INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

The pursuit of a company's interest over the life of a company

Corporate Acquisition and Joint Ventures Commission

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General Reporters:

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Introduction

The typical lifecycle of a company consists of various phases, as for example, startup, growth phase, maturity (mid- to large-size privately held company), IPO and listed phase, and finally the acquisition by another company.

The various stakeholders in a company – understood in a very broad sense including equity holders, debt holders, management, employees, advisors and public – have expectations in the company. According to the stakeholder-value-theory all these expectations of the stakeholders form the company's interest.

Undoubtedly, the expectations of the various stakeholders and, therefore, the company's interest change and develop over the life cycle of the company.

The general report and the working session focus on these changes and developments, how they are reflected resp. influenced by the rules of the various jurisdictions and what the consequences are for us, the legal advisors. For efficiency reasons, the general report is limited to the developments of certain stakeholders' expectations (see A to D in the below matrix)

The following matrix provides an overview of the stakeholders (A to D) and the phases (1 to 5) that are covered by this general report. At the same time it provides an overview of the structure of this questionnaire (chapters A to D, each having sub-chapters 1 to 5). Our goal is to shed light on one or several aspects of a specific stakeholder's interests in each phase so that, as a result, the entire questionnaire provides an overview of the development of the interests of the various stakeholders over the life cycle of the company and, thus, shows the development of the company's interest as such.

	1. Startup	2. Growth	3. Maturity	4. IPO / Listed	5. Acquisition
A. Equity holders	A.1	A.2	A.3	A.4	A.5
B. Debt holders	B.1	B.2	B.3	B.4	B.5
C. Management /	C.1	C.2	C.3	C.4	C.5

Employees					
D. Lawyers	D.1	D.2	D.3	D.4	D.5

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A. Interest of equity holders

1. Start-up phase

In the start-up phase, an entrepreneur or third parties may wish to invest in a business idea as equity holders in a business association. In this context:

1.1 In your opinion, what is an entrepreneur's typical reasoning for setting up a specific business association? Attract investments by third parties? Avoidance of personal liability? Tax reasons? Protect IP rights and technology?

An entrepreneur's typical reasons for setting up a specific business association may be summarized as:

(i) enabling ownership and management of all assets, rights and liabilities under one legal entity.

(ii) ensuring the ability to attract investors to the company (and making such investment by making a capital injection and –at times– choose to be involved in the company's management mechanisms) .

(iii) establishing power and management structure: directors, officers, and shareholders with clearly-defined roles and responsibilities within the corporate framework.

(iv) avoiding personal liability by conducting the business as a limited liability company either in the form of a joint stock company or a limited company.

Protection of IP rights does not play a major role in entrepreneurs' decisions to set up a company. Registered IP rights provide the same legal protection, regardless of whether they are registered under the name of a real person entrepreneur, or on the name of the company incorporated by such entrepreneur.

1.2 What kind of business association structures does your jurisdiction offer to equity holders (e.g., partnerships, corporation, LLC, etc.)?

The most common business association structures in Turkey are limited companies and joint stock companies. Both of these structures have limited liability in accordance with the Turkish Commercial Code numbered 6102 ("**TCC**")[1], where shareholders' liability is limited to their contributions in share capital. However, there are certain situations where the shareholders of a limited company may be held personally liable for the tax and public debts of the limited company (as stated below).

- ***What are the most crucial differences between these business association structures from an equity holder's perspective?***

Liability Issues: The liability of a joint stock company' shareholders is limited to the share capital subscribed by each shareholder.

The personal liability of Board members of a joint stock company for unpaid taxes and other public debts incurred by the joint stock companies are stipulated under the Tax Procedural Code numbered 213 (the "**Tax Procedural Code**")[2] and the Code on Collection Procedure of Public Debts numbered 6183 (the "**Code on Collection Procedure of Public Debts**")[3]. In principle, taxes and tax related debts due to the non-performance of obligations by the legal representatives (=*BoD members*), which cannot be wholly or partially collected from the assets of the tax-payers, will be collected from the assets of those persons who did not perform those legal obligations and duties (Art. 10 of the Tax Procedural Code).

Public debts which cannot be wholly or partially collected from the assets of the legal entity (i.e. the joint stock company), or those that are understood not to be able to be collected, will be collected from the personal assets of the legal representatives (=*BoD members*) (Duplicated Art. 35 of the Code on Collection Procedure of Public Debts).

Shareholders of a limited company are personally liable for unpaid taxes and public debts of the limited company *pro rata* to their shareholding ratio in the company (Art. 35 of the Code on Collection Procedure of Public Debts). Therefore, unlike the shareholders of a joint stock company, the shareholders of a limited company are personally liable for the public debts incurred by the limited company. However, shareholder liability is limited to the ratio of their shareholding in the company.

[1] Turkish Commercial Code numbered 6102 ratified on 13 January 2011; published by the Official Gazette dated 14 February 2011 and numbered 27846

[2] Turkish Tax Procedural Code numbered 213 ratified on 4 January 1961; published by the Official Gazette dated 10 January 1961 and numbered 10703-10705

[3] Code on Collection Procedure of Public Debts numbered 6183 ratified on 21 July 1953; published by the Official Gazette dated 28 July 1953 and numbered 8469

Personal liability for the managers of a limited company relating to unpaid taxes and other public debts of the limited company is outlined in a similar way to the personal liability of the Board of Directors for a joint stock company. If taxes and tax related debts due to the non-performance of those obligations by the legal representatives (=*Managers in a limited company*) cannot be wholly or partially collected from the assets of the tax-payers, they will be collected from the assets of those persons who did not perform those legal obligations and duties (Art. 10 of the Tax Procedural Code). Public debts, which cannot be wholly or partially collected from the assets of the legal entity (i.e. the limited company) or those that are understood not to be able to be collected, will be collected from the personal assets of the legal representatives (=*Managers*) (Duplicated Art. 35 of the Code on Collection Procedure of Public Debts).

Share Transfers: Share transfers in a limited company are subject to a more bureaucratic and costly procedure than in a joint stock company which might have a negative impact on the exit strategy of investors. As for the AS, share transfer restrictions are not allowed in all cases and the cases when a transfer can be restricted are limited by the Article 490 and continuing articles of the TCC. On the other hand, as for limited companies, transfer restrictions are more flexible and are not subject to the limitations under Article 490.

Governance: In terms of governance, a joint stock company is managed and governed by its Board of Directors. The directors may or may not be shareholders of the company. The directors may be real persons or legal entities. A limited company is managed and governed by its Board of Managers. The Board of Managers may be constituted of one or more Managers. However, at least one of the Managers must be a shareholder with unlimited representative powers. The corporate governance of the joint stock company can be set up in a flexible, less burdensome manner, and has more flexibility than a limited company.

- ***If statistics on the use of business association structures are available in your jurisdiction: which are the most commonly used business association structures for start-ups? Do you see a particular reason for the dominance of one specific structure?***

  During the investment phase, joint stock company is the only limited liability company type since the investors do not prefer making investment to limited companies. The joint stock company entity type has a less bureaucratic share transfer regime, as well as no personal liability for shareholders relating to the company's debts. Certain tax incentives also exist in Turkey for angel investors regarding investments that satisfy certain legislative conditions. These incentives are available only for investments realized in an joint stock company. However, although it is more exhausting, bureaucratic and costly, start-ups can be established as a limited company and then converted into joint stock company before investment due to misguidance of the accountants.

- ***In case of a corporation or LLC (in the following we simply refer to the "company"): are there any equity instruments other than common shares that are typically used for equity investments? Non-voting shares? Other forms of participation rights?***

  There may be common shares and preferred shares, which should be defined under the articles of association of the company. Preferred shares may give their holders a preference with regard to voting rights, or governance of the company. For example, certain veto rights during shareholders or Board of Directors resolutions, or the right to elect a certain number of members of the Board of Directors. A preference to participate in future investment rounds under certain conditions may be created through preferred shares. Preferences in profit distribution, or receiving a portion from the liquidation proceedings in the event of liquidation can also be regulated. In this respect, it is common for start-ups to create different groups of shares when receiving an investment from third parties; one group of shares is granted to the founders and another group of shares to the investors. The purpose is to separately define the shareholding rights of these two groups of equity holders.

  Under Turkish law, each shareholder must have at least one voting right. The number of votes granted to those shareholders who hold more than one vote can be restricted in the company's articles of association (Article 434/2 of the TCC).

- ***Can equity investors remain anonymous (for example by the use of bearer shares)? Anonymous towards the company, other investors, the public? In the event equity investors cannot remain anonymous when holding shares, is there any alternative scheme that can be implemented to participate on an anonymous basis (for example, silent partnership schemes)?***

  During the incorporation founders of joint stock companies must be declared in the articles of association. However, other than declaration of the founders during the incorporation phase, the joint stock company shareholders are anonymous and not necessarily registered with the commercial registry. Although attendance sheets and other documents prepared for the ordinary or extraordinary general shareholders' meetings are publicly available for each joint stock company, such records do not necessarily reflect the current shareholding status of the joint stock company since share transfers in a joint stock company are not registered with the commercial registry. Therefore, changes in share ownership are not capable of being tracked via commercial registry records. The only way to track registered shares is to review the share ledger of the joint stock company.

  A joint stock company can also issue bearer share certificates or registered shares can be converted to bearer shares with the condition that the capital of the joint stock company is fully paid in. If a joint stock company issue bearer share certificates once it is not even possible to track the shareholding status of such joint stock company by reviewing the share ledger unless all bearer shares converted to registered shares. .

1.3 Once the entrepreneur has set up a company: what could be a typical focus of third party equity investors when they invest in a company in this phase?

- ***What could typically be the friends', family's and fools' ("FFF") focus? Helping the entrepreneur to get his / her business going?***

  The FFF's focus when they invest in a start-up is mainly to provide an initial needed support to the founders to get their business going.

- ***What could typically be the professional investor's focus?***

  The professional investor's focus is typically to achieve the IRR (*internal rate of return*) that would have been targeted while making the investment, potentially through making a successful exit.

- ***If there is a difference in focus among the various equity investors, how is this typically reflected in the legal relationship (be it corporate or contract law)? Are there legal instruments that are only used by certain investors (e.g., only by professional investors)?***

  The difference in focus among the various equity investors can be observed in different contracts executed among the founders, the start-up, and investors. Professional investors will usually make their investment within the framework of a comprehensive investment and shareholders agreement. Such agreements set out the conditions precedent to be realize in the investment, actions to be taken by each party before, during, and after the closing, as well as the relationship of the shareholders in the post-closing phase. The agreements define their rights and obligations towards each other in terms of the company's governance. Detailed veto or deadlock mechanisms can be created in such agreements to enable investors to block certain significant resolutions during shareholders assemblies or by the Board of Directors. Furthermore, professional investors typically include a strong set of representations, warranties, and indemnities in investment and shareholders agreements.

  On the other hand, agreements concluded by FFF may not be as comprehensive or aggressive towards the founders. There may even be situations when a FFF realizes an investment without executing a comprehensive agreement with the founders.

2. Growth phase

In the start-up phase a business idea comes into existence: the idea is put into a business plan, a company is set up, first steps relating to production, service, distribution, sales etc.

are made. The growth phase allows potential new investors to better assess not only the viability of business idea, but also the commitment of the people involved. In this phase, the new investors are usually not FFF, but professional investors. As a result, the FFF who invested in the start-up phase are faced with more demanding and skilled potential new co-investors. Against this background:

2.1 In your opinion, does the focus of the equity holders (e.g., the FFF or professional investors) shift in the growth phase (as compared to the start-up phase)?

In Turkey, there are no legal limitations regarding the sources of funding. As a result, investors include founders-family-friends, angel investments, venture capital investments, and private equity. Funding via founders-family-friends and angel investors are the most common source of these investments in the start-up phase. Tax incentives exist in Turkey for angel investment. In the growth phase, venture capitals and equity holders are more common sources.

Growth phase investors focus on companies which have a credible business model and offer sustainable profitability. Investors in the growth phase aim to sustain the company's growth and they keep dividends to use for the financing of the company. Investors are motivated to invest in companies by the expectation of a high level financial return.

- ***If so, what could be a particular focus for equity holders in the growth phase? Protection from dilution?***

The aim of the investors in this phase is protection of the investment and enabling the company's growth. For that reason, post-acquisition processes are very important. During the growth phase, parties incorporate protections in the shareholders agreement as contractual obligations. For that reason, shareholders agree to provisions in favour of themselves, such as:

> ***Management of the Company:*** Investors usually prefer to receive a seat at the board level, choosing to have a veto right supported by reserved matters. They may agree on heavier meeting and decision quorums for specific resolutions which are likely to affect the company's financial and operational future, the management or shareholding structure, division of shares into groups, and granting privilege rights to the shares, etc.
>
> ***Provisions for up-rounds:*** Investors prefer to conclude another agreement, besides the articles of association. Referred to as the shareholders' agreement, this reflects the relationship amongst the shareholders, indicating the agreed terms and conditions for certain situations, such as rights of first refusal, pre-emption rights, as well as drag and tag along rights. Since only the first option rights can be regulated within the framework of the linkage system in the articles of association, rights of first refusal, pre-emption rights, drag and tag along rights can only be

constituted by a shareholders' agreement. Since the obligations arising from shareholders' agreements are contractual in nature, those obligations will only bind the parties to such agreements. The obligations will not be binding against third parties acting in good faith.

Provisions for down-rounds: The TCC protects shareholders' pre-emption rights. However, investors generally prefer to include provisions addressing anti-dilution and privileges in liquidation proceedings for the down-rounds. Usually, anti-dilution provisions do not set full ratchet protection, but cover weighted average terms.

Provisions for future rounds: Investors usually ask to insert clauses regarding future financing of the company into company's articles of incorporation or shareholders agreement.

Lock-up periods and commitments of the founders supported by bad leaver provisions and contractual consequences of fulfillment/non-fulfillment of the KPI(s), information rights granted to the certain shareholders to monitor company's financials and current status are also provisions important for the equity holders to protect their investment.

2.2 In your experience, do the equity investors from the start-up phase participate in further capital rounds in the growth phase? Do they usually accept dilution? Do they usually cash out at this point in time?

Friends and family accept dilution and they do not participate in further capital rounds in the growth phase, whereas angel investors may participate in the further capital rounds on the basis of the valuation when a venture capital makes investment to the Company. However, angel investors usually accept dilution. Answers to this question may vary based on the perception of the "growth phase".

2.3 In your jurisdiction, does the company law provide existing equity holders protection from being diluted in further financing rounds in the growth phase? If so, how are they protected? Is there a need for equity holders to seek protection on a contractual basis?

The TCC protects shareholders' pre-emption rights. However, investors generally prefer to include anti-dilution provisions for the down-rounds. Usually, anti-dilution provisions do not set full ratchet protection, but cover weighted average terms.

Shareholder pre-emption right cannot be restricted in Turkey as they can be restricted in the common law system. Therefore, in order to finalize a capital increase which restricts certain shareholder rights, the board must have resolved on a decision which clearly identifies the reasons for such restriction and the shareholders whose rights are restricted must have approved such decision during a general shareholders meeting.

Pre-emption rights are currently granted to all shareholders by laws and these rights cannot be restricted unless otherwise permitted by law. In this regard, any negotiations pertaining to the restriction of such rights which is not permitted by law would be worthless. In addition to that, not all transactions are required to be contractual since Turkey's legal system enables drafting of less detailed contracts by referring to the relevant laws. Therefore, contracts governed by Turkish Law must be negotiated by the presence of a lawyer.

2.4 When new potential investors offer to come on board during the growth phase, the existing equity holders may be reluctant to provide the information required to satisfy the potential new investor's need for valuation. The reason for the existing shareholders' reluctance may be, for example, that the required information contains (still) unprotected intellectual concepts, knowledge or ideas. In your experience, which legal instruments are used to find a balance between the potential new investor's need for information and the existing equity holders' wish to keep such information confidential? Do existing equity holders have legal means to prevent management from disclosing such information?

The legal requirement regarding disclosure of company information is more limited for privately-held companies than public companies. Therefore, most of the information required by debt-holders is only accessible on a request basis. Authorized officials of the debt-holders may request information such as financial records and tax clearance directly from the company, or may request to conduct further due diligence. In accordance with the TCC, shareholders have the right to be informed. With regard the joint stock companies, the following information must be available for shareholders' review at least fifteen days before the company's general assembly meeting (Article 437 of the TCC):

- financial statements,
- consolidated financial statements,
- board of directors' annual activity report,
- audit reports, and
- dividend distribution offer of the board

For limited liability companies, each shareholder is entitled to request information from the managers with respect to all company activities and accounts, as well as conduct inspections on certain matters (Article 614 of the TCC). Additional information which is not stated under the TCC may be requested as per contractual arrangements. For example, audit requests, monthly balance sheets, and monthly financial statements. Further, information rights for certain groups of privileged shareholders may be included in the company's articles of association.

Without prejudice to the above, the TCC obliges companies which are subject to independent auditing to maintain a corporate website and make certain corporate information available on the website.

Companies subject to independent auditing are determined under the Decree Law numbered 2012/4213. Accordingly, companies that meet at least two of the following conditions are subject to independent auditing:

- having total assets of TRY 50,000,000 or more;
- having annual net sales revenue equal of TRY 100,000,000 or more;
- employing 200 or more employees on their own, or together with their affiliates and subsidiaries.

The content of the website is provided under the Regulation regarding the Websites of Capital Stock Companies (Official Gazette No. 28663, 31 May 2013). The following information must always be published on the websites of such companies:

- MERSIS number (MERSIS is the Turkish electronic trade registry);
- Trade name;
- Location of the company's headquarters;
- Committed and paid up share capital;
- Board members (for joint stock companies) or managers (for limited companies);
- Names, surnames, residence addresses and registered branches, if any, of the auditors;
- With regard to group companies, information on share transfers or acquisitions by an undertaking in a group of companies, for the amounts stated in Article 198 of the Commercial Code. The disclosure must be made within five days of the transaction date.

The following must be registered with the trade registry and published in the trade registry gazette for all Turkish companies, whether private or subject to independent auditing:

- The company’s articles of association, including the amount of initial share capital, the address, duration of the company, as well as information on shareholders and the management board;

- Resolutions by the management board (board of directors or managers) and the shareholders' meeting;

- Minutes of general assembly meetings;

- trade registry records showing the company’s capital and liquidation status.

3. Maturity

During the various capital rounds in the growth phase, the circle of equity investors in a company typically becomes larger and the atmosphere may become less familiar. Also, in the maturity phase the management of the company may become more professional in the sense that there is a management in place which is not, or not significantly, invested in the company (i.e., intensification of the principal-agent-conflict). As a consequence, legal concepts that govern the relationship between equity holders (such as fiduciary duties of majority equity holders) as well as legal concepts that govern the relationship between management and equity holders (such as fiduciary duties of the board members / management, duty of loyalty, principle of equal treatment) may become more important. In other words, corporate governance may become more important. Against this background:

3.1 In your opinion, how does the equity holder base change between the start-up phase, the growth phase and the maturity phase? How does the focus of the equity holders change? Focus on fair distributions of earnings?

During transition from start-up to maturity phase, the equity holder base changes in direct proportion to the company’s growth and development. During the start-up phase, funding from friends, family and fools, as well as angel investments are most common types of financing. Therefore, the equity holder base consists of friends, family and angel investors. During the growth phase, venture capitals stand as equity holders. Venture capitals only rarely invest in a company which is still in the start-up phase.

At the maturity phase, companies become more attractive for private equity investors, strategic investors, and other institutional investors. Such investors aim to invest in a company in return for shares. Then when the company makes profit or goes public, they sell their shares. When institutional shareholders become equity holders, they expect transparency in the company’s management so that the company’s activities and financial situation are explicit, the amount of earnings is foreseeable, and the shareholder rights are protected (including minority rights). The ultimate focus of institutional investors is on the calculation and distribution of the company’s earnings. Throughout the start-up and growth phases, dividends are kept internally and used to finance the company with the aim to sustain the company's growth. During the maturity phase, the company's shareholders and investors have a profit expectation. Accordingly, provisions regarding mandatory distribution of dividends after a period of time are usually included both in the target company's articles of incorporation and in the investors right agreement/shareholders agreement.

3.2 In your jurisdiction, does the law provide for stricter corporate governance rules for large (privately-held) companies as compared to small companies? If so, what exactly triggers the application of the stricter corporate governance rules? In which sense are the corporate governance rules different / stricter?

Please see our answer to the question 2.3 regarding the independent audit requirement for large companies compared to small companies. In addition to the independent audit and web-site the public companies are obliged to establish a risk management committee and corporate (enterprise) risk management systems. If the external auditor considers it necessary, unlisted large companies are also required to establish such systems

According to the Regulation on the Definition, Qualification and Classification of Small and Medium Size Enterprises, "small enterprises" are defined as enterprises that employ less than 250 yearly employees and which have net sales revenue or annual financial statements under TRY 40,000,000.

The Turkish Accounting Standards Board (TMSK) adopted the International Financial Reporting Standards (IFRS) and IFRS was translated into Turkish and published in the Official Gazette as the Turkish Financial Reporting Standards (TFRS). The SMEs prepare their financial tables in accordance with the SME TFRS, while the large businesses must comply with TFRS which is much more complex compared to the SME TFRS. If a SME becomes a large enterprise, it shall prepare its financial tables in accordance with TFRS. Besides, for the public companies, certain corporate governance rules are regulated under the Communiqué on Corporate Governance II-17.1 ("**Corporate Governance Communiqué**"). Corporate governance rules are not mandatory for privately-held companies. Such rules are mandatory for publicly-held companies (Article 1529, TCC) but certain publicly-held companies are not required to apply corporate governance rules. Pursuant to the Article 1 of the Communiqué, the following corporations are not subject to the corporate governances rules:

- Publicly held corporations whose shares are not traded on the exchange,
- Corporations whose shares are traded on markets, market places or platforms other than National Market, Second National Market or Collective Products Market,

- Corporations whose shares will be traded on markets, market places or platforms other than National Market, Second National Market, or Collective Products Market, from among those which have applied to the Board for offering their shares to public and/or being admitted to the trading on the exchange for the first time, and

- Corporations deemed to be residing abroad in accordance with the Decree numbered 32 regarding Protection of the Value of Turkish Currency, which came into force by Cabinet Decree dated 7 August 1989, numbered 89/14391.

As it is understood from the purpose and scope of Article 1 (mentioned above), corporations whose shares are traded at the stock exchange are required to apply the corporate governance rules. The main motive behind such regulation is to create a safe and reliable investment environment for institutional investors, as well as harmonize the domestic financial market with international markets for foreign investments. In a company where the corporate governance rules are applied, the company’s management becomes more professional and transparent, as well as protecting the rights of all beneficiaries, not just the shareholders. Therefore, it attracts qualified institutional investors’ attention.

3.3 In your jurisdiction, do (certain) equity holders (e.g., majority shareholders) have obligations towards (certain) other shareholders or the company (e.g., duty of loyalty)? Please explain such obligations.

The TCC includes protective provisions for minority shareholders of joint stock companies, in order to balance conflicts of interest which may arise from the arbitrary applications by shareholders who have majority voting rights. There is no explicit definition for minority shareholders under law. However, certain rights are granted to the shareholders consisting of at least 10% of the capital share (20% for public companies):

- The right to be represented in the board of directors, on condition that it is provided in the articles of association of the company that members will be appointed from among minorities, or that the minorities may propose a candidate. In such case, the general assembly is obliged to elect that member to the board of directors (Article 360 of the TCC);

- The right to call for a general assembly by submitting the reasons and the agenda to the Board of Directors, or adding items to the agenda (Article 411 of the TCC);

- The right to postpone the general assembly for one month regarding financial statements and other matters in relation thereof (Article 420 of the TCC);

- The right to apply to court for a special auditor to be appointed in the event general assembly rejects such request (Article 439 of the TCC);

- The right to request registered shares be issued (Article 486 of the TCC);
- The right to apply to court for dissolution of the company for rightful reasons (Article 531 of the TCC);
- The right to oppose the general assembly's decision towards compromising and releasing the founders, board members and auditors from the responsibility arising out of the incorporation and capital increase of the company. In such case, the general assembly cannot resolve on compromise and release (Article 559 of the TCC).

On the other hand, for group companies, if a company directly or indirectly holds at least 90% of the shares and voting rights of another company and minority shareholders prevent the performance of the company by means such as opposition votes and legal actions, the holding company may buy out the minority shares over their stock price or actual balance value (Article 208 of the TCC).

Additionally, under the TCC, the rights of preferential shareholders are protected. A special committee of preference shareholders ("**SCPS**") is regulated under Article 454 of the TCC. If a resolution concerning the amendment of the articles of incorporation infringes the rights of preference shareholders, such resolution may not be applied unless approved by a decision made during a meeting held by the preference shareholders. The board of directors must convene the SCPS within one month from the date of publication of the general assembly resolution. If this does not occur, each preferential shareholder may request the commercial court to convene the SCPS within fifteen days from the last day of the convocation period. Therefore, the board of directors is obliged to convene the SCPS and in the event of non-compliance with this obligation, the preferential shareholders are entitled to request the convocation in order to eliminate the omissions concerning the convocation of the SCPS. If preferential shareholders vote in favor of the amendment of the articles of incorporation in the general assembly meeting, a separate SCPS meeting is not required. The TCC further stipulates that if a SCPS is called but the meeting does not convene, the resolution pertaining to amendment of the articles of incorporation will be deemed to be approved. As a result, the negative effects that might be caused by the delay of the application of the resolution are prevented.

Unlike limited companies where shareholders are bound by the loyalty obligation requiring protection of the company's interests (Article 613 of the TCC), the shareholders of joint-stock companies do not have a loyalty obligation toward the company. In limited companies, there is the principle of individual shares. The holders of shares are known and the share transfers are realized before a public notary. In joint-stock companies, it is not possible to track down the shareholders in spite of the existence of the registered shares. In joint-stock companies, share transfers are not subject to registration. Therefore, the company’s share ledger must be examined to determine the shareholders of a joint-stock company.

Notwithstanding the above, if the majority of a company’s capital is hold by a group of companies, there are certain rules and additional protective provisions under the TCC to prevent the unfair usage of sovereignty. In certain cases where sovereignty is of concern, the minority shareholders are granted with squeeze out rights and liability of parent company’s board members may arise. Does the company have any means to control the circle of its equity holders (i.e., can the articles of incorporation prevent competitors from holding shares in the company?) or have such restrictions to be agreed among the other equity holders (e.g., shareholders' agreement)?

As a general rule under Turkish law, except as otherwise provided under a company’s articles of incorporation, shares in joint-stock companies can be freely transferred. This is the reason that the company’s capital is allotted into shares. However, some share transfer restrictions exist (discussed below). On the other hand, rights granted to shareholders (such as right of first offer, tag-along, or drag-along) must be tailored in accordance with share transfer restrictions stipulated under the TCC. Otherwise, such restrictions on share transfers are invalid for shareholders and only constitute a contractual obligation arising from the shareholders agreement. Consequently, shareholders may only claim compensation for violation of rights which have been granted to them. Therefore, in order to prevent this situation, rights which constitute share transfer restrictions should be adapted by a Turkish lawyer into the company’s articles of incorporation.

According to article 491 of the TCC, registered shares that have not been totally paid-in may only be transferred upon the approval of the target company. Certain exceptions exist for share transfers realized by means of inheritance, marital property regime between spouses, or enforcement procedures. Notwithstanding this restriction, the target company can also refuse to approve the share transfer if the transferee's financial ability raises doubts and if any security requested by the target company is not provided by the transferee.

On the other hand, the Article 491 of the TCC provides that the articles of incorporation may require that registered shares can only be transferred with the company's approval. Accordingly, the target company may only refuse the share transfer on the basis of an important reason related to the company’s economic independence or shareholder composition, as stated under the articles of association, or alternatively by offering to purchase the shares from the transferring shareholder at their actual value at the time of the purchase request, on behalf of the company, its shareholders or third parties (Article 493 of the TCC).

Pursuant to Article 493 of the TCC, the company is entitled to refuse the share transfer on the basis of an importance reason related to the company’s economic independence or shareholder composition. A company cannot be expected to accept a competitor with conflicting interests into the company's shareholding composition. Furthermore, such participation by the competitor may also pose a significant risk for the company's economic independence. Therefore, a share transfer made to a competitor constitutes an important reason and may be included in the company's articles of incorporation.

Limited companies are not typically used at this stage but it should be noted that share transfer restrictions in limited companies are much more flexible than the joint stock companies.

4. IPO / Listed phase

Following the IPO, a company enters into a new phase of being listed. The listing has potentially a great influence on the equity holder: the sale of their interest becomes easier. Against this background:

4.1 How does the focus of the shareholders change through the going public as compared to the maturity phase? Does the fact that a shareholder may at any time sell the residual value in its share (ideally) at a fair price in your opinion soften the focus on distribution of earnings? Does the focus shift from long term to short term?

Turkish capital markets have been a fairly young market in comparison to its counterparts in major financial centers e.g. London, New York, which is established in 1982. Although Turkey has made significant economic growth in more than a decade of history, and even though sustainable growth expectations continue, Turkey's capital markets both in terms of trading volume, number of traded securities and the amount of total capitalization, is significantly smaller in comparison to any benchmarked renowned financial markets. In other words, Turkey's capital markets' size does not match and represent the size and complexity of its economy.

The smaller cap listings in Turkish market are still a rare case, even though major regulation reforms have been put in place in the recent years. Also, institutional investors such as pension and insurance funds still have certain limitations on high risk investments. Accordingly, IPOs are still considered as a tool to finance large scale companies, which are performed more for purposes of better governance and reputational reasons. This obviously brings forward the possibility for the shareholders not only to rely on the liquidity they may generate out of any potential trading opportunities, but also from the dividend pay outs.

Until very recently, the Capital Markets Board of Turkey ("**CMB**") was announcing the minimum rate of profits to be distributed by the listed companies. Upon the enactment of the Law no 6362 on Capital Markets ("**CML**")[4], the CMB has not used such authority to determine the minimum rate of profit distribution by listed companies. The Communique on Dividends (based on the CML) was published in the Official Gazette on 23 January 2014, which regulates dividend distribution policy for joint-stock companies with publically offered shares. Accordingly, corporations distribute their profits by decisions of the general assembly of shareholders within the frame of their dividend distribution policies (determined by the general assembly of shareholders) and in accordance with applicable laws and regulations and any such profit distribution policy requires to identify clear guidance on whether or not the respective listed company issuing such dividend policy, would distribute profits and if so what would be the minimum ratio of such distribution. These regulations also clearly support a view that shareholder value is grasped not only through trading activities, but also from dividends paid out.

4.2 In your jurisdiction, are there publicly available records on the identity of (certain of) the shareholders in a listed company? If so, does this in your opinion influence the shareholders' focus?

Listed companies are also required to maintain a corporate website and make certain corporate information available on it, which may sometimes include certain shareholder information. The content of the website is provided under the Regulation on the Websites of Capital Stock Companies[5]. In relation to shareholding structure, the following must be published on the website of listed companies;

- Up-to-date information relating to the shareholding and management structure.
- Information in relation to the company's privileged shares.
- With regard to group companies, information on share transfers or acquisitions by an undertaking in a group of companies, for the amounts stated in Article 198 of the Commercial Code must be disclosed in the website. The disclosure must be made within five days of the transaction date.

Publicly listed companies register their shares to Central Securities Depositories ("**MKK**" = *Merkezi Kayıt Kuruluşu*) which is the central securities depository for capital market instruments. The MKK monitors the records of these dematerialised instruments and their associated rights in the electronic environment within the scope provided by CMB. Shareholder information is kept by the MKK and CMB and not disclosed to the public. Information that needs to be published within the scope of Regulation on the Websites of Capital Stock Companies is kept by the MKK for listed companies and

[4] Law no 6362 on Capital Markets ratified on 6 December 2012, published in the Official Gazette dated 30 December 2012 and numbered 28513

[5] Official Gazette No. 28663, 31 May 2013

available on the MKK's website *(*Article 7, of Regulation on the Websites of Capital Stock Companies*).*

In addition, certain information in relation to transactions which is considered material may be required to be disclosed in the Public Disclosure Platform ("**KAP**"= *Kamuyu Aydınlatma Platformu*) from time to time as per CML communiqués. In line with this, as per Article 16 of the Communiqué on Material Events Disclosure numbered II-15.1, a table showing the natural persons and legal entities directly having 5% or more of capital shares or voting rights in the publicly traded issuers and any changes therein, is immediately updated by the MKK and published in the KAP. Additionally, Article 12 of the same communiqué requires that any change in the direct or indirect shareholding of a shareholder in the capital of a publicly traded issuer causing the shareholding to reach or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95% is also disclosed in the KAP.

As a result, information on the identity of a listed company's shareholders (at least a certain majority of the shareholders) can be obtained by third parties within the framework provided above. We consider the information on shareholder identity would have a direct influence on the shareholder focus, as the majority shareholding of most listed companies in Turkey is held by family members and only small portions of the listed company shares become available for public offerings. It is common practice to investigate the shareholding structure of a listed company. Nevertheless, sources of public information explained above, may not always reflect the full shareholding structure.

4.3 An efficient allocation of resources requires a most accurate pricing of the shares.

- ***In this regard, are companies that are listed in your jurisdiction under an obligation to publish price-relevant information (ad hoc publicity)? If so, please provide a short overview of the respective rules including the exemptions from such obligation.***

Under Turkish Law, listed companies are obliged to publish price-relevant information to ensure the fair and transparent functioning of the capital market. The disclosure requirement for public companies is mainly regulated under the Communiqué on Material Events (*Serial II, No. 15.1*). Accordingly, listed companies should disclose material events that give rise to inside information and/or ongoing information on KAP and the company's website.

CMB has issued a Guideline on Material Events within the scope of the CML and the Communiqué on Material Events Disclosure numbered II-15.1. The guideline indicates the circumstances that must be disclosed to the public as inside information. For instance, a merger and a takeover bid are inside information which must be disclosed (provided certain conditions are met). However, a merger, takeover, or appointment of a consultant in relation to these, may not be deemed material information if they do not have any effect on the value of a capital market instrument or decisions by investors *(Article 5.5, Guideline on Material Events)*. In this regard, the importance level of each transaction should be evaluated within the framework of inside information, to determine what the effect of the inside information is on the value of capital market instruments and investors' decisions.

Inside information is defined as material information that may influence the value of a capital market instrument or investor decision, and that has not yet been disclosed to the public. A reasonable investor would take it into account in his or her investment decisions, possessing the information would give an advantage to the investor, and it may influence the price of the capital market instrument or investor decision.

On the other hand, ongoing information consists of all other information that must be publicly disclosed, beside from inside information.

Material events, or any changes in the previously disclosed material events, must immediately be publicly disclosed upon their occurrence or upon becoming known. Material event disclosures must be issued in a timely fashion, correctly, completely, directly, transparently, sufficiently, and free from misleading statements in order to assist decisions by the persons and/or institutions that will benefit from the disclosure.

Listed companies must disclose inside information at a stage when the information comes to a concrete level of certainty, even without a guarantee that the disclosed transaction will be concluded. As long as it is not misleading, such disclosure does not guarantee that the transaction will be completed and it is not yet binding for the parties.

That said, as an exemption to the disclosure requirement, listed companies, at their own responsibility, may postpone the disclosure of the inside information in order to protect legitimate interests if such delays do not mislead investors, and the company can ensure the confidentiality of the information is maintained. As soon as the grounds for the postponement are removed, the inside information in question must be disclosed to the public in accordance with the capital market legislation, including the reasons for the postponement.

In addition to the public disclosure requirement with regards to the material events, the CML also classifies certain transactions as significant transactions and requires their public disclosure. Accordingly, mergers, demergers, changes of kind, transfer of the whole or important parts of assets, change of the field of activity, establishment of privileges, changes to existing privileges, and delisting are considered to be significant transactions. The principles and procedures with regards to significant transactions have been determined under the Communiqué on Principles Regarding Significant Transactions and Squeeze-Out Right (*Serial II, No:23.1*).

- ***It can be assumed that no jurisdiction requires listed companies to publish all price sensitive information. If this is correct in your jurisdiction, how does the law protect the market and its participants (including, the equity holders in the company) from market abuse? Are there insider trading and market manipulation prohibitions? If so, please provide a short overview and, if you can, provide certain peculiarities about them?***

Information relating to prices besides those required to be disclosed as per Communiqué on Material Events Disclosure numbered II-15.1, will not be disclosed to the public (please see Question 4.3 above). Listed companies should avoid disclosing information which does not affect the value of a capital market instrument or investor decisions; information which is not considered to be inside information. Disclosure and/or use of such information may trigger insider trading or criminal market manipulation rules, depending on the circumstances.

Both insider trading and market manipulation is prohibited under the CML. Please see below our explanations in relation to each.

- **Insider Trading**

If the persons mentioned below will be sentenced to imprisonment for between two and five years, or punished with a judicial fine if they give purchase or sale orders for capital market instruments, change the orders they have already given, or cancel them and thus make benefit for themselves or for the thirds parties based on information concerning directly or indirectly capital market instruments or issuers, which can affect the prices of the related capital market instruments, their values or the decisions of investors and which have not been declared to the public yet:

(i) Managers of the companies or their subsidiaries or their controlling corporations,

(ii) Persons who access this information by holding a share in companies or in their subsidiaries or their controlling corporations,

(iii) Persons who have access to this information due to the performing of their jobs, professions and tasks,

(iv) Persons who obtained this information by committing crimes,

(v) Persons who know that the information they possess is of the nature of inside information or that should know it in case when demonstrated.

The judicial fine for the insider trading cannot be less than twice of the benefit obtained through insider trading.

- **Manipulation**

Those who make purchases and sales, give orders, cancel orders, change orders or conduct account activities with the purpose of creating a wrong or giving a deceptive impression on the prices of capital market instruments, their price changes, their supplies and demands, will be sentenced to imprisonment for between two and five years and be punished with a judicial fine to be calculated from five thousand days up to ten thousand days. However, the amount of the judicial fine to be imposed due to this crime cannot be less than the benefit obtained by committing the crime.

In addition to the above, persons who give false, wrong or deceptive information, tell rumors, give notices, make comments or prepare reports or distribute them in order to affect the prices of capital market instruments, their values or the decisions of investors, will be sentenced to imprisonment for between two and five years and be punished with a judicial fine up to five thousand days.

Notwithstanding the above, the CMB is also entitled to take all required measures to ensure the effective and robust functioning of the market and determine the principles and procedures on the implementation of these measures concerning real or legal persons, as well as the authorized representatives of those legal entities about whom a reasonable doubt exist in relation to the execution of insider trading or manipulation. These measures include:

(i) Prohibiting temporarily or permanently the trading activities in the exchanges,

(ii) Changing the clearing methods,

(iii) Imposing restrictions in relation to the transactions of margin trading, short selling, borrowing and lending,

(iv) Imposing a guarantee obligation, or changing this obligation,

(v) Enforcing subject persons to be traded in different market or markets or determination of different transaction principles therefrom,

(vi) Restricting the extent of the distribution of the market data,

(vii) Imposing a transaction or position limit.

5. Acquisition

In its life cycle, the company may itself become the object of an acquisition and integration into the acquirer's structure. At this point the life cycle of the company ends.

For the purpose of the remainder of this questionnaire, we assume the acquirer proceeds via a public tender offer. Against this background:

5.1 In case a listed company (target) is approached by another company (bidder), the board of the target will have to decide whether it supports the offer (friendly offer) or not (unfriendly offer). What are the interests that the board of directors needs to take into consideration for this decision? Shareholders' interests only (e.g., offer price only)? The interests of other stakeholders (employees, community etc.)?

As stated in the previous part, listed companies are governed in accordance with the Communiqué on Corporate Governance Principles (Serial II, No 17.1). Within this context, the listed company, in its transactions and activities must protect the rights of stakeholders which have been regulated in legislation and reciprocal contracts. The Communiqué on Corporate Governance Principles stipulates that board of directors must keep in balance the corporation’s risk, growth, and return at the most appropriate level through strategic decisions. The board of directors must also manage and represent the corporation by firstly protecting the long-term benefits of the corporation through rational and prudent risk management.

Further, the board of directors, which is the management body for listed companies, is obliged to act in a manner to protect the company’s best interests. Article 369 of the TCC stipulates the care and loyalty obligation of board members. In line with this, board members and any managers should carry out their obligations with the utmost care that is expected from a cautious manager and protect the best interests of the company in good faith.

The interests that board of directors must take into consideration are both shareholders interest and the interests of other stakeholders on the grounds of their duties and responsibilities within the scope of the Communiqué on Corporate Governance Principles and the TCC.

5.2 In case of an acquisition of the listed company (target) by another company (bidder), the shareholders' are at a disadvantage as they cannot communicate efficiently or act in concert (for example, regarding the rejection of a low offer). A rational bidder should try to use this disadvantage of the shareholders to his benefit. In your jurisdiction, how does the law protect shareholders of the target in case of public tender offers? (for example, is there a specific process for public takeover offers which provides protection? Does the bidder need to treat target shareholders equally? Are there, for example, minimum price rules and/or best price rules?)

As per Article 5 of the Communiqué on Takeover Bids (*Serial II, No. 26.1*), if a person or persons acting in concert with that person acquire control by fully or partially acquiring the shares representing the capital of the target corporation, it is required to make a takeover bid in such manner to protect the rights of all shareholders holding other shares representing the target corporation's capital. In a takeover bid, all shares included in the same group representing the target corporation's capital are subject to equal treatment.

On the other hand, the Communiqué on Takeover Bids sets forth a minimum level of consideration. A minimum level of consideration is not required in voluntary offers. However, a minimum level of consideration is required in mandatory offers, which will be triggered upon a direct or indirect change in control of the target corporation (Article 15, Communiqué on Takeover Bids).

In mandatory offers, the consideration cannot be less than both:

- The adjusted arithmetic mean of average stock exchange daily price in the six month period following public disclosure of the share transfer agreement, if the target's shares are listed, and

- The highest price paid by the bidder alone or with the persons acting in concert for the target's shares of the same group, in the six month period before the date of the offer.

If there is an indirect change in the target's management control, the offer price must be at least the highest of:

- A price determined in a valuation report to be prepared in line with Capital Markets Board regulations, to determine the price of the shares with respect to the privilege differences between share groups. The offer price which triggers the mandatory offer must be taken into account, or

- The highest price, if any, the bidder or the persons acting in concert with him/her paid for the target's shares. including the takeover bids of bidder or the persons acting in concert with him/her that results in takeover bids, in the six-month period before the date of public disclosure of the share transfer agreement which triggers the indirect change in the management control, or

- Where the target is listed, the adjusted arithmetic mean of average stock exchange daily price of the target's shares for the six-month period before the date of public disclosure of the agreement concerning the sale of the shares.

If the target's share capital is divided into more than one class of shares, the offer price for a class of shares not subject to the share transfer which triggered the offer must be at least the highest of:

- A price determined in a valuation report prepared in line with Capital Markets Board regulations, to determine the price of the shares. This must take into account the concessions of each class, or

- The highest price, if any, that the bidder paid for the shares, including the class not subject to the share transfer, in the six month period before the date of public disclosure of the agreement concerning the sale of the target's shares, or

- Where the target's shares including the class not subject to the share transfer are listed, the adjusted arithmetic mean of average stock exchange daily price of the target's shares for the six-month period before the date of public disclosure of the agreement concerning the sale of the shares.

If the offer price cannot be determined according to these principles, the Capital Markets Board can request a valuation report to determine the offer price, based on the transfer date of the shares.

5.3 As mentioned above, a listing provides (ideally) liquidity for the company's shares and ensures a high level of information for a potential new investor. In fact, equity investors may invest in listed companies exactly for these reasons. In your jurisdiction, how is an equity investor protected from a delisting? Does the delisting require (qualified) shareholder consent? What are the deadlines for the delisting? Do issuers need to provide for an off-exchange trading for a certain period following delisting?

The requirements for de-listing are set out in the Communiqué on the Principles Regarding Significant Transactions and Squeeze Out Right, Serial II, No: 23.1 ("Communiqué on Significant Transactions"). The pre-condition for de-listing a public company is that the total voting percentage of the requesting shareholder or group of shareholders acting jointly reaches or exceeds directly or indirectly 95% or more in the company.

To de-list a public company, both the board of directors and the general assembly must pass a resolution to de-list, according to the requirements in Article 7 of the Communiqué on Significant Transactions. Article 7 requires the approval of two-thirds of shares with voting rights participating in the general meeting, without any meeting quorum requirement.

In a mandatory offer, a de-listing application must be made by the controlling shareholder to Borsa İstanbul (www.borsaistanbul.com/en/home-page), within five business days of the general meeting resolution approving the de-listing. If the application is approved, the Capital Markets Board resolves to de-list the company. Such a resolution becomes applicable following the announcement of de-listing in the Public Disclosure Platform.

The following must be announced in the Public Disclosure Platform:

- The resolution of the board of directors on the de-listing of the company.

- The general meeting approval of the above board of directors' resolution.

- The simultaneous applications to the Capital Markets Board and the Borsa İstanbul.
- Each stage of the offers regarding the de-listing.

These disclosures must include at least the following:

- A detailed explanation of the reasons for de-listing.
- The anticipated date of the application to the Capital Markets Board and Borsa İstanbul.
- Explanation regarding the offer price.
- The period and duration of the dates when the offer must be made in relation to the Capital Markets Board's decision.
- The amount of reserved funds for the offer.
- Transactions for purchasing shares not purchased during the offer in the three years following de-listing, and an amount to be held at the capital markets clearing bank (Takasbank) for these three years.

B. Interest of debt holders

1. Start-up phase

In the start-up phase, the entrepreneur may ask the so called "FFF" (friends, family and fools) for a loan. In other words the entrepreneur asks them to invest in a business idea as debt holders. In this context:

1.1 1.1 In your experience, what could be the typical focus of the FFF in this phase? Helping the entrepreneur to get his / her business going? How is this focus reflected in the legal relationship? For example, will such debt holders be likely to refrain from asking for security? Is the agreed interest rate likely to correctly reflect the risks for the debt investor?

The FFF's focus when they provide a loan to a start-up is mainly to provide an initial needed for support to the founders in order to get their business going. Such debt holders are likely to refrain from asking for security over the loan. The agreed interest rate (if any) may not correctly reflect the true risks involved. The FFF may also postpone the due date for re-payment to a later date for the sake of enabling the start-up to re-pay the loan after it starts to generate a sufficient level of profits. If the FFF and the start-up can be considered to be "related parties" within the framework of Turkish tax legislation, the relationship must be structured on an arm's length basis to avoid tax consequences.

1.2 In your experience, is it common for professional investors to act as debt holders in this phase? If so, how is the different focus of professional investors typically reflected in the legal relationship? What are the legal instruments commonly used in your jurisdiction to protect their interests? For example, is it common for the professional investors to request a personal security by the entrepreneur in case the company does not yet have (a lot of) assets to secure a loan?

In the event that professional investors provide loans to the start-up, it is common to request securities in kind (such as mortgage or share pledge) or personal securities from the entrepreneurs. To strengthen the protection, the personal securities are generally structured in a manner to stipulate the joint and several liabilities of the main obligor and the surety giver.

2. Growth phase

2.1 In your experience, who provides debt in this phase and what could typically be their focus (e.g., high return on investment)?

Turkish practice has developed similar to the concepts contained in most Loan Market Association agreements. Therefore, these European resources may be used to understand terms used within the Turkish system. During the growth phase, debt holders are mostly venture capitals.

- ***Are the debt holders and their focus in the growth phase typically different from the ones in the start-up phase? Is it now mostly professional investors (and no FFF)?***

During the growth phase, debt holders are mostly venture capitals, whereas in the start-up phase, debt holders are generally friends, family, and angel investors. These investors usually request adjustments regarding capital subscription in return for the financing that they provide by restricting the pre-emption rights.

- ***If there is a difference, how could this be reflected in the contractual relationship? For example, do the interest rates or the security for the debt change?***

Investors prefer to insert extensive reporting and access rights, including monthly summary reports, quarterly financial and operational reports, reports on material events and litigations to the agreements between them and Company. They also insert clauses regarding the right to sell all equity securities in the Company held by shareholders to the Company at a price higher than the amount reflected by an Enterprise Valuation of the Company, calculated by multiplying the EBITDA shown in the previous fiscal year's audited financial statements.

2.2 What kind of security is commonly request by debt holders in this phase? For example, rather collateral (pledge, etc.) or personal guarantees by the entrepreneur? What is the reason for the preference of a specific kind of security?

As the company does not have sufficient assets during this phase, investors do not prefer mortgages against the company's assets. In general, the investors in this phase request personal guarantees from the entrepreneurs. Such personal securities are generally structured in a manner to stipulate the joint and several liabilities of the main obligor and the surety giver, to strengthen the protection.

Factors for consideration applicable to each type of possible security include:

Pledge of Shares: The Investor may establish a pledge on and security interest over the company's rights, title and interest in and to the pledged shares and all dividends, distributions, interest and other income related to any pledged share. This includes all accrued and future rights, without limitation. The pledge must be established by way of a contractual relationship and there are no formal requirements for doing this.

Pledge or Assignment of Receivables: It is possible to create a security on the company's existing and/or future receivables.

Personal Securities and Guarantees: A personal security may be requested from company or shareholders. In these circumstances, the company and shareholders would jointly and severally commit to paying the investor in the event of default for the full amount, including accrued interest.

2.3 During the growth phase, the burn rate of the company may be quite high and the company may continuously be at the verge of over-indebtedness. Will investors usually be willing to subordinate their debt? Usually only the entrepreneur / FFF from the start-up phase or also professional investors?

Both start-up phase and professional investors are willing to subordinate their debt on a contractual basis. However, Article 206 of the Enforcement and Bankruptcy Code numbered 2004 ("**EBC**")[6] determines a ranking order to be applied by the bankruptcy administration for payment of the amounts collected from the sales of the assets in the bankrupt's estate. Therefore, it should be noted that subordination of debt does not prejudice the rights thereunder. As per Article 206 of the EBC:

- **1st rank receivables are as follows:**

  Receivables of employees, including the severance and notice payments, which are based on the employment relationship and accrued 1 (one) year prior to the bankruptcy decision, severance and notice payments of the employees, that accrued upon the termination of an employment agreement due to the bankruptcy, the employer's debts to the facilities or charities that are established with the purpose of providing support funds to employees.

- **2nd rank receivables are as follows:**

  Receivables of persons, whose properties have been left to the debtor's control, based on a legal relationship of guardianship and custody.

- **3rd rank receivables are as follows:**

  Debts which are stated as privileged debts as per specific laws. Within this scope, tax payments and social security payments are privileged debts in accordance with the Code on Collection Procedure of Public Debts.

- **4th rank receivables are as follows:**

  All other regular debts, which are not privileged, will fall into the 4th rank, which is the lowest rank in the hierarchy.

According to the EBC, unless the creditors in the previous ranking are indemnified in whole, the creditors in the next ranking cannot be indemnified.

2.4 Investors providing debt in this phase may wish to keep the possibility to participate in the potential valuation upside. How could this wish be accommodated in your jurisdiction? For example, are profit-participating loans or convertible loans commonly used instruments?

Due to the amendment of the wording in TCC, it is no longer possible to convert loans granted by the investors to the companies (bridge finance) into capital by allocating some

[6] Enforcement and Bankruptcy Code numbered 2004, ratified on 9 June 1932, published on the official gazette dated 19 June 1932 and numbered 2128

portion of such amount as emission premium since the emission premium must be paid in cash in line with the current wording. However, convertible agreements can be still structured by using different mechanisms. Usually, investors providing debt in this phase execute a loan agreement with company and other shareholders. Such agreements can also include the following provisions, if the parties choose:

- Investors can convert loans into capital advances,

- If the Company obtains an equity investment of from a third party, investor can benefit from a discount during the calculation of the subscription amount to be undertaken and paid by the investor.

In this regard, mezzanine financing is becoming more popular and preferable in Turkey as profit-participating loans. Different legal mechanisms are created on a case-by-case basis, taking into consideration the necessities of high growth companies.

3. Maturity

After having reached maturity, the structure of debt holders may change fundamentally. Against this background:

3.1 In your jurisdiction, who is usually the debt holder in the maturity phase (e.g., banks)?

- ***Are the debt holders and their focus in the maturity phase typically different from the ones in the start-up or growth phase?***

In the maturity phase, the debt holders are banks.

In addition to the banks, strategic investors and private equities are most common debt holders which meet the financing needs of companies in the maturity phase. These investors usually request adjustments applicable in the future rounds i in favor of the investors such as deduction in valuation.

While deciding on the financing method, Resource Utilization Support Fund ("**RUSF**") is also an important item to be considered. In line with the regulation on RUSF oreign exchange and gold loans obtained from abroad by entities other than banks and financing companies are subject to RUSF obligations. The recent RUSF rates are as follows (Article 11, Council of Ministers Resolution no. 2012/4116):

    - RUSF at 3% is due on the principal amount paid on foreign exchange and gold loans borrowed from non-resident parties with an average maturity period of less than one year.

- RUSF at 1% is due on the principal amount paid on foreign exchange and gold loans borrowed from non-resident parties with an average maturity period between one and two years.

- RUSF at 0.5% is due on the principal amount paid on foreign exchange and gold loans borrowed from non-resident parties with an average maturity period between two and three years.

- No RUSF is applicable for foreign exchange and gold loans borrowed from non-resident parties with an average maturity period of more than three years.

Due to the high RUSF rates, it may not be beneficial to obtain a short-term loan from abroad unless the lender is not a bank or financial institution..

- ***If there is a difference, how may this be reflected in the contractual relationship?***

Strategic investors and private equities usually ask to insert clauses regarding future financing into the company's articles of incorporation or shareholders agreement. Such clauses stipulate certain information, such as on which valuation (EBITDA multiplier) the capital increase will be made, or what the upper limit will be for the capital increase and/or the valuation, as well as how financing will be obtained.

Although such clauses are inserted to the articles of incorporation, the capital increase cannot be compelled if the shareholders vote against the capital increase. The capital increase is a contractual agreement and cannot be forced, even with a court decision. Compensation may be claimed if such a mechanism exists. In this context, financing clauses may be inserted into the company's articles of incorporation by combining such clauses with special arrangements set forth under TCC, such as a registered capital system.

3.2 Before providing debt to a company, the potential debt holder may require information about the company's financial status to assess the default risk. What financial information is publicly available for potential new investors who wish to invest in a privately-held company? Are financial statements available from public registers? Excerpt from the debt enforcement register? Tax returns? Do companies have means to influence the amount of publicly available financial information?

Please see the answer given to the question 2.3 under the Section A.

3.3 In your jurisdiction, is it common for privately-held companies to issue notes? Could you provide a short overview of the requirements and the procedure relating to the issuance of notes? Is the focus of note-holders any different from other debt holders?

For joint-stock companies, issuance of the securities is regulated under the newly introduced Article 504 of the TCC. This includes all kinds of debentures, finance bonds, asset-backed certificates, and other debt instruments issued on discount basis, as well as securities granting the right of purchase and conversion. Pursuant to this Article (which makes a reference to Article 421 paragraph 3 and 4 of the TCC), unless a different quorum is stated by law or the company's articles of incorporation, the general assembly must have affirmative votes representing at least 75% of the share capital in order to make a resolution on issuance of securities. However, a provision to the contrary may be determined under the company's articles of incorporation. The general assembly's decision must contain all necessary terms and conditions regarding the securities to be issued. Further, the authority related to issuance of securities, determination of terms, and conditions of delivery for the general assembly can be delegated to the board of directors for a period of up to15 by amending the relevant provisions in the company's articles of incorporation. The securities can be in bearer form, or in the form of promissory notes with nominal value.

On the other hand, from the capital market law perspective, a note is accepted as a capital market instrument. Therefore, the issuance of notes which is identified as a debt security, is also subject to the provisions of Communiqué on Debt Instruments II-31.1 (published in the Official Gazette numbered 28670 and dated 7 June 2013) ("Debt Instrument Communiqué").

Under the Debt Instrument Communiqué, debt securities may be issued through public offering, or by way of private sale, without being offered to the public. Sales conducted without a public offering can be made as a private placement or to a qualified investor. The debt securities to be issued may be sold in tranches within the issuance limit, to be calculated pursuant to the Debt Instrument Communiqué, and within the issuance limit deemed appropriate by the Capital Markets Board. The issuance limit shall be determined in Turkish Lira for domestic issuances. The issuance limit shall be determined in Turkish Lira or a foreign currency for issuances conducted abroad. If the debt securities are sold within a year, in a currency other than the one approved currency by the CMB, the serial issuance certificate must be prepared in the sale currency.

The issuers must apply to the CMB for the registration with the documents specified at the attachment of the Debt Instrument Communiqué. Upon the application for registration, the CMB may request from issuers that the payment obligations regarding the debt securities be guaranteed by a bank which is resident in Turkey, by a third legal person, or that the sale be open only to qualified investors.

An application concerning the debt securities to be offered to the public is required to be made to the Istanbul Stock Exchange for trading in the relevant market of the stock exchange. Additionally, a prospectus and a circular must be prepared if the debt securities will be sold by way of a public offering.

As explained above, a resolution by the general assembly for the issuance of debt securities is required. Such authority may be transferred to the board of directors in accordance with the Article 505 of the TCC. The maximum amount of debt securities intended to be issued and whether or not the sale will be held through public offering, or by private placement without public offering, must be resolved in the related corporate decision.

Debt securities issued domestically must be registered electronically with the Central Registry Agency ("CRA") and the rights arising from such securities must be tracked in the name of the right holder. Likewise, debt securities to be issued abroad must be registered electronically with the CRA. The CMB may, upon request from the issuer, give exemption to the requirement of the securities to be registered in the CRA so that the debt securities can be issued abroad. However, in such case, the information regarding amount of the issuance, date of the issuance, ISIN No., the commencement date of the term, maturity date, interest rate, clearing agent, currency and a list of countries where the issuance is conducted must be notified to the CRA within three business days from the date of issuance of the securities abroad.

The issuance limit for public companies cannot exceed five times that of the equity amount provided in their annual financial statement prepared in accordance with CMB regulations. For non-public companies, the maximum issuance limit can be three times that of the equity amount provided in the financial statement. If the company is preparing consolidated financials then the equity of the parent company will be taken into consideration.

4. IPO / Listed

4.1 Once a company is listed, the debt holders have a considerably higher level of information regarding the company's financial situation. One could expect that this reduces the risk for the debt holder. Thus, in your jurisdiction, do listed companies usually have to pay lower interests?

As a result of listing of a company, the debt holders will have a higher level of information regarding the company's financial situation, which would ultimately reduce the risk for the debt holders. However, this does not lead listed companies to pay lower interests in Turkey.

4.2 In your jurisdiction, is it possible to list notes? Could you provide a short overview of the requirements and the procedure relating to the listing of notes? In your opinion, is the focus of holders of listed notes any different from the focus of other debt holders?

For the procedure relating to the listing of notes, please see Question 3.3. under the maturity phase with regard to the interest of debt holders.

The listed notes may provide certain rights to their holders depending on their type. Accordingly, a participating note provides its holder the right to entitle to a dividend in addition to the interest. Likewise, the holders of convertible notes have the right to request to transfer shares, instead of the principal debt amount and its interest. Therefore, unlike the other debt holders (such as banks and shareholders) who focus on the repayment of principal amount as well as the interest on the maturity date, holders of listed notes who are capital market players focus on the increase of the profitability in the short term through rights other than entitlement to the principal debt amount, rather than just the repayment of the debt.

Trading of listed notes is also considered advantageous compared to other debt instruments, considering the opportunity to be able to receive cash profit prior to the due date of the debt by an early sale of listed notes. Early repayment of listed notes wholly or partially is possible upon the request of the issuer or investors, under certain terms and conditions stipulated under the Communiqué on Debt Instruments II-31.1 which varies on the party requesting the early repayment.

Furthermore, in case it allowed under the specific regulations and articles of associations of the issuers, it is possible to allocate a certain share of the dividend (Article 16, Communiqué on Debt Instruments II-31.1).

5. Acquisition

5.1 In your jurisdiction, what is commonly the effect of a public tender offer on listed notes. Do they have to be redeemed? Can holders of listed notes interfere in the process of a public tender offer? If so, by which means?

As there are no direct provisions that results in redemption of listed notes as a result of a public tender offer, issuer may redeem the listed notes subject to certain terms and conditions stipulated under the Communiqué on Debt Instruments II-31.1 apart from any public tender offer process.

There are no direct provisions enabling holders of the listed notes to interfere in the process of a public tender offer. Nevertheless, holder of a listed note can also be a shareholder in the company and interfere in the voluntary and mandatory tender offers. Furthermore, any third party is allowed to make a competitive bid in case of a public tender offer, thus holder of the listed note may make a competitive bid within the purchase period of the first voluntary takeover bid to interfere in the process.

5.2 In your jurisdiction, what is the typical influence of a public tender offer on existing credit facilities?

There are no explicit provisions regarding the effect of the public tender offers on existing credit facilities. Nevertheless, in common banking practice, credit facilities and loan agreements often include provisions that allow the banks to request full repayment of the facility in case of a change in the control of the company or even a change in the shareholding structure. Thus, if the public tender offer results in such change, event of default provisions contained in the facility documents may be triggered and the bank may ask for early repayment of the facility amount.

C. Interest of management / employees

1. Start-up phase

In the start-up phase, it is essential that the key management is committed towards the development of the business idea or project. In this context:

1.1 Which are the most commonly used means to ensure that the management / key employees will not leave the company until the company reaches the growth or maturity phase? Are warrants or similar incentives granted during this stage?

Shareholders agreements and employment agreements of management or key employees typically include strong non-compete provisions. Such provisions impose a contractual obligation on key employees to be exclusively engaged in the development of the business and the management of the company on a full time basis, for a certain period of time. Such agreements also include contractual restrictions on key employees and founders, which prohibit them from being involved in any other employment relations or corporate involvement in any other business. Stock option plans are another common means of ensuring that the management or key employees dedicate themselves to the development of the business for a pre-determined period of time.

1.2 It is likely that at this stage, there are not sufficient funds for remuneration of management / key employees. Is it common to grant warrant or stock incentive schemes in your jurisdiction? Is there any other scheme to liaise with this issue?

Granting stock incentive schemes to the management or key employees is a common means in Turkey.

2. Growth phase

The management plays a crucial part in order that a company achieves going from a start-up phase to a growth phase and tend to assumes considerable risks by devoting to such project. Therefore, it would seem reasonable to protect the management in further financing rounds during the growth phase.

2.1 In case new investors come on board in the growth phase and such investors request

replacement of the current management: in such replacement, does the current management usually lose rights granted under an incentive plan? How broad are "bad leaver" provisions usually formulated?

Provisions regarding the rights and obligation of the management are granted under an incentive plan inserted into the agreements to be executed between managers and company. The loss of rights for current managers is subject to their agreements.

Bad leaver provisions can be provided as a contractual obligation in the shareholder's agreement by the shareholders. However, it must be noted that the termination of the employment agreements with justifiable cause is regulated on a numerus clausus (limited number) principle in the Turkish Labor Code. Therefore, their scope cannot be expanded with regard to the rights of the employee to receive notice and severance payments, annual leave payments which are mandatory payments adopted by the Turkish Labor Code. For that reason, other employee rights which are not regulated in the Turkish Labor Code can be arranged on a contractual basis and such rights can be ceased in the event of a bad leaver.

Key employees at the Board level (including any Founding Shareholders) are generally referred to as a "Bad Leaver" in the shareholders agreements in the case of

- gross negligence,
- willful misconduct,
- incapacity,
- substantial underperformance,
- insolvency,
- material and un-remedied breach of the a party to agreements, or
- termination other than for good cause of an employment agreement with the company.

Such events are examples of possible triggering events. If a triggering event occurs, the shares of a bad leaver can be acquired from the shares' nominal value or from a discounted rate which is also the general application. Other options can be the payment of a penalty or compensation.

2.2 Upon implementation of an incentive plan, the rights related to the shares that the management will be entitled to receive are usually subject to vesting. Is there any specific vesting period that is applied in your jurisdiction or is the vesting period usually linked to a liquidation event (such as an IPO)?

There is no specific vesting period and the vesting period is not linked to a liquidation event. Period for vesting is determined on a case-by-case basis.

2.3 In certain jurisdictions the management may fall out of labor relationship since it is developing executive duties for the company and/or may hold certain stock of the company (it might fall in a special labor relationship or corporate relationship). Is this the case in your jurisdiction? If so, is the loss of labor rights compensated by special laws or by contractual means?

There are three option plan mechanism:

- Phantom Stock Option

  In this mechanism, a share transfer is not actually realized, but it is deemed that the Employer acquired the relevant number of shares during an exit where Employee deserves a premium in the same amount equivalent to the value of the vested shares granted to them in the option agreement. Therefore, this mechanism is preferred by companies.

- Stock Option through Conditional Capital Increase Method

  Employees may benefit from conditional capital increase method which enables them to obtain new shares of the company under their employee stock option plans. As stock option plans through capital increases lead to dilution of shares, such plans are subject to the general assembly's approval. Therefore, this mechanism is not preferred by companies.

- Stock Option through share transfer

  Redemption of the shares after share transfer is very difficult and there are usually many restrictions regarding the share transfer in the agreements to be executed between shareholders. Therefore, this mechanism is not preferred by companies either.

In the abovementioned plans the company sets out the conditions that should be fulfilled by the employee to acquire the stock option right, the employee is included in the plan, and the share is subscribed. There are many provisions in the agreements regarding the loss of management duties on contractual basis.

Additionally, Board Members who are also employees have rights in accordance with the Turkish Labour Code numbered 4857 ("**Labor Code**") [7]. An employer may terminate a labour contract with immediate effect, provided that such termination is based on

[7] Turkish Labour Code numbered 4857dated 22 May 2003, published on the Official Gazette dated 10 June 2003 and numbered 25134

"justified grounds". The employer is not obliged to pay a severance payment or give the employee notice of the termination. The employee can challenge the existence of justified grounds by initiating a lawsuit against the employer. An employer may terminate a labour contract based on a valid ground, provided the employer gives the employee a notice period. If the employee wishes to challenge this ground, they may initiate a lawsuit against the employer. A valid ground can occur in respect to a condition arising from either the employer or the employee. An employee may choose to terminate their own labour contract by resigning. In these circumstances, the employer is not required to pay any severance or notice payments to the resigning employee.

3. Maturity

After having reached maturity, the business activity and the relationship between the shareholders and the management / key employees tend to become more complex (in particular, intensification of the principal-agent-conflict). The increasing complexity triggers certain hindrances or deterrents for the ongoing activity of the company. In this context:

3.1 In your jurisdiction, do the various corporate bodies (e.g., board of directors, directors, management) have

- ***an obligation to "act in the best interest of the company"? If so, how is the "interest of the company" defined? Is it the interest of all stakeholders (including the interests of all equity holders (e.g., holder of non-voting shares), debt holders, management, employees and public) or just the shareholders? Are only long term interests taken into account or also short term interests?***

Under the TCC, members of the board of directors and all other third parties responsible for management of the joint-stock companies are obliged to perform their duties diligently, as a prudent executive. They must also protect the company's interests within the framework of the principal of good faith, in accordance with the Article 369. Likewise for joint-stock companies, Article 626 states that managers and other persons that are responsible for the management of the limited company are obliged to perform their duties with utmost diligence and to protect the company's interests within the framework of the principal of good faith.

These provisions are intended to put the company's interests before the personal interests of shareholders, their relatives, members of the board of directors, or any third parties while making decisions. Accordingly, if a conflict of interest exists, the board of directors must take the necessary precautions and act in accordance with the company's interests, without favoring the controlling shareholder. The company's interests include both short term and the long term considerations.

- ***"fiduciary duties" or a duty to treat equity holders equally? How are these defined?***

For joint-stock companies, shareholders should be treated equally under equal conditions (Article 357 of the TCC). In a similar manner, in line with Article 627 of the TCC, managers of limited companies are obliged to give equal treatment towards shareholders. They are expected to act in the same way towards any shareholder where equal conditions exist. This obligation prevents subjective and discretionary decisions and actions by the company’s decision- making or managing bodies. It is explicitly stipulated that transactions which are carried out in defiance of the equal treatment obligation are deemed null and void.

3.2 In your jurisdiction, how are conflicts of interest addressed by the law? Are the rules on conflicts of interests for listed companies applied to non-listed companies? Have the rules on conflicts of interests become more rigid in recent years?

The TCC sets forth certain provisions to avoid conflicts of interest between the company and board of directors in joint-stock companies. Accordingly, Article 393 of the TCC prohibits directors participating in discussion of matters concerning their own interests (or the interests of their relatives) which conflict with the company’s interests. In case of a director with conflicting interests participating in such a discussion, that director and all other directors who are aware of the situation and do not oppose, will be liable for damages incurred by the company. Article 395 and 396 of the TCC, prohibit directors from competing or dealing with the company for their own benefit.

Certain provisions exist under the TCC to prevent the conflict of interest for managers in limited companies. The non-compete obligation on managers is regulated under Article 626/2 of the TCC. Within this scope, managers and other persons responsible for the company’s management must not engage in activities that are in competition with the company. This provision is not mandatory and it may be otherwise agreed within the articles of incorporation, or unanimous approval stating otherwise may be obtained from the shareholders. Additionally, Article 626/3 of the TCC states that as well as the shareholders, managers are also subject to the loyalty obligation which requires managers to protect the company’s interests and disregard their own personal interests if a conflict with the company’s interests arises.

For listed companies, there are specific requirements stipulated under the Corporate Governance Communiqué with regard to conflicts of interest. These include company policies concerning interest holders.

3.3 In your jurisdiction, is it common to put in place incentive plans for key management and employees or are they only entitled to receive a cash bonus (usually based on individual and overall performance)? Do incentive plans provide tax advantage for the company?

Certain financial rights are stipulated for members of the board of directors. Attendance fees, wages, gratuities, premiums, and dividends from annual profit may be paid to the members of board of directors, provided that the relevant amounts are defined in the articles of incorporation, or by a general assembly resolution (Article 394, TCC).

Other than such financial rights there are three types of mechanisms for key personal incentive plans. Details of such options are outlined in Question 2.3 under the growth phase, with regard to the interest of management/employees.

4. IPO/ Listed phase

Reaching an IPO is often the pinnacle of private companies which have reached certain growth and have an attractive equity interest. Obviously, the management and employees play a significant role in the IPO / listing process. In this context:

4.1 It is our understanding that when a company goes from a private to a public setting it implies considerable changes for management and employees. In your experience and within this framework, what is the most significant change for management and employees? Does going public usually increase the total amount of the compensation and/or does it usually change the structure of the compensation (cash, shares, warrants, etc.)?

In terms of Management

Publicly listed companies must be governed in accordance with the Communiqué on Corporate Governance Principles (*Serial II, No 17.1*). The Corporate Governance Principles which require strict compliance as purported by the CMB must be followed by listed companies.

Accordingly, the most significant change in a company's management after it goes from a private to a public setting would be the obligation to comply with the corporate governance rules. Certain obligations in relation to management can be listed below as:

- The board of directors must form an "Audit Committee" (except for banks), "Early Detection of Risk Committee" (except for banks), "Corporate Governance Committee", "Nomination Committee, Compensation Committee" (except for banks) in order to fulfill its duties and responsibilities in a reliable way. However, if a separate nomination committee and compensation committee cannot be established due to the structure of the board of directors, the corporate governance committee must fulfill the duties of such committees.

- The structure of the board of directors should be re-organised to include Independent Board Members. In compliance with Communiqué on Corporate Governance Principles, at least five board members must be appointed in order to form the board of directors. The number of independent board members cannot be less than one third of the total number of board of directors.

- A target rate for membership of women in the board of directors must be determined. The rate must be 25% or more.

- Management of the company can be the perpetrator of the crimes listed under the CML, including insider trading and manipulation etc.

In terms of Stakeholders (Employees)

Stakeholders are defined as persons, institutions, or interest groups that are related with the achievement of goals or activities of the corporation, such as employees, creditors, clients, suppliers, syndicates, several non-profit organizations. As the employees of a listed company are defined as stakeholders, the principles under the Communiqué on Corporate Governance Principle will apply.

In line with this, the listed company, in its transactions and activities must protect the rights of stakeholders which have been regulated in legislation and reciprocal contracts. If the rights of stakeholders are not protected by the relevant legislation and reciprocal contracts, the rights of the stakeholders must be protected within the framework of bona fides principles and within the corporation's capabilities. Within this framework:

- The company must issue an indemnification policy for its stakeholders and announce the policy via its website.

- The models for supporting stakeholders (including the employees) to take part in the company's management must be developed in a way which do not constitute any obstacles in the management. The relevant models adopted by the company must be included in the internal regulations or articles of association of the company.

- Corporation must be fair in all rights provided to the employees, organize training programs for improvement of the knowledge, skill and experience of the employees and issue training policies.

- For decisions which may impact employees, the opinion of the unions must be received.

- The company is entitled to issue share purchase plans for its employees.

- The company must support freedom to form associations and the right to be a party to collective employment agreements.

- Management of the company can be the perpetrator of the crimes listed under the CML, including insider trading and manipulation etc.

4.2 Following the IPO the management is constantly assessed by the performance of the share price. Also the management's pay may to large extent depend on the share price performance. One could expect that management may abstain from taking any steps that are likely to weaken the share price – even if such steps are beneficial to the company in long term. In your jurisdiction, are there any measures that are commonly taken to address this conflict (i.e., incentives for long term strategies)? Is, for example, by law or by agreement a part of the pay paid in mid- to long term options?

The board of directors, which is the management body of the listed companies, is under the obligation to act in a manner to protect the company's best interest.

Article 369 of the TCC, stipulates the care and loyalty obligation of the board members. In line with this, board members and any managers should carry out their obligations with utmost care that is expected from a cautious manager and protect the best interests of the company in good faith. This applies to both listed and non-listed companies. Any decision contradicting this principle may be declared null and void.

Without affecting the generality of the provisions under the TCC, additional careful management obligations are determined for listed companies. In this regard, the Communiqué on Corporate Governance Principles stipulates that the board of directors must balance the corporation's risk, growth and return at the most appropriate level, through strategic decisions and manages and represents the corporation by firstly protecting the long-term benefits of the corporation through rational and prudent risk management.

The board of directors, by obtaining the opinions of the relevant committees of the board of directors, must establish internal control systems and information processes and risk management which may reduce the effects of the risks on stakeholders of the corporation, mainly on shareholders.

Within this framework, any action of the management to the effect that may weaken the share price to increase their own pay is prohibited by the legislation.

4.3 Is the management and/or employees bound by a mandatory lock up period upon the IPO? In the event the lock up period is not mandatory, please explain the common standards in your jurisdiction towards implementing a lock up period.

There is no mandatory lock-up period for the management and/or employees after an IPO.

As there is no mandatory lock-up period, any obligation towards implementing a lock up period for the employees or the management should be based on a contractual relationship.

Please also note that, Information Policies of listed companies are required to envisage certain protection methods in relation confidential information, including the actions and measures that will be taken for confidentiality of information on material events until they are disclosed to public *(Article 17, Communiqué on Material Events Disclosure)*. In line with this provision, persons having access to inside information can be banned from buying or selling their shares within certain periods before the disclosure of the financial tables, provided that the Information Policy incudes such a provision. In practice, most companies include provisions in their Information Policies interim periods stipulating “Prohibition Period” and “Silent Period”.

5. Acquisition

In the scenario of the acquisition, it is frequent that the management is essential towards the subsequent development of the company. In this context:

5.1 The focus of the board of directors of a listed company may be set to a large extent on the share price performance. Usually, this should be in line with the corporate interest. However, in case a listed company is being approached by a potential bidder, the board of directors and the management of the potential target may face a conflict of interest: an acquisition that may be beneficial to the shareholders of the potential target, may at the same time require replacement or adjustment of the target's board of directors and management. In your jurisdiction, how is this conflict of interest addressed? For example, are there limits to the defense measures that the board of directors of the target may take?

The board of directors, which is the management body of the listed companies, is obliged to act in a manner to protect the company’s best interest. The care and loyalty obligation of the board of directors is stipulated under Article 369 of the TCC, as explained above in Question 4.2.

The board of directors’ obligation to protect the company’s interests is also regulated under the Communiqué on Corporate Governance Principles, as explained above in Question 4.2.

Within this framework, if an acquisition is beneficial to the shareholders of the potential target and at the same time requires replacement or adjustment of the target's board of directors and management, this conflict should be addressed in a manner that would be most beneficial to the target company.

Any acquisition that is not cooperated by the target's board of directors would be considered a hostile takeover. In case the board of directors wishes to prevent the potential bidder from acquiring the target's shares, it may try to restrict the transfer of shares. This is allowed under certain circumstances as a possible defense mechanism to prevent hostile takeovers. That being said, the transfer of registered shares in a public company can only be restricted in the circumstances set out in Article 495 of the TCC. Within the scope of Article 495, a management board can only decline approval of a share transfer if the articles of the company impose a limit on the acquisition of registered shares and this limit has been exceeded. However, most shares of a public company are floating and bearer shares and not registered shares. Further, this provision is relatively recent, and the Capital Markets Board does not allow such restrictive clauses in the articles in practice in an IPO, since Article 6 of the Communique on Shares (Serial VII, No. 128.1) states to be subject to an IPO, the company's shares cannot bear any restrictions on their transfer.

5.2 Which are the common alternatives in order to keep management / key employees focused and keen to continue in the company?

As a rule, a share acquisition does not affect the management or key employees. A partial or complete acquisition of shares would not alter the terms of employment and same conditions will apply after the acquisition.

Nevertheless, if the acquisition is carried out by way of a merger; all employees, including key employees, would have a right to object to the transfer of their employment agreements to a new employer. Due to this provision, obtaining the consent of the employees prior to the merger transaction is highly advised. In accordance, it is common to offer the key employees better conditions to prevent them from leaving the company by exercising this right after the merger.

It is highly suggested to decide upon the employment issues prior to an acquisition, preferably before the initiation of the process, in order to prevent any unexpected and unfavorable situation that may be brought up by any employee for reason of a delay in the decision making processes with respect to dismissals, terminations and other issues.

5.3 In parallel, is it common to reinforce non-competition and confidentiality undertakings of the management / key employees upon acquisition? Is it common to regulate a non-solicitation by the Seller and that it is enforceable (for which period)?

Non-competition, confidentiality and non-solicitation undertakings are common in employment agreements with management and key employees in Turkey. All such undertakings will remain in force after an acquisition, regardless of the nature, as no changes will occur in the employment terms.

It is common to incorporate these undertakings in the employment agreements, however if there are no such obligations in the employment agreement in effect as of the date of acquisition, the relevant employee must agree to new undertakings. Otherwise, he/she will not be bound by any non-compete or non-solicit obligations.

Non-competition clauses are regulated by Article 44 of the Turkish Code on Obligations. In line with this, the term of non-competition clauses must not exceed two years after the termination of the employment relationship and the scope of non-competition must be restricted to a specific area and line of work. In case of termination without any just cause by the employer, non-compete undertakings will be invalidated by law.

There are no explicit regulations on non-solicitation clauses and therefore there are no limits. However, it is important to review what consequences will raise out of the breach of a non-solicitation clause after a termination. In any judicial process, if the breach of non-solicitation obligation leads also to the breach of non-compete obligation, the employee may simply utilize the defense of invalidation of non-compete obligations.

It is also common to restrict the use or disclosure of confidential information and company property, both during employment and after its termination. The confidentiality obligation will remain in force after the acquisition, even after a termination, regardless of whether the termination is based on just cause or not.

D. Interest of advisors / lawyers

1. Startup

During the startup phase, it is one of the most difficult stages to advice companies and/or projects since the company does not have the resources (funds) to implement an appropriate legal scheme and the management/equity holders tend to think in the short term rather than the long term.

1.1 Which are the common difficulties you liaise with during this stage? How do you tend to structure your fees (for example, do you go below your standard rates and agree to have this difference compensated at a later stage when the company has become more successful)?

Late or inadequate payment of lawyers’ fees is one of the most common difficulties in advising start-ups. When structuring our fees, we usually postpone the due date of payment to a later stage when the start-up is expected to generate profit, thus will be in a better position to pay our fees. Alternatively, a scheme where we take over a number of shares of the start-up in consideration of our professional services can also be structured.

1.2 In case you accept warrants / rights to shares as compensation for professional services rendered: how do you set the amount or the value of such warrants and rights? Do you rely on valuations of the company? If so, whose valuations? Is it common for an advisor in this situation to request that the company has previously successfully completed a minimum viable product ("MVP") stage which reduces the risk of failure (i.e., as part of the lean startup methodology it is advisable to diminish uncertainty for the project by means of developing an MVP to validate the project)?

In cases where we accept to receive shares as compensation for our professional services, we usually rely on the valuation of the start-up and our own assessments and evaluations with regard to the business model, market share or profitability of the start-up. It is not very common to request the existence of an MVP.

2. Growth

Commonly, it is important to provide appropriate legal advice when the company intends to achieve going from the start-up phase to a growth phase. The role of lawyers and advisors would likely enhance the possibilities to effectively reach a solid growth phase. In this context:

2.1 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up phase)?

We propose a project based fee or blended fee during this stage. Addition to this, we may acquire shares from the company in the growth phase.

2.2 Is it common for advisors (in particular, lawyers) to take board positions during this phase? If so, how is such board member compensated? In cash? Or with exclusivity for providing legal services to the company?

According to the Attorneyship Law, services and duties rendered in exchange for payments are incompatible with attorneyship. These payments include monthly salary, a fee, a daily wage, or dues, working as an insurance agent, a merchant, or a tradesman; and all activities not agreeing with the respectability of the profession. However, there is no restriction for attorneys preventing them being a shareholder, board chairman, board member, or auditor in joint stock corporations, limited companies, cooperative companies, or partnership in commandite.

However, Attorneys does not prefer to be a board member as the role causes an inappropriate conflict and preclude attorneys from providing representation or advice to companies.

2.3 ***As the lawyer you may be asked by the entrepreneur to render advice on the division of equity (in particular to FFF)? What is the basis for your advice regarding the division of equity?***

Founding entrepreneurs ideally should not have a shareholding less than 70% to 80% in the beginning of the growth phase.

2.4 ***In certain jurisdictions corporate law is rigid and does not allow to regulate certain rights of the shareholders in the by-laws of the company (such as, preferential preemptive rights, drag along or tag along rights). Please explain (succinctly) which is corporate legal scheme that applies in your jurisdiction. Is the shareholders agreement enforceable against third parties in your jurisdiction or is only binding between the relevant shareholders?***

Turkey adopted the continental law systems and hence the corporate law also contains rigid regulations. TCC adopts certain restrictions against the freedom of contract.

To incorporate a company, the founders conclude articles of association (=by-laws of the company). The articles of association is a publicly available contract and binding upon the founders, the existing and future shareholders, third parties as well as the company. This agreement must satisfy the principles and mandatory provisions set forth in the TCC. However, the articles of association may also include provisions that are not required by the TCC. Within this concept, the rights arising out of these provisions will not bind the company, its branches or third parties. Therefore, these rights cannot be enforced via the mechanisms set forth in the TCC even though such provisions are included in the articles of association. Such provisions only create contractual obligations under the Turkish Code of Obligations numbered 6098 ("**TCO**")[8] and bind the parties who have consented to their terms.

In light of above, investors conclude another agreement, apart from the articles of association as the shareholders' agreement which is only binding between the relevant shareholders and reflects the relationship amongst the shareholders, indicates the agreed terms and conditions for some certain situations, such as rights of first refusal, pre-emption rights, drag and tag along rights.

To give an example, share transfer restrictions are only allowed in certain circumstances determined in Article 490 and continuous Articles of the TCC. Restrictions against such provisions will not be valid and binding upon the company and third parties as explained above. Drag-along rights, tag-along rights and other similar provisions which are freely determined under the shareholder agreements; can be inserted to the articles of association as long as such provisions comply with the wording of the TCC. Therefore,

[8] Turkish Code of Obligations numbered 6098, ratified on 11 January 2011, published on the Official Gazette dated 4 February 2011 and numbered 27836

such restrictions must be handled by a lawyer and drafted in a compatible manner in line with the TCC.

3. Maturity

After having reached maturity, the business activity is much more complex and the interests of the company become more intricate. In this context:

3.1 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up or growth phase)?

We propose a project based fee or blended fee during this stage.

3.2 Are you able to become member of the board of directors of the companies? Do you tend to render more unique advice to companies (while the corporate counsel provides the typical ongoing corporate advice)?

Please see the answer given to the question 2.2 under growth phase with regard to the interest of advisors/lawyers part.

3.3 From a lawyers' perspective, how is the conflict of interest of the management liaised with (are there any mandatory provisions that apply in your jurisdiction)?

As per Article 393 of the TCC, member of the board of directors cannot participate in the negotiations relating to the subjects on which the interests of the company conflict with the personal interests (and interest outside the company) of his/her own, his/her spouse or one of its relatives by blood or marriage up to the third degree (including the third degree).

3.4 Does the anti-money laundering provisions in your jurisdiction have changed the form your render advice?

Lawyers are also subject to Anti-money Laundering Law numbered 4208[9]. Our firm also voluntarily signed the commitment of UN Global Compact.

4. IPO/ Listed phase

Reaching an IPO is often the pinnacle of private companies which have reached certain growth and have an attractive equity interest. It is unlikely that the process of becoming a listed company will be successful without the proper advice. In this context:

[9]Anti-money Laundering Law numbered 4208 ratified on 13 November 1996, published on the Official Gazette dated 19 November 1996 and numbered 22822

4.1 How do you structure your fees for an IPO?

Fixed fee determined on the basis of different factors such as scope of work, time budget required for the specific engagement, etc.

4.2 From a lawyers' perspective, which are the main regulatory aspects of offering equity to the public? Is it common that companies reach this stage (in certain jurisdictions becoming a listed company is less rigid)?

If the number of shareholders exceeds 500, the shares of a joint stock company are considered to have been offered to the public and these corporations are subject to the Capital Markets Law. Not many companies in Turkey reach this number before they apply for public offering. Many companies in Turkey are managed and owned by small groups of family members and prefer not to have many shareholders.

Additionally, joint stock corporations whose shares are offered to the public are defined as public companies. Public offering of equity can be made by preparing a prospectus which includes characteristics of and rights and risks associated to capital market instruments to be issued or admitted to trading on the exchange.

The preparation of prospectus and its approval by the CMB is compulsory for the public offering of capital market instruments. The related processes and sales methods of shares are defined in the following regulations enacted in 2013; Communiqué Serial:II No:5.1 on Principles Regarding Prospectus and Issue Documents and Communiqué Serial:II No:5.2 on Principles Regarding Issue of Capital Market Instruments.

There are strict prerequisites and approval requirements for public offering of equities. The main document of public offering is the prospectus. Other fundamental documents are the financial statements and the independent auditors' reports. Audited financial statements in line with the CMB's accounting standards (i.e. IFRS) for the last three financial years and the latest interim financial statements (if available) should be provided.

There are also very strict regulations to be followed by public companies under CML and related regulations.

Within this scope, it can be argued that not many companies in Turkey are able to reach necessary growth and equity interest to become public.

4.3 Is there any specific secondary market in your jurisdiction that allows early startup companies to become listed with the aim of obtaining more equity (given the complexity of becoming a public company in certain jurisdictions a startup company can become listed in a specific market which is less rigid and allow it to obtain other sources of financing, among others)?

The stock exchange institution namely Borsa İstanbul A.Ş. ("**BIST**") consists of two markets for trading equities: **(i)** Equity Market and **(ii)** Emerging Companies Market (=*Gelişen İşletmeler Piyasası*) ("**ECM**"). Transactions under the Equity Market are carried out in these sub-markets:

- National Market,
- Collective Products Market,
- 2nd National Market,
- Watchlist Companies Market,
- Primary Market,
- Wholesale Market,
- Rights Coupon Market,
- Free Trade Platform.

Pursuant to the Listing Regulation published in the Official Gazette numbered 25502 and dated 24 June 2004 ("**Listing Regulation**"), companies which meet the listing requirements or relevant market criteria determined by BIST can be traded on the Equity Market.

As a sub-market of the Equity Market, the 2nd National Market enables small and medium sized enterprises ("**SME**"), the companies which promise a growth potential but which fail to meet the listing criteria of National Market, to have their equities traded on the equity exchange. By virtue of the 2nd National Market, the respective companies can ensure that equity prices are formed in a regular and transparent market under competitive conditions and provide liquidity to equities, thereby creating inexpensive funding and growth potential for the companies, providing them with the opportunity to obtain funding from the capital market.

On the other hand, the companies which are registered by CMB but which fail to meet the listing requirements on the Equity Market can be traded on the ECM provided that there is a reasonable anticipation of a potential development and growth. In order for admission of shares to the ECM Directory, no quantitative criteria such as profitability, operational age, and capital or market capitalization size are sought, as is required for the Equity Market. Therefore, the ECM has been established as a transparent and organized platform where the securities of SME can be traded in order for the companies to have the opportunity to raise funds while presenting themselves better, and adding to their visibility among investors, as well as their operational markets.

There is also a newly established private market that has started taking applications on August 2014, under the control of BIST. Private market, which is a web-based and member based platform which allows start-up companies or rising companies that have already reached a certain size to conduct share purchase and sell transactions without going public. Private Market offers companies the opportunity find shareholders and thereby access to finances without going public, company partners intending to sell their shares liquidity, and for investors, new investment opportunities and liquidity for their investments.

4.4 Does the fact of becoming a listed company imply that the lawyers and/or advisors adjust rates their rates accordingly?

No, we do not give our fee offer solely depending on the fact whether the company is a listed company. The calculation of the fee depends on a number of factors, such as the scope of the work and the time budget required to complete the assignment, etc. However, the works regarding the listed companies may sometimes require longer hours of work as they may be more extensive and complex.

5. Acquisition

In the scenario of the acquisition, it is frequent that lawyers and advisors are highly involved. In this context:

5.1 Which is most frequent scheme of implementing an acquisition (asset deal vs share purchase deal)?

The most frequent scheme for implementing an acquisition is share purchase. For asset acquisitions, the transferee and the transferor remain exposed to joint liability for obligations in relation to the transferred business for two years after the closing of an asset transfer transaction under Turkish law (Article 202 of the Turkish Code of Obligations numbered 6098).

5.2 From a lawyers' perspective, which are the main differences within the process of acquiring a stake in listed companies versus private companies?

The main difference between acquiring a stake in a listed company and in a private company is that acquisition with regard to a listed company will be subject to the capital market regulations in addition to the general rules set forth under TCC. For listed publicly-held companies, acquisition of shares will be made through the stock exchange.

5.3 *From a lawyers' perspective, which are the main steps in your jurisdiction in order that a public entity becomes a private entity as a consequence of an acquisition?*

The procedure to be followed where a public entity becomes a private entity in consequence of acquisition is regulated under the Communiqué on Principles pertaining to Removal of Corporations from the Scope of Law and Obligation of Trading of Shares on Exchange II-16.1 ("**Communiqué II-16.1**") published in the Official Gazette numbered 28867, dated 30 December 2013. As per Article 6 of the Communiqué II-16.1, if a corporation demonstrates more than ninety-five percent of the its capital is owned and held by a maximum of fifty shareholders by a list of attendees of the general assembly meeting held within the last six months prior to the date of application, such corporation will be excluded from the scope of the Capital Market Law which regulates the terms and conditions with regard to the publicly-held companies upon application to the CMB. During such application, the following documents (stated in the Annex-1 of the Communiqué) must be presented to the CMB:

- Information introducing the issuer;
- Articles of association, containing all amendments and additions made thereto, combined in the form of a single text, signed by authorized signatories of the corporation;
- Original copy or notary-certified copy of the decision of the board of directors relating to removal from the scope of the Capital Market Law;

    a) For applications for removal from the scope of the Capital Market Law due to the shareholder structure within the frame of Article 6 of this Communiqué II-16.1, the list of attendants of the relevant meeting of the general assembly of shareholders or the expert report relating thereto; and

    c) For applications for removal from the scope of the Capital Market Law due to the number of shareholders within the frame of Article 7 of this Communiqué II-16.1, the expert report relating thereto; and

- If deemed necessary by the CMB, documents confirming the information supplied, and other information and documents that may be requested by the CMB; and
- A notary-certified signature circular.

Under Article 7 of the Communiqué II-16.1, corporations which demonstrate that the total number of their shareholders is below five hundred via an expert report appointed by the competent court and in reliance upon *i)* list of attendees, *ii)* share register, *iii)* accounting records and documents pertaining to distribution of dividends, *iv)* records and documents relating to shareholders who apply at the time of foundation and at the subsequent capital increases, and similar other documents and transactions relating to relations of the corporation with its shareholders, if any, are excluded from the scope of the Capital Market Law upon an application to the CMB with the above-mentioned documents listed in Annex-1 of the Communiqué with a claim of removal from the scope of the Capital Market Law, on condition that their application is found acceptable by the CMB. The list of attendees relied upon in the expert report is required to have been issued no later than one year before the date of application, and the share register is required to be updated.

5.4 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to other phases)?

We propose a project based fee or blended fee during this stage. There is no difference in the fee structure as compared to other phases.