

THE INITIAL PUBLIC
OFFERINGS
LAW REVIEW

SECOND EDITION

Editor
David J Goldschmidt

THE LAWREVIEWS

THE INITIAL PUBLIC
OFFERINGS
LAW REVIEW

SECOND EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in April 2018
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
David J Goldschmidt

THE LAWREVIEWS

PUBLISHER

Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER

Nick Barette

BUSINESS DEVELOPMENT MANAGERS

Thomas Lee, Joel Woods

ACCOUNT MANAGERS

Pere Aspinall, Sophie Emberson,
Laura Lynas, Jack Bagnall

PRODUCT MARKETING EXECUTIVE

Rebecca Mogridge

RESEARCHER

Arthur Hunter

EDITORIAL COORDINATOR

Gavin Jordan

HEAD OF PRODUCTION

Adam Myers

PRODUCTION EDITOR

Simon Tyrie

SUBEDITOR

Caroline Fewkes

CHIEF EXECUTIVE OFFICER

Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2018 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of March 2018, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – tom.barnes@lbresearch.com

ISBN 978-1-912228-22-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE ACQUISITION AND LEVERAGED FINANCE REVIEW
THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW
THE ASSET MANAGEMENT REVIEW
THE ASSET TRACING AND RECOVERY REVIEW
THE AVIATION LAW REVIEW
THE BANKING LITIGATION LAW REVIEW
THE BANKING REGULATION REVIEW
THE CARTELS AND LENIENCY REVIEW
THE CLASS ACTIONS LAW REVIEW
THE CONSUMER FINANCE LAW REVIEW
THE CORPORATE GOVERNANCE REVIEW
THE CORPORATE IMMIGRATION REVIEW
THE DISPUTE RESOLUTION REVIEW
THE DOMINANCE AND MONOPOLIES REVIEW
THE EMPLOYMENT LAW REVIEW
THE ENERGY REGULATION AND MARKETS REVIEW
THE ENVIRONMENT AND CLIMATE CHANGE LAW REVIEW
THE EXECUTIVE REMUNERATION REVIEW
THE FOREIGN INVESTMENT REGULATION REVIEW
THE FRANCHISE LAW REVIEW
THE GAMBLING LAW REVIEW
THE GOVERNMENT PROCUREMENT REVIEW
THE HEALTHCARE LAW REVIEW
THE INITIAL PUBLIC OFFERINGS LAW REVIEW
THE INSOLVENCY REVIEW
THE INSURANCE AND REINSURANCE LAW REVIEW
THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW
THE INTELLECTUAL PROPERTY REVIEW
THE INTERNATIONAL ARBITRATION REVIEW
THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW
THE INTERNATIONAL TRADE LAW REVIEW
THE INVESTMENT TREATY ARBITRATION REVIEW
THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW
THE ISLAMIC FINANCE AND MARKETS LAW REVIEW
THE LENDING AND SECURED FINANCE REVIEW
THE LIFE SCIENCES LAW REVIEW
THE MERGER CONTROL REVIEW
THE MERGERS AND ACQUISITIONS REVIEW
THE MINING LAW REVIEW
THE OIL AND GAS LAW REVIEW
THE PATENT LITIGATION LAW REVIEW
THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW
THE PRIVATE COMPETITION ENFORCEMENT REVIEW
THE PRIVATE EQUITY REVIEW
THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW
THE PRODUCT REGULATION AND LIABILITY REVIEW
THE PROJECTS AND CONSTRUCTION REVIEW
THE PUBLIC COMPETITION ENFORCEMENT REVIEW
THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW
THE REAL ESTATE LAW REVIEW
THE REAL ESTATE M&A AND PRIVATE EQUITY REVIEW
THE RESTRUCTURING REVIEW
THE SECURITIES LITIGATION REVIEW
THE SHAREHOLDER RIGHTS AND ACTIVISM REVIEW
THE SHIPPING LAW REVIEW
THE SPORTS LAW REVIEW
THE TAX DISPUTES AND LITIGATION REVIEW
THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW
THE THIRD PARTY LITIGATION FUNDING LAW REVIEW
THE TRADEMARKS LAW REVIEW
THE TRANSFER PRICING LAW REVIEW
THE TRANSPORT FINANCE LAW REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

A&L GOODBODY

ALLEN & OVERY

ASW LAW LIMITED

CHIOMENTI

DLA PIPER

FISCHER BEHAR CHEN WELL ORION & CO

HAN KUN LAW OFFICES

HERBERT SMITH FREEHILLS LLP

NIEDERER KRAFT & FREY LTD

PAKSOY

PROLEGIS LLC

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

TRILEGAL

URÍA MENÉNDEZ

WEERAWONG, CHINNAVAT & PARTNERS LTD

CONTENTS

PREFACE.....	v
<i>David J Goldschmidt</i>	
Chapter 1 BERMUDA	1
<i>Becky Vernon and Neil Horner</i>	
Chapter 2 CHINA.....	11
<i>Chen Yang and Zhi Bin</i>	
Chapter 3 FINLAND.....	20
<i>Salla Tuominen</i>	
Chapter 4 GERMANY.....	32
<i>Stephan Hutter and Katja Kaulamo</i>	
Chapter 5 HONG KONG	43
<i>Christopher Betts, Antony Dapiran and Anthony Pang</i>	
Chapter 6 INDIA	55
<i>Bhakta Batsal Patnaik and Rachana Talati</i>	
Chapter 7 IRELAND.....	65
<i>Matthew Cole and Sheena Doggett</i>	
Chapter 8 ISRAEL.....	74
<i>Nitzan Sandor and Sharon Rosen</i>	
Chapter 9 ITALY	85
<i>Enrico Giordano and Federico Amoroso</i>	
Chapter 10 LUXEMBOURG.....	97
<i>Frank Mausen and Paul Péporté</i>	

Contents

Chapter 11	PORTUGAL.....	113
	<i>Carlos Costa Andrade and Ana Sá Couto</i>	
Chapter 12	RUSSIA.....	124
	<i>Alexey Kiyashko and Alexander Kovriga</i>	
Chapter 13	SINGAPORE.....	136
	<i>Siddhartha Sivaramakrishnan, Jin Kong, Ban Leong Oo and Sandra Tsao</i>	
Chapter 14	SPAIN.....	147
	<i>Alfonso Ventoso and Marta Rubio</i>	
Chapter 15	SWITZERLAND.....	157
	<i>Philippe A Weber, Thomas M Brönnimann and Christina Del Vecchio</i>	
Chapter 16	THAILAND.....	171
	<i>Patcharaporn Pootranon, Nattaya Tantirangsi and Trin Ratanachand</i>	
Chapter 17	TURKEY.....	183
	<i>Ömer Çollak, Ökkeş Şahan and Nazlı Tönük Çapan</i>	
Chapter 18	UNITED KINGDOM.....	193
	<i>Danny Tricot and Adam M Howard</i>	
Chapter 19	UNITED STATES.....	210
	<i>David J Goldschmidt</i>	
Appendix 1	ABOUT THE AUTHORS.....	223
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	237

PREFACE

Welcome to the second edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related IPO regulatory environments, and provides insight into the legal and procedural IPO landscapes in 21 different jurisdictions. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

The global IPO landscape is ever-changing. While several of the oldest stock exchanges, such as the New York Stock Exchange and London Stock Exchange, are still at the forefront of the global IPO market, the world's major stock exchanges now are scattered around the globe and many are now publicly traded companies themselves. IPOs take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market.

Virtually all markets around the globe have experienced significant volatility in recent years; however, 2017 marked a resurgence for many IPO markets. The number of 2017 IPOs and total proceeds raised were led by the Asia-Pacific exchanges, with many other regions also experiencing improvement over recent years. Despite the increase in available private capital, which has enabled issuers to remain private for longer periods of time, there is continued optimism for 2018 in terms of both global deal count and proceeds. The strong global IPO pipeline includes many well-known companies across a range of industries, and it is anticipated that these companies will seek to list on a variety of stock exchanges around the world.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different between jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, it is important that the company and its management are aware from the outset of the legal requirements as well as potential pitfalls that may impact the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply. This second edition of *The Initial Public Offerings Law Review* introduces the intricacies of taking a company public in these jurisdictions and serves as a guide for issuers and their directors and management.

David J Goldschmidt

Skadden, Arps, Slate, Meagher & Flom LLP

New York

March 2018

TURKEY

*Ömer Çollak, Ökkeş Şahan and Nazlı Tönük Çapan*¹

I INTRODUCTION

In the past few years, there has been a slowdown in initial public offering (IPO) activity in Turkey and until recently, few companies were considering going public in the Turkish equity market. In light of this, the Capital Markets Board of Turkey (CMB) and Borsa Istanbul introduced certain regulatory changes with the aim of easing public offerings and boosting capital market activity in Turkey.

To this end, in 2017, the CMB published a major change regarding 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 the listing principles in the Borsa Istanbul Listing Directive (the Listing Directive) with a view to asserting Borsa Istanbul as a viable option for IPOs in the minds of Turkish companies.

Following the new legislative amendments with regard to incentivising Turkish companies to go public in Borsa Istanbul, Turkish capital markets participants expect to see a robust year ahead in 2018, with high IPO activity in the market and opportunities to deepen the capital markets in Turkey.

II GOVERNING RULES

The CMB, Borsa Istanbul, Central Registry Agency (MKK) and Istanbul Clearing, Settlement and Takasbank are the main rule-making and enforcing authorities on IPOs in Turkey. The main legislation applicable to companies considering going public in Turkey is the:

- a* Capital Markets Law No. 6362;
- b* Communiqué on Shares No. VII-128.1;
- c* Communiqué on Prospectus and Issuance Document No. II-5.1;
- d* Communiqué on Sales of Capital Market Instruments No. II-5.2;
- e* Communiqué on Material Events No. II-15.1;
- f* Communiqué on Corporate Governance No. II-17.1;
- g* Listing Directive; and
- h* relevant directives, general letters and announcements of Takasbank and the MKK.

¹ Ömer Çollak is a partner, Ökkeş Şahan is a counsel and Nazlı Tönük Çapan is an associate at Paksoy.

i Main stock exchanges

Borsa Istanbul is the sole exchange entity in Turkey in the form of a joint stock company, bringing together all the exchanges operating in Turkey (i.e., former Istanbul Stock Exchange, Istanbul Gold Exchange and the Derivatives Exchange of Turkey). Borsa Istanbul mainly consists of four markets, namely, the Equity Market, the Debt Securities Market, the Derivatives Market, and the Precious Metals and Diamond Markets.

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

- a* the Star Market, on which the shares of large companies with a market value of free-float shares of at least 100 million lira and other companies listed on BIST-100 index are traded;
- b* the Collective Investment Products and Structured Products Market, 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;
- c* the Main Market, on which the shares of mid-sized companies with a market value of free-float shares between 25 million lira and 100 million lira are traded;
- d* the Emerging Companies Market, on which the shares of emerging companies with a market value of free-float shares of less than 25 million lira are traded;
- e* the Pre-Market Trading Platform, on which the shares of certain companies determined by the CMB pursuant to its Decision No. 17/519, dated 3 June 2011, have been admitted to trading;
- f* the Watch List Companies Market, on which the shares of companies under special surveillance and investigation due to extraordinary situations with regard to transactions on Borsa Istanbul, insufficient compliance with disclosure requirements or other events that may necessitate a temporary or permanent suspension of the trading are traded; and
- g* the Equity Market for Qualified Investors, where the shares of companies are:
 - issued for direct sale to CMB-qualified investors without being publicly offered; and
 - traded only between CMB-qualified investors.

In addition to these seven market segments, an Official Auction Market may be opened when necessary, allowing the trading of stocks by courts, executive offices and other official entities in a separate market.

There is one other market, namely the Primary Market, on which the shares in companies being publicly offered and listed for the first time on Borsa Istanbul, and any additional shares offered following rights offerings of companies listed on Borsa Istanbul, are traded. In addition to these markets, there are two different transaction structures that are conducted on the Equity Market. Block trades of listed stocks are conducted as specifically regulated wholesale transactions and pre-emption rights during rights issues (granting the right to subscribe for newly issued shares) are traded separately as pre-emption right transactions.

As of the end of 2016, there are 405 companies in total traded in the Equity Market, of which 118 companies are in the BIST Stars Market and 171 companies are in BIST Main. Generally, domestic companies tend to list their shares at home. Overseas companies do not tend to list in the Turkish market.

ii Overview of listing requirements

The issuer shall prepare a prospectus used for domestic offering, submit it to the CMB for approval and also apply to Borsa Istanbul to get the offered shares listed. The major requirements for launching an IPO and getting the offered shares listed are as follows:

- a* the company's articles of association must be amended to comply with the CMB rules and regulations;
- b* 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; and
- c* 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; and
 - regarding the total amount of non-trade related party receivables, not exceed 20 per cent of the issuer's total receivables and 10 per cent of its total assets.

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

The 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 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 years in accordance with the relevant CMB regulations.

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

Star Market Group 1

Under Star Market Group 1, the following rules apply:

- a* the market value of shares offered to the public must be at least 250 million lira;
- b* total market value of the company must be at least 1 billion lira;
- c* profit must have been earned in the past two years;
- d* the minimum ratio of publicly offered shares to paid-in capital must be 5 per cent; and
- e* the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 3:4.

Star Market Group 2

Under Star Market Group 2, the following rules apply:

- a* the market value of shares offered to the public must be at least 100 million lira;
- b* the total market value of the company must be at least 400 million lira;
- c* profit must have been earned in the past two years;
- d* the minimum ratio of publicly offered shares to paid-in capital must be 10 per cent; and
- e* the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1:1.

Main Market Group 1

Under Main Market Group 1, the following rules apply:

- a* the market value of shares offered to the public must be at least 50 million lira;
- b* there is no total market value requirement;
- c* profit must have been earned in the past two years;
- d* the minimum ratio of publicly offered shares to paid-in capital must be 15 per cent; and
- e* the ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1:1.

Main Market Group 2

Under Main Market Group 2, the following rules apply:

- a* the market value of shares offered to the public must be at least 25 million lira;
- b* there is no total market value requirement;
- c* profit must have been earned in the past two years;
- d* the minimum ratio of publicly offered shares to paid-in capital must be 25 per cent; and
- e* the ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 5:4.

The Listing Directive

Under the Listing Directive, the following requirements also apply:

- a* two years must have elapsed since the company's establishment (this, however, is not applied for holding companies that have been established in less than two years but own a minimum of 51 per cent in shares of a company that has been established for more than two years);
- b* the exchange management must have had the corporation's financial structure examined and accepted its ability to continue as a going concern;
- c* the company must have obtained confirmation from Borsa Istanbul that its financial structure is sufficient for its operations;
- d* the shares must not contain any clauses prohibiting the shareholders to use their rights;
- e* the articles of association of the company must not contain any clauses restraining the transfer or the circulation of the shares;
- f* the company's articles of association must include nothing to restrict the transfer or trading of the securities to be traded on Borsa Istanbul or prevent shareholders from exercising their rights;
- g* there must be no major legal disputes that may affect the production and operation of the company;
- h* there must be an independent legal report confirming that the establishment and the operation are in compliance with the relevant laws;
- i* there must be no material legal disputes that could adversely affect production or other commercial activities;
- j* the company must not have:
 - suspended its operations for more than three months during the past two years, except for the causes 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 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;
- k* the company's securities must comply with Borsa Istanbul's criteria on current and potential trading volumes; and
- l* the company's legal status in terms of its establishment, activities and shares must comply with the applicable law.

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

iii Overview of law and regulations

The main regulations governing IPOs in Turkey are the Listing Directive, the Communiqué on Shares No. VII-128.1 and the Communiqué on Sales of Capital Market Instruments No. II-5.2, as mentioned above. With the purpose of attracting Turkish companies to listing in Borsa Istanbul, the CMB eased local allocation requirements for IPOs in Borsa Istanbul by amending its Communiqué on Sales of Capital Market Instruments No. II-5.2 in parallel with Borsa Istanbul's approach on easing IPOs in Borsa Istanbul through an amendment to the Listing Directive.

To this end, on 1 December 2017, the CMB published its amendments to the Communiqué on Sales of Capital Market Instruments No. II-5.2 regarding sales periods and the allocation percentages of capital market instruments being offered to the public. The legally required percentage, designated for allocation of the nominal value of shares in a public offering to domestic investors, has now changed to 20 per cent (10 per cent for domestic institutional investors and 10 per cent for domestic individual investors), unlike the provisions in-effect prior to this amendment, where issuers had to allocate at least 30 per cent of the nominal value of the shares to domestic investors (20 per cent for domestic institutional investors and 10 per cent for domestic individual investors). The CMB is also authorised to decrease such allocation percentages to zero or increase them by taking into consideration the market price of shares to be offered, market conditions and the issuer's request on similar grounds.

In addition to the amendment on allocations, the CMB paves the way for revising the offering price downwards through a public disclosure announcement without requiring any prospectus amendment. If the offering price is to be revised prior to initiating the sales or book-building period, the public offering may start on the second day at the earliest following the date of such public disclosure. If the offering price is to be revised within the sales or book-building period, at least two business days shall be added to the respective public offering period.

Prior to the CMB's amendments mentioned above, the Listing Directive was also amended on 31 July 2017. Before the amendment, the issuing entity had to have an equity to capital ratio of greater than 3:4 for listing in Star Market Group 1 and 1:1 for listing in Star Market Group 2. Following the amendment, companies that have not earned profit in the past two years and meet the shareholders' equity to capital ratio can still be listed in the Star Market of Borsa Istanbul. In order to satisfy the foregoing, companies recorded operating profits in the preceding financial year and relevant interim period, and with shareholders' equity-to-capital ratio greater than 50:50, will be eligible for listing in Borsa Istanbul's Star Market. Such eligibility criteria are only applicable where there is issuance of new shares, other requirements of listing in the Star Market of Borsa Istanbul are met and the board of Borsa Istanbul approves the listing application of the relevant company.

III THE OFFERING PROCESS

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

- a* organisation of an internal working group;
- b* due diligence work for the IPO;
- c* selection of an intermediary institution and execution of a market advisory agreement;
- d* selection of an independent auditor and preparation of financial statements;
- e* articles of association amendment;
- f* pricing;
- g* preparation of the prospectus;
- h* simultaneous application to the CMB and Borsa Istanbul;
- i* approval of the CMB; and
- j* commencement of trading on the relevant market of Borsa Istanbul upon its approval.

As pointed out in the above steps, the company whose shares are offered to the public shall complete the offering process with the assistance of an internal working group and external advisers. An internal working group must be set up within the company to carry out the required IPO process. In general, finance and public relations divisions, and other relevant mid-level managers of the company are included in the internal working group.

In order to complete the full IPO process in a diligent, professional and adequate manner, professional external advisers shall also be appointed. In practice, the main external advisers are as follows:

- a* an intermediary institution shall be appointed by the company whose shares will be offered to the public and there shall be an agreement with the intermediary institution. There may also be a consortium (for example, in a relatively large IPO) rather than a single intermediary institution to take advantage of the syndicated efforts of several brokerage firms;
- b* an independent auditor shall prepare the financial statements of the company whose shares are offered to the public in accordance with capital markets regulations. These statements must be audited by an independent audit firm selected from the CMB's authorised list. The company must sign an audit contract with the selected audit firm;
- c* a financial adviser who generally advises on the timetable, structuring, valuation, price determination and so on shall also be appointed by the company whose shares are offered to the public;
- d* a research analyst is adequate for publishing research on the company;
- e* legal advisers shall be appointed in order to handle the legal aspects of the full IPO process (e.g., preparing the CMB application documents in line with the CMB and Borsa Istanbul regulations, carrying out legal due diligence, and negotiating the agreements between the company and external advisers); and
- f* public relations advisers are crucial for attracting as many investors as possible. Public relations advisers publish marketing materials and press releases that explain the company's core business activities.

i General overview of the IPO process

The IPO process may be structured in three ways: offer of existing shares (shareholders’ sale as shareholders sell their shares through a public offering and the company does not receive any cash but the shareholders generate income); 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 financial gain); and combination of an offer of existing shares and capital increase.

For primary listing of the company, as referred to previously, the prospectus and other documents required under the capital markets legislation shall be submitted to the CMB for obtaining its approval. The CMB will approve the prospectus if the information given is found to be complete according to CMB standards and regulations. Further, the CMB generally requests additional documents or information from the company whose shares will be offered to the public. In this case, the company shall be informed in writing or electronically within 10 business days of the date of application by the CMB, and accordingly required to complete the deficiency. Once the prospectus is approved by the CMB, it shall be published on the issuer’s website within 15 business days of the date of receipt, as well as on the Public Disclosure Platform.

Although each deal is different, an indicative timetable for an IPO is set out below, where ‘T’ signifies the first day of trading on Borsa Istanbul.

T minus 6 months to T minus 3 months	Preparation for the IPO: <ul style="list-style-type: none"> • the company’s articles of association 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; and • due diligence is started. <p>After the preparation period, prospectus drafting commences</p>
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 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 book building starts and announcement of sales
T minus 9 days	Domestic book building starts
T minus 6 days	The pricing decision is made. Domestic and international book building ends
T minus 4 days	If requested, the distribution list is sent to the CMB. Offer price and allocations announced. 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)

ii Pitfalls and considerations

The main considerations in the IPO for companies are generally the costs and fees attributed to such process. Accordingly, the usual costs and fees for conducting an IPO and their percentage of the total amount of such costs and fees are as follows:

- a brokerage and IPO consultancy fees (71 per cent);
- b independent audit fees (5 per cent);

- c* legal consultancy fees (9 per cent);
- d* CMB fees (4 per cent);
- e* CSD (MKK) fees (1 per cent);
- f* Borsa Istanbul listing fees (2 per cent); and
- g* other fees (advertisement, promotion, other consultancy services, etc.) (8 per cent).

Based on the Borsa Istanbul reports, the aggregate amount of the fees and costs generally corresponds to the 4 per cent of the total offering proceeds of the issuer for the issuances launched in the main equity market.

iii Considerations for foreign issuers

Requirements for the listing of shares of foreign-based institutions that are operating abroad are the same as for the Turkish companies. There is no requirement for ministerial approval for the initial listing of foreign capital market instruments. 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 the 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.

IV POST-IPO REQUIREMENTS

There are continuous disclosure requirements attributed to the public companies as per applicable capital markets legislation in relation to financial statements and material events.

i Disclosure requirements relating to financial statements

Pursuant to 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 quarterly in accordance with Turkish Financial Reporting Standards (TFRS):

- a* annual results: audited year-end consolidated financial statements and reports prepared in accordance with 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);
- b* the second quarter: interim condensed consolidated six-month financial statements must be published on the Public Disclosure Platform within 50 days of 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); and
- c* the first and third quarter: audited first quarter and third quarter consolidated financial statements must be published on the Public Disclosure Platform within 40 days of the end of the accounting period (if companies are not required to submit consolidated financial statements, the period is extended to 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.

Pursuant to the CMB's Disclosure Communiqué No. II-15.1 (the Disclosure Communiqué), 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 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. Pursuant to our disclosure policy, we can disclose our future forecasts.

ii Disclosure of material events

Disclosure of material events by public companies is primarily regulated by the Disclosure Communiqué, and the CMB makes a distinction between 'inside information' and 'continuous information'. Rather than identifying each material event requiring disclosure in the Disclosure Communiqué, the CMB leaves specific disclosure decisions regarding inside information to the companies' individual discretion on a case-by-case basis. 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 means of communication that is likely to affect the value or 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, analyses, assessments and predictions made on the issuer company based on the issuer's public disclosures do not fall within the scope of this principle.

iii Inside information

The Disclosure Communiqué defines 'inside information' as any information or event not disclosed to the public that may impact investors' investment decisions or is likely to affect the value or 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 per cent or more of the share capital or the voting rights of the issuer company; or who, regardless of such threshold, hold privileged shares that give their holders the right to nominate or elect members to the board of directors of such issuer (and that the issuer is not itself aware of), such persons must make a public disclosure regarding such 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 not to 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 it cannot be kept confidential.

iv Continuous information

The following changes in share ownership or management control in a company must be publicly disclosed under the Disclosure Communiqué by the persons conducting the relevant transactions:

- a* a person or persons acting together becoming direct or indirect holders of 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 33 per cent, 50 per cent, 67 per cent or 95 per cent of the issued share capital or voting rights of a public company in Turkey are required to disclose such acquisitions on the Public Disclosure Platform and, thereafter, to disclose on the Public Disclosure Platform their transactions in the shares or voting rights of such company, when the total number of the shares or voting rights they hold falls below or exceeds such thresholds;
- b* the founding shareholder and the shareholders are required to disclose on the Public Disclosure Platform any direct or indirect acquisition of 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 33 per cent, 50 per cent, 67 per cent or 95 per cent 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 such thresholds;
- c* persons with managerial responsibility in a public company, persons with close relations to any such persons or the majority shareholder in a public company are required to disclose their transactions relating to the shares, or other capital markets instruments of such company, as of the date when the aggregate value of the transactions performed by such persons reaches 280,000 lira (individually or together) in one year; and
- d* companies are required to 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 forth a public company's natural person and legal entity shareholders who hold directly 5 per cent or more of the shares or voting rights of such 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.

V OUTLOOK AND CONCLUSION

IPO activity in Turkey has been negatively affected in recent years due to the economic slowdown triggered by the global financial crisis. During 2016, only two companies were offered to the public and 343 million lira was provided, while in 2017, only three companies successfully completed the public offering process.

In contrast with the recent slowdown in Turkish IPOs, capital markets experts predict that the remarkable initiatives taken by the CMB and Borsa Istanbul will encourage Turkish companies to go public in Borsa Istanbul instead of foreign stock exchanges. If this is the case, these legislative changes will contribute to the growth of Turkish IPOs in 2018 and the Turkish IPO market will not fall short of expectations.

ABOUT THE AUTHORS

ÖMER ÇOLLAK

Paksoy

Ömer Çollak is the partner heading the capital markets practice at Paksoy with a specific focus on equity, debt and equity-linked transactions representing the underwriters and issuers in initial public offerings, debt offerings, Islamic finance transactions, and private placements.

Mr Çollak also acts in regulatory capital issuances under Basel III, and represents clients in structured finance transactions, including but not limited to securitisations. He further has significant experience in listed company mergers and acquisitions in addition to various high-ticket cross-border mergers and acquisitions in varying sectors, including financial institutions and retail, acting for private equity firms and strategic investors.

Prior to joining to Paksoy, Mr Çollak worked as a foreign associate at a US firm in California, where he acted for biotech and high-tech multinational clients.

Mr Çollak is a graduate of Marmara University School of Law, and holds an LLM degree from Golden Gate University School of Law, San Francisco. He is admitted to the Istanbul Bar and is a member of the American Bar Association and International Bar Association.

ÖKKEŞ ŞAHAN

Paksoy

Ökkeş Şahan is a counsel at Paksoy, specialising in securities law, capital market transactions, corporate governance and public company law. He practises in capital markets, acting for issuers and underwriters in equity-linked instruments in international public offerings, Eurobond offerings and private placements.

Prior to joining Paksoy, Mr Şahan worked for almost 15 years at the Capital Markets Board of Turkey as legal counsel.

Mr Şahan is a graduate of Ankara University School of Law, and holds an LLM degree from the University of California, Davis. He is a member of Istanbul Bar and holds the following licences: capital market activities (advanced level), derivative instruments, real estate appraiser, credit rating specialist, corporate governance rating specialist and independent auditing in capital markets.

NAZLI TÖNÜK ÇAPAN

Paksoy

Nazlı Tönük Çapan is an associate specialising in capital markets, banking and finance, mergers and acquisitions, and corporate law.

Her capital markets experience has a specific focus on issuance of capital market instruments, investment funds, registration and de-registration of foreign investment funds, custody and clearing arrangements, structuring of foreign financial institutions in Turkey, and capital markets transactions.

Ms Tönük Çapan is also experienced in financial sector private mergers and acquisitions, particularly in IT and energy sectors, takeovers, loan and credit facilities and other general corporate work.

Ms Tönük Çapan is a graduate of Marmara University School of Law, and holds an LL.M degree from University of Montréal, International Business Law.

PAKSOY

Orjin Maslak

Eski Büyükdere Caddesi

No:27 K:11 Maslak 34485

Istanbul, Turkey

Tel: +90 212 366 47 00

ocollak@paksoy.av.tr

osahan@paksoy.av.tr

ntcapan@paksoy.av.tr

www.paksoy.av.tr

Law
Business
Research

ISBN 978-1-912228-22-5