

# client alert

CORPORATE LAW | TURKEY |

7 MAY 2014

## INDEPENDENT AUDIT OF COMPANIES

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 relates to the auditing of certain types of commercial companies, which shall now be carried out by independent auditors (Articles 397 *et seq.* of the Turkish Commercial Code).

Article 397/4 provides that companies affected by such an independent audit requirement shall be determined by the Council of Ministers. In this respect, in early 2013 the Council of Ministers set forth the criteria applicable to determine which companies shall be subject to such a mandatory independent audit.

In a decision published in the Turkish Official Gazette on 13 March 2014, the Council of Ministers amended the thresholds of the above-mentioned criteria with retroactive effect as from 1 January 2014. Accordingly, companies which fulfill at least two of the following criteria during two consecutive financial years shall be subject to mandatory independent audit:

- companies whose assets value amounts to TRY 75,000,000 (previously TRY 150,000,000);
- companies whose net sales proceeds reach TRY 150,000,000 (previously TRY 200,000,000); and
- companies which employ at least 250 employees (previously 500 employees).

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.

As regards companies which hold 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 that other specific companies (e.g. listed companies, 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) companies subject to the supervision and control of the Capital Markets Board or of the Banking Regulation and Supervision Agency, (ii) insurance, reinsurance and pension companies, (iii) companies allowed to perform their activities within Borsa Istanbul (the recently unified Turkish stock exchange); (iv) licensed and general warehouses subject to the Agricultural Products Licensed Warehousing Law and General Warehousing Law and (v) press companies holding television channels.

As regards companies that do not fulfill the criteria for 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 still remain unclear at this stage.

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

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