



client alert

CORPORATE LAW | TURKEY |

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LOWER THRESHOLDS FOR INDEPENDENT COMPANY AUDITS

With the entry into force of the new Turkish Commercial Code no. 6102 on 1 July 2012, one of the major impacts on Turkish corporate life is the auditing of certain types of commercial companies, which must now be carried out by independent auditors (Articles 397 *et seq.* of the Turkish Commercial Code).

Article 397/4 provides that companies requiring such an independent audit shall be determined by the Council of Ministers. In this respect, a decision of the Council of Ministers was published in the Turkish Official Gazette in early 2013, setting forth the criteria (as amended from time to time) applicable to determine which companies shall be subject to such a mandatory independent audit.

Now, in a decision published in the Turkish Official Gazette on 26 May 2018, the Council of Ministers sets forth the new criteria applicable to determine which companies shall be subject to such a mandatory independent audit.

Accordingly, companies which fulfill at least two of the following criteria during two consecutive financial years shall be subject to such an audit:

- companies whose assets value amounts to TRY 35 million (formerly TRY 40 million);
- companies whose net sales proceeds reach TRY 70 million (formerly TRY 80 million); and
- companies which employ at least 175 employees (formerly 200 employees).

Please be reminded that:

- to determine whether the above thresholds have been reached, the financial statements of the relevant companies as well as their average number of employees within the past two years shall be taken into account; and
- as regards companies with subsidiaries and affiliates, the above-mentioned thresholds shall be assessed in light of the sum of (i) all relevant financial figures (*i.e.* assets value and net sales) of such group companies, and of (ii) the average number of all their employees.

It should be noted here that other specific companies (*e.g.* companies not listed but deemed to be publicly traded, newspaper companies, companies regulated by the Information and Communication Technologies Authority or by the Energy Market Regulatory Authority, etc.) shall also be subject to a mandatory independent audit upon fulfillment of slightly lower thresholds relating to the same criteria.

In addition to the above, and regardless of any of the aforementioned criteria, the following companies shall, **in any case**, be subject to a compulsory independent audit: (i) listed companies, (ii) unlisted companies issuing capital market instruments (excluding shares), (iii) companies subject to the supervision and control of the Capital Markets Board or the Banking Regulation and Supervision Agency, (iv) insurance, reinsurance and pension companies, (v) companies allowed to perform their activities within Borsa Istanbul; (vi) licensed and general warehouses subject to the Agricultural Products Licensed Warehousing Law and General Warehousing Law, and (vii) press companies owning television channels.

As regards companies that do not fulfill the criteria for a mandatory independent audit, the Turkish Commercial Code provides for the principle of an alternative audit obligation. The terms of such an audit are expected to be determined in a secondary legislation, still to be issued. Accordingly, the exact scope of such an audit, the qualifications, duties and authorities of the relevant auditors, the procedure to be applied for their appointment and dismissal, the contents of the audit reports as well as the procedure for submission of the audit reports to the general assembly, remain unclear at this stage.

In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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