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Turkey
CAPITAL MARKETS

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This country-specific Q&A provides an overview of capital markets laws and regulations applicable in Turkey.

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TURKEY
CAPITAL MARKETS

1. Please briefly describe the regulatory framework and landscape of both equity and debt capital market in your jurisdiction, including the major regimes, regulators and authorities.

The main legislation governing both equity and debt capital markets is the Capital Markets Law numbered 6362. Capital Markets Board, which is established under this law, is the regulatory authority overseeing the Turkish capital markets. The Capital Markets Board enacts secondary legislation in the form of communiqués, principle decisions, decisions, guides and announcements to regulate the market. The Capital Markets Board also publishes a weekly bulletin where various news items, such as new principle decisions, announcements and debt and equity issuance approvals are announced.

Other key institutions in the Turkish capital markets are Borsa Istanbul, the Central Securities Depository, Istanbul Settlement and Custody Bank (Takasbank), and the Turkish Capital Markets Association. These institutions also enact their own secondary regulations, which govern the conduct of their respective activities and the activities of the relevant capital markets participants. Borsa Istanbul issues directives and announcements to establish exchange-specific regulations such as listing requirements and trading procedures. Borsa Istanbul also includes a dispute committee authorized to resolve disputes regarding transactions on the exchange. The Central Securities Depository establishes rules and guides regarding the securitization and digitization of capital market instruments. Istanbul Settlement and Custody Bank operates the clearing and settlements system. The Turkish Capital Markets Association establishes professional rules and regulations for capital markets institutions, conducts research and organizes events.

Listed companies are obligated to make certain public announcements on the Public Disclosure Platform. Announcements by non-listed public companies are published on the website of the Capital Markets Board.

2. Please briefly describe the common exemptions for securities offering without prospectus and/or regulatory registration in your market.

Some common exemptions for offerings without a prospectus are the following:

(a) Public offerings where each investor purchases capital markets instruments exceeding TRY 1,656,457 (for 2023), calculated for each public offering;

(b) Issuances where the nominal value of a single share is higher than TRY 1,656,457 (for 2023);

(c) Private placements;

(d) Issuances to qualified investors (trading amongst qualified investors on the exchange);

(e) With the condition of publishing an announcement determined by the Capital Markets Board, capital markets instruments newly issued (and traded at the stock exchange) as a result of a merger, transfer, spin-off, capital in kind capital contribution or share transformation;

(f) Issuance of gratis shares including for paying out dividends in shares;

(g) Share issuances to pay tender offers in newly issued shares;

(h) Except for private issuances, if new shares are offered to the public via transforming non-listed shares into listed shares, only if the ratio of the newly converted shares is less than 10 percent of the listed shares of the same share group.

In addition, an exemption may be granted on an application basis, if the public offering is not an IPO and the total sales amount of all issuances within the last 12 months (excluding issuance of gratis shares due to dividend distribution or capital increase from internal resources) is less than TRY 45,000,000 (for 2023).

It must be noted that, although a prospectus is not required in these cases, obtaining an official approval from the Capital Markets Board is still necessary.

3. Please describe the insider trading regulations and describe what a public company would generally do to prevent any violation of such regulations.

Insider trading is punishable with a prison sentence ranging from three to five years or a judicial fine. The judicial fine may not be less than twice the profits gained from insider trading. The Capital Markets Board also has the authority to impose limits and bans on trading activities of individuals and/or take other precautions to prevent them from engaging in insider trading. The Capital Markets Board may also impose administrative fines on individuals who engage in insider trading.

To track and prevent insider trading, public companies are required to report an insiders list to the authorities and keep it updated. Intermediary institutions are also obligated to inform the authorities of any suspicious activities that might constitute insider trading. Apart from these regulations, public companies can also take necessary steps to prevent insider trading by their employees. They enact internal company policies for preventing insider trading and train employees to educate them on the matter and/or to reinforce the importance of complying with the regulations and company policies aimed at preventing insider trading. Applying solid information management policies, such as restricting employees' access to sensitive information and ensuring physical and digital security over company's information, is also important.

4. What are the key remedies available to shareholders of public companies / debt securities holders in your market?

The most sought-out remedy is a complaint filed with the Capital Markets Board. The Capital Markets Board initiates investigations upon receiving such complaints. Other remedies include remedies foreseen under the Turkish Commercial Law numbered 6102, which include shareholders' statutory rights such as suing for cancellation and/or invalidity of company resolutions and filing compensation claims against the management of public companies. In case of debt securities, holders may also exercise their rights under Turkish bankruptcy and execution regulations and attempt to claim their receivables through courts and execution offices.

Furthermore, debt holders (through the debt instrument holders' board they constitute) have the power to object to significant resolutions that amend the interest rate, maturity, principal and other fundamental terms and conditions of the debt instrument or other fundamental terms and conditions stipulated in the prospectus/issuance certificate of a debt instrument.

5. Please describe the expected outlook in fund raising activities (equity and debt) in your market in 2023.

Turkey has been experiencing a local IPO boom that began in 2020, following a long streak of minimal IPO activity in the market during the late 2010s. Following the depreciation of the Turkish Lira and perceived risk of lending to Turkish companies by foreign lenders, Turkish companies have turned to the local market to fund their activities. During this time, foreign investors' interest in M&A in Turkey has also declined, which has resulted in investors and private equities that have invested in Turkish companies to prefer IPOs for exits.

Debt issuances in the local currency have also increased during this time, with the companies looking to borrow in Turkish Lira to take advantage of the low interest regime currently conducted by the Turkish Central Bank. Turkey has also enacted certain restrictions on borrowing in foreign currency, as well as borrowing in local currency from Turkish banks for companies that hold foreign currency on their balance sheets, which has led to companies turning to local debt issuances to fund themselves.

The local fundraising activities have continued in 2023 and are expected to continue as long as the underlying conditions prevail.

6. What are the essential requirements for listing a company in the main stock exchange(s) in your market? Please describe the simplified regime (if any) for company seeking a dual-listing in your market.

There is a single stock exchange in Turkey and that is Borsa Istanbul A.Ş. ("Borsa Istanbul" or "BIST").

Borsa Istanbul has several markets on which securities trade. The largest market for equities is BIST Star, followed by BIST Main and BIST Sub. Listing requirements differ by markets. As of 2023, Borsa Istanbul seeks the following criteria to admit listings:

	BIST STAR	BIST MAIN	BIST SUB
Free-float market value at minimum*	TRY 300 million	TRY 75 million	TRY 40 million
Free-float percentage at minimum*	15%	20%	25%
Presence of net income at minimum**	Last 2 years	Last 2 years	Last 2 years
Equity/Capital ratio at minimum	Larger than 1	Larger than 1	Larger than 1.25

* Shares acquired by upper management and individual investors acquiring 10% or more shares are not counted as free-float.

** Net income and equity/capital ratio requirements can be waived for companies applying to trade at BIST Star if the company has: (a) positive operating income in the independently audited accounts of the preceding year and the relevant interim period, (b) free-float market value is TRY 500 million at minimum, (c) equity/capital ratio to exceed 1 after adding the proceeds obtained from emission premiums and the increased share capital, (d) public offering includes issuing new shares (i.e. not merely shareholder sale).

Additional criteria are:

(a) Company must have been incorporated at least 2 years ago;

Exception: Newly incorporated special purpose companies are exempt if they acquire more than 51% of the shares of a company that was incorporated more than 2 years ago.

(b) Company must have adequate financial health to continue its operations going forward;

(c) Company's shares to be offered to public must not be encumbered in any way;

Note: If there are such encumbrances or limitations, these must be removed before the IPO date.

(d) Company must not be in a situation where its liquidation, arrangement of debts or bankruptcy is requested. It must not have ceased its activities for a period of more than three months in the last year other than for reasons acceptable to Borsa Istanbul;

(e) Company must provide a legal opinion prepared by an independent lawyer confirming that it is not subject to a significant dispute or legal issue such as lack of permits that might adversely affect its operations, that its shares are compliant with any legislation they might be subject to, and the shareholders and senior management of the company were not convicted of certain crimes;

Note: We assist in conducting a legal due diligence and supplying such legal opinion.

(f) Company must provide audited consolidated accounts compliant with the Turkish Accounting Standards and Capital Markets Board's requirements (similar to IFRS) for the last three years and last quarterly accounts.

Please also note:

Controlling shareholders or shareholders with 10% or more ownership are prohibited from selling their shares below the initial public offering price on Borsa Istanbul for a period of one year following the IPO. The Capital Markets Board usually requests shareholders and the company to undertake not to sell their shares at all and not do any capital increases for one year following the public offering.

At least 20% of the new issuance must be allocated to domestic investors (10% retail, 10% institutional). Depending on the market value of the issuance, market conditions and/or upon the request of the issuer, the Capital Markets Board may waive this requirement or increase the minimum percentages up to 100%.

Dual listing of foreign companies on Borsa Istanbul

Foreign companies may dual list on Borsa Istanbul by issuing capital markets instruments including depository certificates in Turkey. Following the approval of the Capital Markets Board, they must apply to Borsa Istanbul to be listed by fulfilling the listing requirements of the relevant market (mentioned above). If the dual listing of a foreign company's shares without a public offering is planned, minimum free-float percentage and minimum free-float market value criteria will be calculated as the ratios in the relevant market it is being traded on.

Fast-track dual listing of foreign companies and Turkish companies

Alternatively, for both foreign companies and Turkish companies, if the relevant company is traded in the main market of certain foreign exchanges to be determined by

Borsa Istanbul, dual listing is possible without seeking any other requirement so long as the prospectus or the issuance certificate is approved by the Capital Markets Board. The exchanges currently eligible to benefit from this fast-track dual listing were announced as follows:

- Bursa Malezya
- Qatar Stock Exchange
- Nasdaq Dubai
- GPW Warsaw Stock Exchange
- Athens Stock Exchange
- Nasdaq OMX Nordic

The board of Borsa Istanbul may decide to impose further requirements or waive existing requirements on capital markets instruments to be dual listed, including depository certificates, based on the rights they represent, restrictions of their transfer or legal regulations of their country of issuance.

In addition, Borsa Istanbul may decide to impose further requirements or waive existing requirements related to debt securities issued by international institutions, where the Ministry of Treasury and Finance, Republic of Turkey Central Bank or similar institutions are a member or shareholder of, as well as debt instruments issued by foreign states and foreign municipalities.

7. Are weighted voting rights in listed companies allowed in your market? What special rights are allowed to be reserved (if any) to certain shareholders after a company goes public?

Weighted voting rights in listed companies are allowed and are very common for family-owned companies going public, as well as joint venture type companies controlled by different groups. Privileges are granted to certain shareholders by designating different types of shares (i.e. Group A shares, Group B shares, etc.) where the controlling shareholders usually hold a combination of privileged shares that cannot be traded on the exchange and common shares that are traded on the exchange.

Privilege of appointing board members and weighted voting rights are allowed but are subject to limitations. A maximum of 15 votes per share may be assigned to one share. However, in practice the Capital Markets Board is in favor of protecting equal representation and usually demands a lower ratio. In the past few years, the typical voting rights that can be assigned to a share is 5 votes per share. Similarly, the privilege to appoint board members may not exceed half of the total board members of a company.

No new privileges may be created after the company has become public. Furthermore, if the listed company operates with losses for five consequent periods, all privileges must be removed.

8. Is listing of SPAC allowed in your market? If so, please briefly describe the relevant regulations for SPAC listing.

Listing of SPACs is allowed, but not practiced commonly in Turkey. SPACs are regulated under the Listing Directive issued by Borsa Istanbul under Article 11.

Listing requirements for SPACs are:

(a) Free-float market value at minimum: TRY 200 million;

(b) Free-float percentage at minimum: 50%;

(c) Percentage of institutional investors at minimum: 80%;

(d) Percentage of shares owned by the board members: 10%; and management at minimum:

(e) Founders and the management must undertake not to sell the shares (on the stock exchange or otherwise) they owned before the public offering until the consummation date of the merger with the company to be acquired and 12 months thereafter;

(f) Fulfilling all other listing requirements described under Question 7.

SPACs may also be traded in the Qualified Investors Market under Borsa Istanbul. In such cases a Capital Markets Board approved issuance certificate and an approved articles of association will be required.

9. Please describe the potential prospectus liabilities in your market.

The issuer, as well as any selling shareholder(s) and the investment banks are liable for any misrepresentation, omission or inaccurate information in the prospectus. In a similar manner, auditors are liable for the accuracy of the financial statements they have prepared with respect to the issuance and lawyers are liable for the accuracy of the independent lawyers report they prepare in connection with the issuance. Other parties involved, such as rating agencies, may also be held liable for any inaccurate or misleading information they have signed off with respect to the relevant company going public.

Investors / debtholders may file compensation claims

against the responsible parties for all losses they incur which arise from inaccurate, misleading or incomplete information in the prospectus and other issuance documentation. Additionally, the Capital Markets Board may impose administrative fines on the relevant company and may take other precautions to limit any losses and damages from such inaccurate information.

10. Please describe the key minority shareholder protection mechanisms in your market.

Shareholders holding at least 5% of the shares are considered a minority. In addition to shareholders rights applicable for all shareholders, minority shareholders have the following rights:

- They may request the removal or change of the auditor;
- They may invite the general assembly to convene and add items to the meeting agenda;
- They may request deferring discussion of financials at the general assembly meeting to a later date to enable time to obtain information;
- They may request a special auditor to audit the company and may apply to the courts for its appointment if the general assembly rejects the request.

In addition, all shareholders have the right to file a lawsuit against a board resolution of the company for determination of its status as void. All shareholders also have the right to file a lawsuit for the cancellation of a general assembly resolution, provided that they have attended the relevant general assembly, voted against the resolution and had their dissent annotated to the general assembly minutes.

11. What are the common types of transactions involving public companies that would require regulatory scrutiny and/or disclosure?

Turkish capital markets legislation defines “material transactions” as transactions that would induce regulatory scrutiny and/or require disclosure. Please see under question 14 for the definition of “material transactions”. Material transactions would require additional regulatory scrutiny and/or disclosure obligations, including, but not limited to mandatory general assembly approvals, Capital Markets Board approvals, special disclosure obligations and retirement rights.

In addition to the foregoing, lesser transactions that do not qualify as “material transactions” but are still important for current or potential investors’ investment decisions must be disclosed to public. Under the Special Events Communiqué numbered II-15.1, any information, incident or development that may affect the price of the security or current or potential investor’s investment decisions must be announced on the Public Disclosure Platform, which is the official platform for such disclosures.

Insider transactions may also trigger certain regulatory requirements, depending on their size. Persons holding managerial positions 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 reaches TRY 5,000,000 (individually or together) (for 2023) in a single calendar year.

Additionally, M&A transactions may trigger scrutiny from the Turkish Competition Board. Certain other regulatory approvals might also be required depending on the type of the relevant company. For example, certain transactions involving a bank might require approval from the Turkish Banking Regulation and Supervision Agency or certain transactions involving an energy company might require approval from the Turkish Energy Market Regulatory Authority.

12. Please describe the scope of related parties and introduce any special regulatory approval and disclosure mechanism in place for related parties’ transactions.

Related parties are defined under Turkish accounting standards (TMS 24). Pursuant to the Corporate Governance Communiqué numbered II-17.1, taking a board of directors’ resolution is a necessary first step in order to engage in related party transactions that exceed certain thresholds. Furthermore, all related parties’ transactions must be duly disclosed on the Public Disclosure Platform.

Single Transactions

The calculation of these thresholds is based on the ratio of the size of the proposed transaction to the company’s total assets, total annual sales, and weighted average market cap in the last 6 months. If either of these ratios

exceeds 5%, the board of directors must first engage a third party approved by the Capital Markets Board in order to have them prepare a valuation report with respect to the proposed transaction.

If the said ratios exceed 10%, the majority of the independent board members must also vote in favor of the proposed related party transaction in the said board resolution. If the majority of the independent board members do not approve the proposed transaction or remain silent, the proposed transaction must be approved in a general assembly.

Continuous Transactions

The calculations foreseen for continuous transactions with related parties (such as leasing or an ongoing service procurement) depend on whether the public company is providing these services or receiving these services.

If the public company is receiving these services, the key ratio is the annual payment for these services to the annual cost of goods sold of the company. If the public company is providing these services, the key ratio is the annual payment for these services to the annual sales of the public company. If these ratios exceed 10%, a valuation report must be prepared in connection with the transaction, as described above.

13. What are the key continuing obligations of a substantial shareholder and controlling shareholder of a listed company?

Substantial and controlling shareholders of a listed company have continuing notification requirements in case their voting rights exceeds certain thresholds. Shareholders (as well as other persons exercising management control) of a listed company must publicly disclose the following transactions:

If the shareholding percentage of a person or a group of persons acting in concert exceeds or falls below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95% of the issued share capital or voting rights of a public company, they must disclose such acquisitions on the Public Disclosure Platform.

- In case of a direct shareholding by a natural person or a legal entity, this notification will be directly made by the Central Registry Agency. If the change of ownership / voting rights stems from changes in indirect ownership or through acting in concert, the relevant persons are obliged to disclose the transaction;
- Similarly, disclosures must be made if an investment fund directly or indirectly acquires 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95% of the issued share capital or voting rights of the company or falls below these thresholds;
- Persons holding managerial positions 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 reaches TRY 5,000,000 (individually or together) (for 2023) in a single calendar year;
- Companies must update any changes relating to the general information of the company disclosed on the Public Disclosure Platform within two business days of any change. The Central Registry Agency is responsible for updating the shareholders list, publishing a public company's natural person and legal entity shareholders holding directly 5% or more of the shares or voting rights of that public company; and
- Any changes in rights/privileges attached to various classes of shares must be disclosed on the Public Disclosure Platform and changes relating to the voting rights must be notified to the Central Registry Agency.

Furthermore, there are restrictions in transferring shares for major shareholders. Shareholders who directly hold more than twenty percent of the share capital of a public company, either alone or together with persons acting in concert, or who hold privileged shares that entitle them to elect at least one of the members of the board of directors or to nominate at least one of the members of the board of directors at the general assembly meeting must prepare a share sale information form and apply for the Capital Market Board's approval for share sales exceeding three percent of the paid-in capital of the company in any twelve-month period.

14. What corporate actions or transactions require shareholders' approval?

Generally, shareholders' approval is required for mandatory general assembly agenda items such as distribution of profit, appointment of board members and auditors, releasing board members from their liabilities associated with the past financial years and approval of

the company financials, among others. For public companies, “material transactions” also require shareholders’ approval. Capital Markets Board has set out the rules for determining significant transactions under the Material Transactions and Retirement Right Communiqué numbered II-23.3 (“MT Communiqué”).

According to the MT Communiqué, the following transactions of public companies will constitute material transactions and will require the approval of the general assembly of shareholders. Moreover, the Capital Markets Board reserves the right to deem other transactions as material transactions, if such transactions are significant transactions that might affect the investment decisions of investors by making significant changes in the company’s main activities or substantially altering its ordinary business.

- Participating in mergers and demergers specified under Article 5 of the MT Communiqué;
- Transferring a significant amount of assets (the ratio of the transaction value to the public company’s value must exceed 75% of the total public company’s value with respect to the calculation method set out in the MT Communiqué), or concluding transactions resulting in such transfer or establishing limited rights in rem on such assets;
- Changing company’s legal form;
- Granting new privileges, altering the scope or subject of existing privileges.

Moreover, for listed companies with a free-float above 50%, any transaction fundamentally changing the field of activity will be deemed as a significant transaction regardless of any significance threshold.

For public companies keeping consolidated financial tables, transactions of subsidiaries may also qualify as significant transactions. Transactions carried out by subsidiaries above the significance threshold calculated for the parent company in relation to consolidated financials will be deemed as a significant transaction of the parent company.

Furthermore, in case independent board members do not approve or remain silent on approving a related party transaction exceeding certain thresholds, a general assembly resolution must be taken before such transaction can be done. Please refer to Question 12 for more details.

15. Under what circumstances a mandatory tender offer would be triggered? Is there any exemption commonly relied upon?

If a person or group of persons acting in concert acquires direct or indirect management control of a public company (for example by acquiring shares or by concluding voting agreements among themselves), the obligation to make a tender offer is triggered. Management control is defined under the Tender Offer Communiqué numbered II-26.1 as either having:

(i) more than 50% of the voting rights, solely or in concert with others, directly or indirectly, in a public company;

(ii) privileged shares giving the right to appoint or nominate the majority of the Board in a public company, regardless of the percentage of voting rights acquired.

Mandatory tender offer obligation does not trigger in the following cases:

- Obtaining management control after making a voluntary tender offer to all shareholders for all their shares;
- Obtaining management control without any share acquisition, but by concluding voting agreements between other shareholders and having the general assembly approve such voting agreements, provided that the new controlling shareholders offer to purchase the shares of all shareholders who had voted against such voting agreements in the relevant general assembly;
- When the shareholding ratio of the shareholder who has management control of the company falls below 50% but such shareholder regains majority of the shares before losing its management control to third parties by acquiring more shares;
- When voting rights granting management control are acquired as a consequence of intergroup transfers within the group exercising management control who previously carried out a tender offer;
- When a non-controlling shareholder acquires shares from controlling shareholders by acquiring their shares or obtains shares through subscription at a capital increase, has less than 50% of the voting rights, and executes an agreement to share the management control of the company with the existing managing shareholder(s);
- When right to squeeze out and sell out is triggered concurrently as a result of gaining control of the company through share

acquisition;
- When the management control is acquired by an existing shareholder who participated in a capital increase of a listed company where the pre-emption rights were not limited; and
- When shareholders unwillingly acquire control due to events outside their control, such as freezing of voting rights of other shareholders, decrease of the company's capital through retirement of shares, cancellation of existing share privileges, or share buybacks.

In the abovementioned cases, the relevant shareholders must make a formal disclosure on the Public Disclosure Platform within two business days after they acquire the management control and must disclose which exemption case applies.

Exemptions may also be granted by the Capital Markets Board on a case-by-case basis. Common basis for applying for an exemption, among others, include:

- Investing in a public company to save it from financial distress;
- Relinquishing control by reselling shares that grant control before such shares are used to vote in the next general assembly meeting, provided that the board of directors' composition remains unchanged;
- Sale of shares owned by the government due to privatization;
- Management control changes due to inheritance or divorce;
- Transfer of shares due to legal requirements under the applicable legislation regarding limitations on shareholders and their qualifications.

In order to request an exemption, an application must be made to the Capital Markets Board within six business days after the mandatory tender offer requirement has been triggered.

16. Are public companies required to engage any independent directors? What are the specific requirements for a director to be considered as "independent"?

All public companies must employ at least two independent directors. The minimum number of independent directors required is dependent on the corporate governance group of the relevant company. As a general principle, the number of independent directors cannot be less than one-third of the total number of directors. However, for listed companies falling under Group 3, appointing two independent board members is sufficient. In addition, corporations besides banks, where at least 51% of shares are owned by two natural/legal persons that do not have any direct or indirect capital, management or audit relationship, sharing management control of the public company equally on the basis of a shareholders agreement, may apply to the Capital Markets Board for an exemption. If the exemption is granted, they may appoint two independent board members, regardless of the corporate governance group of the company.

"Independent" directors must fulfill the following criteria:

(a) The independent director, as well as the director's spouse and relatives by blood or marriage up to the second degree must not

- be employed in an executive position assuming significant duties and responsibilities within the last 5 years in or in connection with (i) the public company itself, (ii) corporations in which the company has management control or significant influence over, (iii) shareholders who control the management of the company or have significant influence over the company, other legal entities controlled by these shareholders ("Related Parties");
- have joint or sole ownership of more than 5% of the capital or voting rights or privileged shares of the Related Parties within the last 5 years; and
- have any significant commercial relationship that has been established within the last five years between the Related Parties.

(b) The independent director must not be

- a shareholder (5% or more) of other companies, which the public company has a significant commercial relationship, including but not limited to companies providing auditing (including tax audit, legal audit, internal audit), rating and consultancy services to the company ("Related Companies") within the past 5 years;
- an employee in a managerial position assuming significant duties and responsibilities in a Related Company within the past 5 years; and
- a member of the board of directors in a Related Company within the last 5 years.

(c) must have professional education, knowledge and experience to duly fulfill the duties of an independent board member;

(d) must not be working full-time in public institutions and organizations after being elected as a member, except for university faculty membership, provided that the necessary legal requirements under the relevant legislation are met;

(e) must be resident in Turkey;

(f) must have strong ethical standards, professional reputation and experience to contribute positively to the company's activities, to maintain impartiality in conflicts of interest between the company and the shareholders, and to decide freely by taking into account the rights of the stakeholders;

(g) must have time to allocate to the company's business to follow up the activities and duly fulfill the necessary duties;

(h) must not have served as a member of the board of directors of the company for more than six years within the last ten years;

(i) must not be serving as an independent board member in more than three of the companies controlled by the company or by the shareholders controlling the company and in more than five public companies in total;

(j) must not be registered and announced as a board member representing a legal entity.

17. What financial statements are required for a public equity offering? When do financial statements go stale? Under what accounting standards do the financial statements have to be prepared?

Independently audited financial statements are required. These must be prepared according to Turkish Accounting Standards, which are very similar to IFRS. Required statements for each corresponding sales period are summarized below:

	Sales Period	Required Independently Audited Financial Tables
1	1 January – 15 February	Last 3 years' financials or previous 3 years' financials and last 9 months' interim period financials
2	16 February – 15 May	Last 3 years' financials
3	16 May – 15 August	Last 3 years' financials and last 3 months' interim financials
4	16 August – 15 November	Last 3 years' financials and 6 months' interim financials
5	16 November – 31 December	Last 3 years' financials and 9 months' interim financials

If these dates have passed; however, if the beginning of the intended date of sales is within 15 days of the end of any period listed above, the sale can be made by annexing the next quarter's financials to the prospectus, without revising its entire content. Furthermore, it is common for the Capital Markets Board to grant additional time by way of official announcements for companies looking to go public, especially if the IPO process takes longer than usual due to the workload of Capital Markets Board.

18. Please describe the key environmental, social, and governance (ESG) and sustainability requirements in your market. What are they key recent changes or potential changes?

Capital Markets Board has published sustainability principles and incorporated them into the Corporate Governance Communiqué numbered II-17.1. Adherence to these sustainability principles is voluntary, however companies (a) must report whether they comply with these sustainability principles, (b) provide a detailed explanation of the reason for their noncompliance, and (c) provide explanations on how this non-compliance will affect environmental and social risk management. If any significant change arises differing from these disclosures, the change must be mentioned in the interim activity reports of the company.

The Capital Markets Board also published a guideline for green / sustainable bonds and green / sustainable lease certificates based on ICMA Green Bond Guidelines. We are expecting a climate law to be enacted within 2023 which may impose further obligations on Turkish companies.

19. What are the typical offering structures for issuing debt securities in your jurisdiction? Does the holding company issue debt securities directly or indirectly (by setting up a SPV)? What are the main purposes for issuing debt securities indirectly?

Debt securities are issued predominantly directly by the relevant company. Setting up an SPV or other types of indirect issues is not common. Most commonly used types of debt issues are direct issues of Eurobonds abroad, and direct issues to qualified investors through either book building or private placement. Issues of debt instruments to the public (i.e. retail investors) are rare.

Lease certificate (sukuk) issuances are also commonly used by Turkish companies and the practice has increased over the past decade, with the most preferred type of lease certificate issuance being “management lease certificates”. In lease certificate issuances, only special companies authorized by the Capital Markets Board for this purpose may issue the debt instruments. They transfer the proceeds of the issuance to the company and act as intermediaries between the company and the investors throughout the duration of the relevant debt instrument.

20. Are trust structures adopted for issuing debt securities in your jurisdiction? What are the typical trustee’s duties and obligations under the trust structure after the offering?

In 2022, the Capital Markets Board introduced a new communiqué titled The Communiqué on the Procedures and Principles on the Issuance of Secured Capital Market Instruments numbered II-31/B.1 (“Trusts Communiqué”) for the issuance of secured capital market instruments where the ownership of the assets subject to security must be transferred to a trustee (or a limited usage right must be established over such assets) for the benefit of the trustee. Prior to this legislation, it was possible for issuers to grant pledges over their assets as collateral for their debt. It was also technically possible for issuers and investors to agree on a trust-type structure; however, there was no specific capital markets legislation that enabled the trustee structure. With this legislation, the Capital Markets Board has introduced the necessary legislation specifically for issuers and investors looking for a trustee structure. With that said, this piece of legislation is relatively new and not yet widely practiced.

Trusts Communiqué requires the intended structure to be determined in a trust management agreement to be executed in writing by the trustee and the issuer before the relevant issuance. In this respect, the agreement must determine issues such as rights and obligations of the parties, matters related to the issuance, coverage of the receivables from the securities, party that would have the possession of the assets, costs, expenses, fee and payment principles.

The trustee is obligated to prepare a report (i) every six months (ii) in the event of default (iii) in case the security is converted into cash, and (iv) in other cases required by the Capital Markets Board. The trust report has to be disclosed to the public via the Public Disclosure Platform on the next business day following the signing date of the said trust report. Pursuant to the communiqué, the trustee is required to make a material event disclosure via the Public Disclosure Platform in the event:

- that the trust management agreement is amended;
- that the independence of the trustee is impaired;
- that there is a decrease of 25% or more in the value of the assets subject to the security;
- that the issuer violates its non-payment obligations;
- of default of the issuer or other cases having the same result as an event of default;
- that the payment obligations are fulfilled through liquidation of the security; and
- of other cases deemed necessary by the Capital Markets Board.

21. What are the typical credit enhancement measure (guarantee, letter of credit or keep-well deed) for issuing debt securities? Please describe the factors when considering which credit enhancement structure to adopt.

Shareholder guarantee is one of the most preferred type of credit enhancement measure. Granting pledges over company assets as collateral for the debt security issuance is also fairly common, especially in debt

issuances made to a single or a small number of investors. You may also refer to our response to question 20 above related to the recently introduced trustee structure for capital market instruments.

22. What are the typical restrictive covenants in the debt securities' terms and conditions, if any, and the purposes of such restrictive covenants? What are the future development trends of such restrictive covenants in your jurisdiction?

It is common for debt securities issued locally to not include any type of covenants. However, in certain cases local debt instruments might also include restrictive covenants such as cross-default, restrictions of change of control and in certain cases, financial ratios might be imposed on the issuers. Certain local debt security issuances also have social and environmental covenants, especially if the investor in such securities are international institutions such as European Bank of Reconstruction and Development and International Finance Corporation. In Eurobond issuances of Turkish companies, standard terms and conditions and restrictive covenants are common. We expect covenants related to ESG matters to increase in the future as the world shifts towards a more sustainable future.

23. In general, who is responsible for any profit/income/withholding taxes related to the payment of debt securities' interests in your jurisdiction?

Generally, interest income derived by natural and legal persons from holding debt securities are subject to withholding tax for both domestic and international issuances. Withholding tax is deducted by the issuer entity making the interest payments.

In addition, resident corporations in Turkey have to incorporate any income generated through interest payments into their corporate tax declarations, but are allowed to deduct any withholding tax deducted from the corporate tax to be paid.

Resident natural persons in Turkey have to declare any income generated through interest payments of debt securities issued internationally, if these exceed TRY 150,000 (for 2023).

Please note that the bilateral agreements between Turkey and other countries as well as additional rules with respect to taxation might affect the applicable tax regime and therefore tax implications for investing in debt securities issued by Turkish issuers must be confirmed with tax advisors.

24. What are the main listing requirements for listing debt securities in your jurisdiction? What are the continuing obligations of the issuer after the listing?

Debt securities may be listed on Borsa Istanbul through a public offering or sales to qualified investors.

The main requirements for listing debt securities at Borsa Istanbul via a public offering are the following:

(a) Issuer must have been incorporated at least 2 years ago;

(b) Issuer's equity capital in the last independently audited financials must be larger than its share capital and the issuer must have a net period profit in at least one of the last two years financial tables;

(c) Issuer must be in adequate financial situation to continue its operations going forward;

(d) Issuer must provide a legal opinion prepared by an independent lawyer confirming that it is not subject to a significant dispute or legal issue such as lack of permits that might adversely affect its operations, that its debt instruments are compliant with any legislation they might be subject to.

However, if the issuer is a listed company trading at BIST Star, BIST Main or BIST submarkets or if the issuer is a bank or capital markets intermediary institution, the abovementioned requirements will be waived.

In addition, the requirements above will also not apply for asset-based, mortgage-based or project-based securities and covered bonds.

Lastly, like all public offerings, preparation of a prospectus and obtaining an approval from the Capital Markets Board will be necessary to list debt securities through a public offering.

Listing debt securities through sales to qualified investors does not require a prospectus, but preparation of an issuance certificate is mandatory. This issuance certificate requires the approval of the Capital Markets Board. Listing of debt securities to be issued solely to qualified investors are not subject to additional requirements by Borsa Istanbul and can be done by applying to Borsa Istanbul with the Capital Markets Board's approval regarding the relevant issuance.

Ongoing obligations of issuers of debt securities

Issuers of debt securities must open and maintain a Public Disclosure Platform account. Debt securities issuers (besides issuances made through private placement) are required to disclose general information on the company (such as shareholding percentages, composition of the board of directors etc.) on the Public Disclosure Platform and update such information within two business days in case of changes.

In addition, debt securities issuers must publicly disclose the following:

(a) General assembly resolution on distributing profit;

(b) General assembly meeting agenda and minutes, if the general assembly does not convene the reason thereof;

(c) Authorized body resolution on increase or decrease capital, merger, spin-off, conversion;

(d) Authorized body resolution on obtaining an issuance ceiling to issue capital markets instruments;

(e) Status of default for issuances, payment of principal, interest or interim payments for each tranche;

(f) Any and all changes to the conditions determined at the stage of issuing the capital markets instruments that may affect investors' rights;

(g) Exercise of conversion or exchange rights regarding the capital markets instruments;

(h) Rating notes regarding capital markets instruments and changes therein;

(i) Warranties and securities regarding the capital markets instruments and changes therein;

(j) Developments or incidents in the issuer's financial status and/or activities that may adversely affect its ability to meet its obligations against noteholders; and

(k) Buy back of capital markets instruments issued from related parties.

Lastly, if a natural or legal person or other persons acting in concert directly or indirectly acquire shares or voting rights corresponding to 25%, 50% or 67% or their shareholding falls below these thresholds, these persons are required to make a public disclosure on Public Disclosure Platform.

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