

THE INITIAL PUBLIC
OFFERINGS LAW
REVIEW

FOURTH EDITION

Editor
David J Goldschmidt

THE LAWREVIEWS

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REVIEW

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PREFACE

Welcome to the fourth edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related initial public offering (IPO) regulatory environments, and provides insight into the legal and procedural IPO landscapes in 20 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 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, 2019 marked a year of continued strength for many IPO markets. While the number of 2019 IPOs decreased both domestically and globally, total proceeds raised were up significantly in the US, and relatively stable throughout the rest of the world, reflecting an increased proportion of IPOs by larger companies throughout the world. Despite the temperamental nature of global economics, and the potential repercussions of various ongoing and expected geopolitical events, there is continued cautious optimism for 2020 in terms of both global deal count and proceeds. The 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 among 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 fourth 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 2020

TURKEY

Ömer Çollak, Ökkeş Şahan and Pınar Tüzün¹

I INTRODUCTION

There was a slowdown in initial public offering (IPO) activity in Turkey until 2017. To boost capital market activity, the Capital Markets Board of Turkey (CMB) and Borsa Istanbul introduced certain regulatory changes with the aim of easing Turkish IPOs.

The CMB published a major change in 2017 regarding sales periods and allocation percentages to attract Turkish companies to go public in Turkey rather than considering foreign exchanges. In addition, in an effort to encourage Turkish companies to go public on Borsa Istanbul, the CMB eased the conditions for IPOs in 2018, and the condition on preserving the sum of capital and legal reserves of the issuer should no longer be required for IPOs. 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. Accordingly, companies that have not earned profit in the past two years or meet the shareholders' equity to capital ratio as required under the Listing Directive, or both, can still be listed in the BIST Stars Market, provided certain conditions are met. Before this amendment, many companies with operating profits could not go public because of certain cost and expense items under their financials preventing them from satisfying profit conditions. Following the amendment, entities that have recorded operating profits as per its latest audited annual financials and relevant interim financials will be eligible for listing in the BIST Stars Market. In addition, with the amendments to the Listing Directive, the issuing entity will be able to include new funds from the offering in its shareholders' equity to capital calculations. Further, Borsa Istanbul announced a new market structure for the Borsa Istanbul Equity Market and amendments to the trading principles on this market in 2019. The new market structure is expected to increase the motivation of both retail and institutional investors to trade on the secondary market, and encourage issuers to put more effort into expanding the depth and liquidity of the secondary market for their shares.

However, the fate and success of Turkish IPOs remain inevitably tied to broader macroeconomic conditions, timing and investor sentiment. Although the markets have been silent since mid-2018, we expect the postponed Turkish IPOs to come to the markets at the first opportunity when the markets rebound, and the new welcome changes in the legislation in 2020 will support the growth in Turkish capital markets in the year ahead.

¹ Ömer Çollak is a partner, Ökkeş Şahan is a counsel and Pınar Tüzün is an associate at Paksoy.

II GOVERNING RULES

The CMB, Borsa Istanbul, the Central Registry Agency (MKK), and Istanbul Clearing, Settlement and Takasbank (Takasbank) are the main rule-making and enforcing authorities on IPOs in Turkey. The main legislation applicable to companies considering going public in Turkey are 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 of Borsa Istanbul; and
- h* relevant directives, general letters and announcements of Takasbank and the MKK.

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, the 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 Market.

Publicly held companies from various sectors are traded in the Equity Market, and this trading is carried out in the following sub-markets:

- a* the BIST Stars Market, on which the shares of large companies with a market value of free-float shares of at least 150 million Turkish lira are traded;
- b* Structured Products and Fund Market (formerly the Collective 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 BIST Main Market, on which the shares of medium-sized companies with a market value of free-float shares under 150 million Turkish lira are quoted;
- d* the BIST Emerging Companies Market, on which the shares of emerging companies 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 Watchlist Market, on which the shares of companies under special surveillance and investigation owing 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 qualified investors as defined under relevant legislation of the CMB (CMB-qualified investors) without being publicly offered; and
 - traded only among qualified investors of the CMB.

In addition to these 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 at the end of 2018, there were 416 companies in total traded in the Equity Market, of which 93 companies were in the BIST Stars Market and 258 companies were in the BIST Main Market. 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 or 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 in the IPO, 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.

Criteria for trading on markets and groups	Stars Market Group 1	Stars Market Group 2	Main Market Group 1
Market value of free float shares	>1 billion Turkish lira	>150 million Turkish lira	>30 million Turkish lira
Free float ratio	-	>10 per cent	>20 per cent
Minimum ratio of shareholders' equity to capital	>0.75	>1	>1.25

Companies that do not meet the minimum market value of 30 million Turkish lira criterion are listed in Main Market Group 2.

Other requirements

Under the Listing Directive, the following requirements also apply:

- a* two years must have elapsed since the company's establishment (however, this is not applied for holding companies that have been established for 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 company's articles of association must not include anything restricting the transfer or trading of the securities to be traded on Borsa Istanbul, or preventing shareholders from exercising their rights;
- f* there must be no major or material legal disputes that may adversely affect the production, operation or commercial activities of the company;
- g* there must be an independent legal report confirming that the establishment and the operation are in compliance with the relevant laws;
- h* there must be no material legal dispute that could adversely affect production or other commercial activities;
- i* 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 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 or her 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;
- j* the company's securities must comply with Borsa Istanbul's criteria on current and potential trading volumes; and
- k* 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, the 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 list in Borsa Istanbul, the CMB eased local allocation requirements for IPOs by amending its Communiqué on Sales of Capital Market Instruments No. II-5.2 in parallel with Borsa Istanbul's approach on easing IPOs 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. Additionally, once the book-building commences, should there be under-subscription in the domestic market, an amount up to and including the size of the minimum domestic allocation can be reallocated and sold to international investors.

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 the 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.

In 2018, the CMB amended the Communiqué on Shares No. VII-128.1 to ease the conditions required for IPOs in Turkey. Accordingly, the condition on preserving the sum of capital and legal reserves of the issuer should no longer be required for IPOs, and thus the issuers having total assets at a minimum amount of 10 million Turkish lira and net sales at a minimum amount of 5 million Turkish lira will be able to go public regardless of whether the sum of their capital and legal reserves is lost.

Prior to the CMB's amendments, the Listing Directive was also amended on 31 July 2017, 8 January 2018 and 19 September 2019. Before the amendments, the issuing entity had to have an equity to capital ratio of greater than 3:4 for listing in the BIST Stars Market Group 1, and 1:1 for listing in the BIST Stars Market Group 2. Following the amendments, companies that have neither earned profit in the past two years nor meet the shareholders' equity to capital ratio, or both, can still be listed in the BIST Stars Market, provided certain conditions are met. To satisfy the foregoing, the usual requirements have been eased by allowing the addition of the proceeds to be obtained from the offering as well as the nominal value of the newly issued shares to the shareholders' equity amount under the latest audited financials in calculating the required ratio. From now on, a company is able to include the new funds from the offering in its shareholders' equity to capital calculations. However, this is only possible where the shareholders' equity to capital ratio of the relevant company is positive as per its latest audited financials, and there is an operating profit as per its latest audited annual financials and relevant interim financials. These eligibility criteria are only applicable where there is issuance of new shares, other requirements of listing in the BIST Stars Market are met and the board of Borsa Istanbul approves the listing application of the relevant company. In late 2019, Borsa Istanbul further amended the Listing Directive and amended the listing requirements of Borsa Istanbul Stars Market Group 1, Stars Market Group 2, Main Market Group 1 and Main Market Group 2. In addition to grouping under the Stars Market and Main Market, the Collective and Structured Products Market will be

renamed as the Structured Products and Fund Market, and shares trading on this market (real estate investment companies, venture capital investment companies and securities investment companies) will be taken off said market and traded in the relevant group on the relevant market. Borsa Istanbul's announcement also regulates that the minimum market value of shares offered to the public for initial listing, which is determined under the Listing Directive, will be increased from 100 million to 150 million Turkish lira for the Stars Market, and from 25 million to 30 million Turkish lira for the Main Market Group 1.

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* articles of association amendment;
- c* due diligence work for the IPO;
- d* preparation of the prospectus;
- e* selection of an intermediary institution and execution of a market advisory agreement;
- f* selection of an independent auditor and preparation of financial statements;
- g* agreement on comfort packages and legal opinions;
- h* drafting of the marketing presentations, followed by marketing and book-building;
- i* pricing and allocation of shares;
- j* simultaneous application to the CMB and Borsa Istanbul;
- k* approval of the CMB;
- l* settlement;
- m* commencement of trading on the relevant market of Borsa Istanbul upon its approval; and
- n* exercise of any over-allotment and price stabilisation.

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.

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 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. They 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); or a combination of an offer of existing shares and capital increase.

In addition, companies with over 500 shareholders (other than companies whose shares are already traded on the stock exchange or companies raising capital from the public using crowdfunding) are deemed to be public companies and are subject to the Capital Markets Law No. 6362 and its sub-regulations. Once a company reaches this threshold, this constitutes another way to join the market without raising capital. In such cases, the company must apply to Borsa Istanbul within two years of becoming a public company to have its shares listed and traded. If the company fails to do so, the CMB is authorised to decide to have either the shares of that company listed and traded on Borsa Istanbul or to take the company outside the scope of the Capital Markets Law No. 6362. If the company is taken outside the scope the Capital Markets Law No. 6362, it cannot continue to trade on the exchange as a listed company and it must therefore become a privately held company.

For primary listing of the company, the prospectus and other documents required under the capital markets legislation shall be submitted to the CMB to obtain 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.

Timeline	Action
T minus 6 months to T minus 3 months	<ul style="list-style-type: none"> • Preparation for the IPO; • 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 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 preliminary immediate or cancel (IOC) order with price range (subject to approval by the CMB) is distributed. 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 the 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 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 4 to 7 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 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 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 the Communiqué on the Principles Regarding Financial Reporting in Capital Markets No. II-14.1 and the Communiqué on Public Disclosure Platform No. VII-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 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 subject to limited review procedures by independent auditors 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: unaudited 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 30 days following the end of the accounting period). If the first and third quarter financial statements are independently audited, they 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 making either public disclosures on the Public Disclosure Platform or relevant explanations under activity reports. If there is a material change within the scope of future forecasts, disclosure of the material change is required.

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. Yet, disclosure

guidelines published in 2017 clarify the events triggering a disclosure requirement by providing illustrative examples. 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 the issuer (and that the issuer is not itself aware of), such persons must make a public disclosure regarding the 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 this 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, 10, 15, 20, 25, 33, 50, 67 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. If direct shares of a person (real person or legal entity) in the public company exceed or fall below 5, 10, 15, 20, 25, 33, 50, 67 or 95 per cent, the notification referred herein shall only be made by the MKK in lieu of such shareholder. However, in the case of persons reaching, exceeding or falling below such thresholds (1) by acting in concert, (2) indirectly or (3) with voting rights (through voting agreements, etc.), the relevant shareholder or the persons acting in concert with such shareholder, rather than the MKK, will need to disclose the change in their shareholding;

- b* the founding shareholder and the shareholders are required to disclose on the Public Disclosure Platform any direct or indirect acquisition of 5, 10, 15, 20, 25, 33, 50, 67 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 400,000 Turkish lira (individually or together) in one year as of 1 January 2020; 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 MKK is responsible for updating the shareholding list, and setting forth a public company's natural person and legal entity shareholders who directly hold 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 MKK.

V OUTLOOK AND CONCLUSION

The newly introduced changes made under legislation of both the CMB and Borsa Istanbul mainly aim to remove certain regulatory impediments to go public in Turkey and attract more Turkish companies to tap into equity capital markets through primary or secondary offerings.

Although Turkish IPOs are facing a recent slowdown, we expect the postponed Turkish IPOs to come to the markets in the first opportunity when the markets rebound, and easier offering opportunities will support the increase in new IPOs on Borsa Istanbul. However, the future of Turkish IPOs still remains subject to broader macroeconomic conditions, timing and investor sentiment.

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Ömer Çollak is a 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.

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