

TURKEY TAKING STRONG STEPS TOWARDS A SOLID INFRASTRUCTURE FOR CORPORATE GOVERNANCE

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The past six years have brought Corporate Governance in Turkey from management textbooks to boardroom agendas. The Turkish Corporate Governance Association has played a particularly significant role in the development of Corporate Governance in Turkey.

Management Structure and Role of the Board of Directors

In Turkey, boards of directors are unitary in structure, comprised of at least three members, appointed for a maximum period of three years in joint stock corporations. The Commercial Code provides that (i) only individuals may be members of a Board; and (ii) directors must be elected from amongst the Company's shareholders, or be representatives of legal-entity shareholders. The Code allows foreign citizens to be elected as directors. One caveat of the Code is that it does not set forth any expertise or education-related criteria for Board membership.

The Corporate Governance Guide of the Capital Market Board (the "**Guide**"), addressing publicly held companies, pays special importance to an effective election of the Board of Directors. The Guide requires companies to provide, to all shareholders, detailed information regarding the Board nominees' relations with the Company and other companies, their personal and educational backgrounds, their assets, and whether or not they meet the required criteria for independence.

The Guide also suggests that Board members be divided into two classes: (i) executive members; and (ii) non-executive members. More importantly, the Guide recommends the presence of independent Board members.

Members of the Board have a general duty of due diligence, care, foresight and good faith. Board members are accountable to the Company for losses created by their actions, such as appointing incompetent managers, or tolerating their harmful acts, but they are not directly responsible for losses created by managers.

Under the Commercial Code, Board members are precluded from entering into transactions with the Company unless specifically permitted by the shareholders. If any party to such a transaction suffers a loss, directors may be held liable to compensate the loss and damages incurred by the Company's shareholders or creditors.

Disclosure Requirements and Transparency

According to the CMB Communiqué on the Public Disclosure of Material Events, changes in the capital structure and management control, activities, investments, financial structure, financial fixed assets and the sale, purchase, and/or rental of the assets of publicly held companies must be disclosed. The Guide also requires publicly held corporations to disclose all significant information, which may influence stakeholders' investment decisions.

Corporate Governance Rating

In July 2007 the CMB's revised the Communiqué of December 2003 on Rating Activities and Rating Agencies in the Capital Market. The revised Communiqué sets forth principles and procedures for the activities of rating agencies, as well as conditions and criteria for the performance of rating activities. It defines Corporate Governance rating as the "*the independent, impartial and fair evaluation and rating of corporations' compliance with the CMB's Guide on Corporate Governance Principles*".

According to the Communiqué, rating of the implementation of Corporate Governance principles is to be based on varying degrees from 1 to 10, and the criteria are stakeholders' interests; disclosure and transparency; shareholders' protection; and the Board of Directors. Only agencies authorized by the CMB are entitled to carry out rating activities in Turkey.

The long-awaited Corporate Governance Index of the Istanbul Stock Exchange was published by the Exchange on 31 August 2007. Currently, there are five companies that are listed on this Index. According to the rules, only those companies whose ratings are above 5 (i.e. at least six) are to be included in the Index.

Corporate Governance Association of Turkey

The Corporate Governance Association of Turkey (the "TKYD") was founded in 2003 to establish, develop and assist the Corporate Governance Best Practices in Turkey.

The first Annual Corporate Governance Summit was held by TKYD on 16 September 2004 in Istanbul. It initiated "Effective Governance in Boardrooms" training programs in 2005. These programs, started in Istanbul, have also advanced to various Anatolian cities under an agreement with the Center for International Private Enterprise (the "CIPE"). In Anatolia, some 340 board members attended to these programs since May 2006.

The TKYD has conducted a research, "Governance Map of Turkey", in co-operation with the Boston Consulting Group in 2005. The research was re-visited in 2006 with Istanbul Bilgi University. Findings indicated that boards' excessive involvement in execution and insufficient disclosure are the main issues in the Turkish corporate world.

Finally, the new Turkish Commercial Code, prepared by a commission, is expected to be approved by the Parliament this year. Introduction of the new Code is likely to result in the further development of Corporate Governance in Turkey.