of whether the interested shareholder is a natural person who is the ultimate controlling shareholder of the company or a company controlled by this shareholder.

22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

Continuing obligations apply to listed foreign companies and to issuers of depositary receipts. However, the CMB is authorised to adopt different principles in relation to financial reporting and the independent audit requirements of foreign companies, taking into account the respective legislation of the jurisdictions where the foreign companies are incorporated.

Foreign companies are exempt from the CMB regulations relating to profit interest payment distribution and corporate governance, unless otherwise specified by the CMB.

23. What are the penalties for breaching the continuing obligations?

The CMB is authorised to impose administrative fines on public companies breaching continuing obligations. Borsa Istanbul is also authorised to de-list the company for such violations.

Market abuse and insider dealing

24. What are the restrictions on market abuse and insider dealing?

Restrictions on market abuse and insider dealing
Under the Capital Markets Law No 6362, insider dealing (*bilgi suistimali*) is a crime in Turkey. The Capital Markets Law No 6362 defines insider trading as benefiting from, or enabling others to benefit from, or avoiding losses through, or enabling others to avoid losses through, the use of non-public information that may affect the value and/or price of securities or the investment decisions of investors. Benefiting from non-public information is the essential element of the offence. For an act to constitute an insider trading violation, the information must be used in a manner which provides an unfair advantage over other investors. The violation may be committed by:

- The management of the issuer, its subsidiaries or controlling shareholders.
- The shareholders of the issuer or their controlling shareholders.
- Persons that are informed of inside information in connection with the execution of their work, profession or duties.
- Persons acquiring inside information with the intention to commit crime or persons that are, or that should be, aware of the fact that the information they have access to constitutes inside information.

The Capital Markets Law No 6362 exempts certain transactions, including those that are undertaken within the framework of stabilisation activities, share buybacks or employee stock option programmes in accordance with the CMB regulations, from the scope of insider trading crime.

Market abuse/manipulation is defined as:

- Making purchases and sales, giving orders, cancelling orders, changing orders or realising account activities with the purpose of creating inaccurate, misleading or deceptive representations on the prices of capital market instruments, their price fluctuations, supplies and demands.
- Giving false, misleading or deceptive information, spreading rumours, giving notices, making comments or preparing or distributing reports to affect the prices of capital market instruments, their values or the decisions of investors.

Penalties for market abuse and insider dealing
Under the Capital Markets Law No 6362, insider trading violations are punishable by prison terms of two to five years or a judicial fine. The minimum monetary fine cannot be less than twice the monetary benefit obtained through such actions.

The activities constituting market abuse/manipulation can be punished with a prison sentence of two to five years and a judicial fine from 5,000 days up to 10,000 days. This judicial fine is an amount payable to the State Treasury that is calculated by multiplying the full number of days subject to the penalty with the amount of the daily fine. The amount of the daily fine is between TRY20 and TRY100, and will be calculated in light of the private and economic

conditions of the person subject to the fine. The amount of the judicial fine cannot be less than the amount of the benefit obtained as a result of the market manipulation.

De-listing

25. When can a company be de-listed?

De-listing
Voluntary de-listing. If 95% or more of the voting rights of a public company are acquired, either directly or indirectly by any means, the company can apply to the stock exchange for de-listing. For a company to apply for de-listing, it must:

- Pass a general assembly resolution adopting the de-listing.
- Apply to the stock exchange within five business days from the date the resolution is adopted.

The controlling shareholder must also apply to the CMB for a mandatory tender offer for the remaining percentage of the company's shares that will be offered to the minority shareholders.

The public company must announce certain facts and developments to the public in accordance with the principles set out in the related CMB legislation concerning public disclosure requirements. The company must announce all of the following to the public:

- The board of directors' resolution for de-listing.
- The approval of the resolution by the shareholders' meeting (general assembly meeting).
- The application to Borsa Istanbul and the CMB for de-listing.
- Every major stage of the mandatory tender offer.

Compulsory de-listing. If the voting rights relating to the shares reach 98% of the voting rights of the company or if any additional shares have that effect, the controlling shareholder is entitled to buy out the shares of other shareholders who will be entitled to sell out their shares to the controlling shareholder.

Upon completion of the sell-out and buy-out process, Borsa Istanbul will evaluate the application and decide whether to de-list the shares of the company and impose any future restrictions on their listing. The company whose controlling shareholder has exercised the right of buy-out will *ex officio* become a private company.

Borsa Istanbul can de-list the securities of any company which breaches its continuing obligations or the listing requirements. In addition, under the Borsa Istanbul Listing Directive, a capital market instrument is delisted if any of the following applies:

- The company has ceased operating at least a year ago.
- The company has not paid Borsa Istanbul's fees for a year since the due date of such payment.
- The total amount of non-commercial receivables from the company's related parties exceeds 50% of its assets (based on the last three years' financial statements).
- The independent auditor issues an adverse or negative opinion or has avoided giving an opinion in the last three years.

Suspensions
Borsa Istanbul's General Manager can suspend the trading of a stock temporarily if:

- Borsa Istanbul receives information about a stock or an issuing company where there is uncertainty or information of vital importance, which can affect the decisions of the traders and it deems it necessary that this information must be disclosed to members and their clients.
- Buy and sell orders at an unusual price or quantity are transmitted to the system to prevent the development of a healthy market for that stock.
- There is information of vital importance about the market maker or liquidity provider in charge of a capital market instrument, which may affect him or her in his or her duty, and the General Manager considers it necessary that investors be informed about the situation.
- Other factors which prevent the healthy operation of the market arise.

Borsa Istanbul's General Manager can suspend the trading of a stock for a maximum period of five business days. The Executive Council must pass a resolution for a suspension exceeding five business days. There are also detailed rules which set out how to resume trading. The CMB can also de-list a stock or suspend its trade.

Reform

26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

There are currently no proposals for the reform of equity capital markets or the exchanges. In 2017 and 2018, the CMB and Borsa Istanbul introduced certain regulatory changes with the aim of easing public offerings and boosting capital market activities in Turkey. To this end, in 2017, the CMB published a major change regarding the sales periods and allocations percentages in order to attract Turkish companies to go public in Turkey rather than considering foreign exchanges. In parallel with the CMB's initiative, Borsa Istanbul also introduced certain amendments to listing principles in the Borsa Istanbul Listing Directive with a view to asserting Borsa Istanbul as a viable option for IPOs for Turkish companies.

Contributor profiles

Ömer Çollak, Partner

Paksoy

T +90 212 366 4732
F +90 212 290 2355
E *ocollak@paksoy.av.tr*
W *www.paksoy.av.tr*

Professional qualifications. Istanbul Bar Association, 2004; Golden Gate University, School of Law, LLM, 2000; Marmara University, School of Law, 1998.

Areas of practice. Capital markets; banking and finance; mergers and acquisitions; project finance; restructuring and insolvency; corporate and commercial.

Languages. English, Turkish.

Nazlı Tönük Çapan, Associate

Paksoy

T +90 212 366 4754
F +90 212 290 2355
E *ntcapan@paksoy.av.tr*
W *www.paksoy.av.tr*

Professional qualifications. Istanbul Bar Association, 2010; University of Montréal, International Business Law, LLM, 2012; Marmara University, School of Law, 2009.

Areas of practice. Capital markets; banking and finance; mergers and acquisitions; corporate and commercial.

Languages. English, Turkish.

END OF DOCUMENT

Related Content

Topics

Listing, Prospectus, Disclosure and Transparency Rules
Cross-border - Equity Capital Markets

Articles

Prospectus content requirements • Law stated as at 01-Sep-2018
Stock exchanges and regulatory authorities by jurisdiction • Law stated as at 01-Sep-2018
Withholding tax on interest and stamp/transfer duties relating to debt instruments • Law stated as at 01-Sep-2018

Country Q&A

Debt capital markets in Turkey: regulatory overview • Law stated as at 01-Jul-2019