TRANSPARENCY AND DISCLOSURE
WITHIN TURKISH COMPANIES: A NEW ERA
FOR CORPORATE GOVERNANCE IN TURKEY

Derya BASARAN

ANR: 984063

Supervisors: Prof. Dr. E.P.M. Vermeulen

D.A. Pereira Dias Nunes, LL.M

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The Compatibility of New Turkish Commercial Code Transparency
Provisions with the OECD Corporate Governance Disclosure and
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I. INTRODUCTION

The crisis on the international financial markets, which arise in the recent history, indicated the inadequacy of the governance strategy in the corporations and in the countries\(^1\). Like Enron, Parmalat, Arthur Andersen, Worldcom, some of the biggest companies in US and Europe were the victims of corporate scandals and they went bankrupt speedily. As the lack of good management in the corporations is admitted to be trigger of the crisis, the studies started expeditiously to develop more transparent markets and corporations. It is proved that the companies in the global economy shall be responsible to shareholders and additionally to the suppliers, customers and the society\(^2\). In reply to the scandals, the legislators all around the world started to work for the regulations and standards for the management systems as they work for the financial market principles. A system had been invented in order to solve the financial problems and to assure good management and transparency. This system is called Corporate Governance, which has been first used in the USA and then became a global system by which the companies are directed and controlled\(^3\). For instance, the Sarbanes Oxley Act had been enacted to increase accountability and dependability of the companies by the disclosing system. Moreover, the European debate of Corporate Governance is started with the United Kingdom\(^4\). The United Kingdom has a non-binding code, called “The United Kingdom Corporate Governance Code\(^5\), which is the prototype model of corporate governance codes. Following that, most of the countries have enacted their own corporate governance codes, which are not laws. Hence, they do not have the binding force. However, some countries have self-regulations for enforcement. For example, the stock corporation act may have a provision which rules that the listed companies must disclose\(^6\).

By means of the technological developments and the globalization, the competition between the companies gradually increased and a new international market is being restructured\(^6\). The foreign investors represent a significant financial resource as a group. Within that structure, the foreign investors, when in search of new markets in the emerging countries, consider the quality of the corporate governance practices at the same time they take cognizance of the financial performing

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1 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
3 Cadbury Committee, 1992
4 Comparative Corporate Governance, The State of the Art and International Regulation, K. Hopt, 2010
5 Comparative Corporate Governance, The State of the Art and International Regulation, K. Hopt, 2010
6 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
The countries, which successfully satisfy these expectations, have an advantage over the others on the international competition regarding the foreign investment. The low cost investment attractions by the companies and the economic systems of the countries are relied on an investor trust established due to their qualified governance systems. Moreover, as an internal corporate governance problem, the conflict of interests between the shareholders and the managers caused a general problem in corporations across the globe. Almost every country had relied on board reforms to solve that issue. In addition to that, more conflicts started to exist as well: between controlling and minority shareholders, and also between the shareholders and others like employees, creditors, and others. However, the focus of this thesis is on the external corporate governance, with emphasis on the corporate governance principles, which aims to reach best practices and the good corporate governance.

The OECD has been working to promote the good principles of corporate governance for years. The principles put the governments and the private sectors together for the development of good governance practices. The working group of OECD relied on that the weak form of corporate governance is not compatible with sustainable economies and markets. They have issued the non-binding principles to make recommendations for the good practices and ethical behaviors on the well functioning markets in 1999, and revised them in 2004. Although the principles of OECD are actuated with a focus on publicly traded companies’ needs, they are flexible to be implemented to the unlisted companies, family businesses and the state administrations (or state-owned entities, also known as “SEOs”). The Principles generally cover the financial condition or the operations of the corporations, at the same time OECD recommends companies to inform about the company’s object, partnership structure, board members, executives and their royalty payments, management and controlling. Thus, the OECD and non-OECD countries take into account these non-binding principles to improve their corporate governance practices. The principles help the legislators to improve their frameworks into a more

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7 Analysis of Performance Standards For Direct Foreign Investors, Carl Davidson, Steven J. Matusz, Mordechai E. Kreinin, Michigan State University, 2006
8 Analysis of Performance Standards For Direct Foreign Investors, Carl Davidson, Steven J. Matusz, Mordechai E. Kreinin, Michigan State University, 2006
10 Corporate Governance, Joanie Sompayrac, Encyclopedia of Business, 2nd Edition
13 Donald J. Johnston, OECD Secretary General, The OECD Corporate Governance Principles, 2004
15 Donald J. Johnston, OECD Secretary General, The OECD Corporate Governance Principles, 2004
transparent and efficient market, provide easy implementation of the principles to their codes and also they reduce the risk of costly over regulation. The six key areas of corporate governance are covered by the Principles are: ensuring the basis for an effective corporate governance framework, the rights of shareholders, equal treatment of the shareholders, the role of stakeholders, disclosure and transparency and the responsibilities of the board\textsuperscript{16}.

Almost all of the countries widely accepted the transparency, equality, accountability and responsibility principles for their corporate governance model\textsuperscript{17}. The equality principle ensures the equal treatment to all the stake and shareholders, including the minority and the foreign shareholders for protecting their rights. The equality principle entitles the shareholders rights to maintain their interests, to exit, to elect members of board of directors and to participate in the executive decisions. All the shareholders should be enabled to receive compensation in the event of their rights’ violation\textsuperscript{18}. The responsibility principle, on the other hand, defines the convenience of the legislation, articles of association and bilateral agreements with the operations conducted by the company\textsuperscript{19}. Accountability should provide the obligation of the board members to control the management effectively and to render an account to the company and the shareholders\textsuperscript{20}. Finally, the disclosure and transparency principle aims a timely, accurate, complete and clear disclosure of financial and non-financial information to the public\textsuperscript{21}. Both in OECD recommendations or Turkish regulation, the transparency principle is constituted to inform the shareholders accurately and on time about the financial conditions, performances, partnership conditions and other economical conditions of the corporations\textsuperscript{22}. The efficiency of the markets is particularly dependent on that information. The existence of asymmetric information brings along the moral hazard and adverse selection problems with it. The only way to resolve the information asymmetry is transferring the qualified and adequate information to market participants\textsuperscript{23}. At this point the particular importance of transparency is rising for the capital markets.

\textsuperscript{16} The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries, Fianna Jesover and Grant Kirkpatrick, 2004
\textsuperscript{18} OECD, Principles of Corporate Governance, Equal Treatment of the Shareholders, Paris, 2004
\textsuperscript{19} OECD, Principles of Corporate Governance, The Responsibilities of the Board, Paris, 2004
\textsuperscript{20} OECD, Principles of Corporate Governance, Paris, 2004
\textsuperscript{21} OECD, Principles of Corporate Governance, Disclosure and Transparency, Paris, 2004
\textsuperscript{22} Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
\textsuperscript{23} Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
Therefore, the legislators of the countries prioritize the transparency principle when improving their regulations.24

The majority of the family businesses and small enterprises in Turkey caused the country to be underdeveloped in the corporate governance framework when compared to the developed economies.25 In 2003, the Capital Markets Board of Turkey issued listed companies corporate governance principles in Turkey. In addition to that, the regulatory arrangements of the corporate governance principles are enacted in the Commercial Code. However, the Code has remained in effect almost for fifty years. As a part of international markets, Turkey was in need of a modernization of the regulation about corporate governance in order to be attuned to the supranational rules, technological and legal developments, and specifically the requirements of the European Union integration. In the light of these facts, the ethical standards for the corporations were taken into account and the New Code, which governs the social responsibility of the companies, is developed.26 The increase on the numbers of corporations, the decisions made by the directors on their own best interests those damage the shareholders, the gaps in the law about the corporate governance rules caused the amendment studies on the corporate governance clauses on the purpose to adopt it to the current conditions.27 The disclosure and transparency provisions that enacted in the Commercial Code and the Corporate Governance Principles of Turkey were weak with the lack of “information” about the corporations. The only information provided was in the interests of the partners, yet it is sufficient for all the shareholders, other stakeholders, even the public.28 In recent years, the number of Turkish big companies has been increased. Accordingly, after some of that big corporations globalized, they unfortunately had difficulties to adopt the international corporate governance principles.29 Adapting the national law with these international rules has become compulsory issue for the country in the path towards full membership of the European Union and for the development of the economy and the public itself.30 Therefore, the

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24 Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
25 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
26 Corporate Governance in Turkey: A Pilot Study, OECD, 2006
28 Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
29 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
disclosure and the transparency principle are arranged in the current binding Commercial Code with the amendments and information to the public had become a binding issue for the corporations. It is arranged mandatory for the financial conditions of the corporations to be represented in accurate and completely to the beneficiaries and to public as well by publishing the information on their websites.

Within this scope, the arrangement of the Corporate Governance transparency principle in the New Commercial Turkish Code will be the main subject of my thesis and will be discussed broadly. I will generally refer to the meaning of corporate governance and its history in the first part. The OECD Principles of Corporate Governance, as a benchmark for good corporate governance will constitute my second part. Hereby, the transparency, responsibility, disclosing and equality principles will be represented one by one in general. The scope of transparency principle will be indicated in narrower view at the third part. After informing about the transparency principle, I will put emphasis on Turkey about the amendments on its Commercial Code. The reason of the amendments and the deficiencies felt will be specified in the fourth part. After informing about the importance of transparency in the corporations and the changes in Turkish Capital Markets corporate governance, I will focus on the changes related to the transparency principle on the New Turkish Commercial Code. In the conclusion part, I will state my opinions about the Turkish legislation if it is compatible with the OECD corporate governance principles.

II. CORPORATE GOVERNANCE

a. Definition

Corporate Governance has gained an increasing importance as a concept of global financial markets since 1980s. The concept became an issue in the USA in the first instance and following that generated discussions in the UK. Afterwards, it had been one of the most significant topics in the corporate world in 1990s. The recent corporate scandals have created the highest interests in the countries, including Continental Europe and the Asians, and gave rise to the academic studies and the legal reforms all around the world. The reason of going out of the business of the biggest companies, for

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31 Corporate Governance in Turkey: A Pilot Study, OECD, 2006
33 OECD, Principles of Corporate Governance, Paris, 2004
34 Corporate Governance and the Global Financial Crisis, William Sun, Jim Stewart, David Pollard, 2011
35 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
example Enron, Worldcom, Parmalat, is determined that the managers did not act for the benefits of the shareholders but for themselves. The lack of a control mechanism for the shareholders and the other beneficiaries lead up for the managers to conduct for their own interests. As a consequence of those problems, the importance for the companies to carry the business with transparency, responsibility, equality and accountability increased dramatically. As the domestic investors take cognizance of the management models, at the same time the international investors started to examine the existence of the corporate governance practices as they analyze the financial performances while they are in search of the corporations and countries for their investments.

It is not possible to have a common description of the term ‘corporate governance’ recognized universally. The definition varies by the culture, development level, structure of the financial markets, financial and legal positions of the countries. That is why there is a wide range of corporate governance definitions. For instance, the UK describes the corporate governance as “the system by which the companies are directed and controlled”. The OECD Corporate Governance Principles define it; “the Corporate Governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate Governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.” In the Netherlands, it is defined as a code of conduct for the people who are associated with the companies, like the directors, board members and the investors. The conventional theories about the corporate governance define its basic topics as “structure” and “action”. Structure represents the rules, –like laws, regulations-, and institutions –like government agencies, corporations, and positions as well –like CEOs, other managers, and employees. The term

36 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
37 Corporate Governance and the Global Financial Crisis, William Sun, Jim Stewart, David Pollard, 2011
38 Donald J. Johnston, OECD Secretary General, The OECD Corporate Governance Principles, 2004
39 Analysis of Performance Standards For Direct Foreign Investors, Carl Davidson, Steven J. Matusz, Mordechai E. Kreinin, Michigan State University, 2006
40 Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
42 OECD Principles of Corporate Governance, Paris, 2004
43 Recommendation on Corporate Governance in the Netherlands, Forty Recommendations, Committee on Corporate Governance, 1997
44 The Emerging Reality of Corporate Governance: Theoretical Challenges and Alternative Thinking, William Sun, 2011
“action” illustrates the corporate actors and their activities\(^45\). With those terms it is easier to understand the corporate governance and its issues. Although it has numerous definitions, the principles of the corporate governance have a universal consent\(^46\). They are as mentioned above: the responsibility of the boards, the equal treatment to the shareholders, the accountability and the transparency of the companies. In accordance with those principles, the companies take the aim putting in an outstanding performance, enhancing the quality, increasing the value and becoming more competitive\(^47\).

b. History

Due to the immenseness of the subject, it is not possible to mention about an accurate history. Since the conflict of interests between the managers and the shareholders started, the corporate governance became an issue in the corporate world somehow\(^48\). However, it became popular subject during the last decades of 19th century in USA, Europe and Japan\(^49\). In the USA, the term primarily came on the official reform agenda of the Securities and Exchange Commission (SEC) about management accountability by 1976\(^50\). By the early 1990s, the research on corporate governance acquired a substantial international dimension. The scandals damaged the major American companies like Enron and Worldcom domestically and have discredited the corporate governance models of the states in the eye of the foreign investors\(^51\).

After the scandals which had a great influence all around the world, the UK’s Cadbury Commission under the presidency of Sir Adrian Cadbury developed principles of corporate governance, which provided the foundation for UK’s Combined Code\(^52\) as listing requirements for the companies which are listed in London Stock Exchange. Even though the principles are not binding, the companies need to clarify the reasons if they are complying with the rules or not, explicitly\(^53\). This led for all other

\(^{45}\) The Emerging Reality of Corporate Governance: Theoretical Challenges and Alternative Thinking, William Sun, 2011
\(^{46}\) Kurumsal Yönetimin Anlayışının Özel Merkezi Bankaların Yapısi ve İşleyişi Üzerine Etkileri, Cuneyt Kahraman, Doktora Tezi, 2008
\(^{47}\) The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries, Fianna Jesover and Grant Kirkpatrick, 2004
\(^{48}\) Kurumsal Yönetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
\(^{49}\) Kurumsal Yönetim Anlayışının Özel Merkezi Bankaların Yapısi ve İşleyişi Üzerine Etkileri, Cuneyt Kahraman, Doktora Tezi, 2008
\(^{50}\) Cultural Adaptation and Institutional Change: The Evolution of Vocabularies of Corporate Governance, W. Ocasio and J. Joseph, 2005
\(^{51}\) The History of Corporate Governance, ©Brian R. Cheffins, 2012
\(^{52}\) Aston Business School, http://www1.aston.ac.uk/aston-business-school/staff/academic/law/sir-adrian-cadbury/
\(^{53}\) Kurumsal Yönetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
adversely affected developed countries to have legislations to hinder fraud, which caused the biggest companies to go bankrupt\textsuperscript{54}. The growth of the international and national capital markets, and the desire of the investors to increase their profits influenced cutting all across the boundaries. In 1995, the second basic study on corporate governance, the Greenbury Report, centered in the financial rights of the directors and the conferment systems\textsuperscript{55}. The Combined Code of UK came into force in order to equilibrate the relation between the shareholders and the stakeholders. The revised version of the code focused on the accountability and the transparency of the companies.

Starting in 2001, United States of America had the most difficult age of its business history because of the corruptions in the companies. In the year 2002, the Sarbanes-Oxley Act was signed into law with the intent of enhancing corporate responsibility to improve the board of directors’ credibility and regulate the auditors for more transparent executive actions to the shareholders\textsuperscript{56}. That act brought very strict rules after the collapses appeared in USA, but still the problems that it refers to, are global. That is why the act had effects on the markets and national corporate governance rules all around the world. After that time, corporate governance became an important matter about the information. It is believed that if all the information about the companies and their structure and actions will be disclosed to the public, the issues of the corporate governance would be disappeared\textsuperscript{57}. Additionally, the persons who had the corporate power and no control in the companies are accepted as the reason of the corporate scandals, and the corporate governance principles are regarded as a solution to those problems with its basic functions; to equilibrate the power of management, controllers and stakeholders; to control and account the year-end reports by specialized, experienced and independent persons or companies in the light of the preset principles; to provide an information to the public, in a sense of transparency, about the company operations\textsuperscript{58}.

However, the global financial crisis in 2008 indicated the deficiencies on the current corporate governance rules, structures and principles\textsuperscript{59}. Investors want to be assured that their money is in safe

\textsuperscript{54} Kurumsal Yonetim Anlayisinin Özel Sermayeli Bankaların Yapısı ve İşleyişi Üzerine Etkileri, Cuneyt Kahraman, Doktora Tezi, 2008
\textsuperscript{55} Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
\textsuperscript{56} http://www.sox-online.com/basics.html
\textsuperscript{57} Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
\textsuperscript{58} Corporate Governance, Anonim Şirket Yönetiminde Yeni Model, Prof. Dr. Hasan Pulasli, 2003
\textsuperscript{59} The Corporate Governance Lessons From the Financial Crisis, Grant Kirkpatrick, 2009
hands and there is a control to protect them against the risks about losing that money. Besides, the quality of the implementations of the corporate governance rules became an important topic for both foreign and domestic investors. To provide that, good corporate governance became the lifeblood of the biggest companies of the world, by clarifying the business information to the public rather than hiding it. The existing significance of the institutional investors, who had the majority on the capital markets, triggered the works on the corporate governance to protect their own rights and interests. Separately, the companies, which carry their business in benefit of all public, reached the first place in comparison with the others that ignore the benefits of outsiders and public in general. Considering about only the shareholders had stayed as an old structure of the companies that succeeded its business after they started to be responsible to all the interest holders. Thus, the conscious companies gain an affirmative reputation and positive effects on the long-term performances.

As a summary, it can be said that the importance of the term corporate governance is influenced by the factors, which could be designated as; the financial crises, bankrupts regarding to the bad governance of the companies, the increasing role of the institutional investors and their demands, and competition environment came with the globalization finally.

c. International Studies on Corporate Governance

In recent years, the emergence of the globalization and the increase of international transactions created the need for the developed standardizations. Therefore, the international harmonization of the generally accepted standards came up as a significant activity in the financial markets. The companies all around the world do not rely only the domestic investors, but at the same time they are trying to attract foreign investors. That is why there is a need for standardization to bring into safety and trust for investors. Within this scope, numerous international associations started working in order to establish international collaborations in the field of corporate governance. As the countries have their own legal structures, rules, financial systems, the partnership structures of the companies, cultures and economical factors; the developing standards should be extremely flexible and should consider the international aspects.

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60 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
61 Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
62 Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
The international initiatives should be referred as follows:

1. **OECD**

   The Organization for Economic Co-operation and Economic Development, an international organization established to help governments to tackle the economic and social challenges in the globalized economy\(^\text{63}\), grouped workers in the purpose to develop recommendations regarding to the corporate governance principles. Representatives of 29 member states, and European Commission, World Bank, International Monetary Fund (IMF) and Bank for International Settlement (BIS) representatives formed the working group. Consequently, they constituted the first accepted international principles in 1999 and those principles were revised in 2004 in parallel with the global developments. Although the principles are not binding, they provide a framework that helps countries to develop their own legal and corporate approaches\(^\text{64}\).

2. **ICGN**

   International Corporate Governance Network was founded on 1995 as a non-profit body to develop corporate governance practices worldwide. Its objective is to create a competition area between the companies and make the global economies proper their best\(^\text{65}\). On the purpose to reach the best practice, the organization prepares guidelines. For instance, ICGN provides guidelines to the members to implement the OECD principles with the best way for their good governance through their publications and website. The members include institutional investors, business leaders and advisors, which have an interest on promoting the corporate governance in the best way\(^\text{66}\).

3. **CACG**

   The Commonwealth Association for Corporate Governance was established in 1998 to promote the perfection of the corporate governance\(^\text{67}\). The aim of the association with support of the other institutions is to promote the good practice of corporate governance and enable the development of corporations.

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\(^{63}\) [www.oecd.org](http://www.oecd.org), About the OECD.

\(^{64}\) The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries, Fianna Jesover and Grant Kirkpatrick, 2004

\(^{65}\) Statement on Global Corporate Governance Principles, Frankfurt Annual Conference, 1999

\(^{66}\) [https://www.icgn.org/about-icgn](https://www.icgn.org/about-icgn)

\(^{67}\) CACG Guidelines, Principles For Corporate Governance In the Commonwealth, 1999
4. GCGF

The Global Corporate Governance Forum has been dedicated to the emerging markets to improve the knowledge about the corporate governance in the Commonwealth member states. It teaches lessons to those markets from the markets of developed and developing countries. The Forum becomes partners with the institutions to create incentives to invest in the corporations and also, to emerge socially responsible, transparent transactions of the companies, in such states.

III. OECD CORPORATE GOVERNANCE PRINCIPLES

OECD has made a significant contribution of corporate governance development and implementation of it. As mentioned above, the countries all have the different corporate governance systems because that they have the distinctive conditions, which form basically the same corporate governance systems in different ways. The OECD ministers endorsed the principles of corporate governance in 1999, which became an international standard for the investors, companies and policy makers. For the member and non-member countries they had provided recommendations about the regulatory and lawmaking initiatives. In 2004, the principles were reviewed in regard to the development and experiences of the both member and non-member countries with the participation of key institutions from the private sector. The policy makers started to believe that good corporate governance carries the companies into the competitive markets, and they gain financial stability, economical growth and investors. That makes the corporate governance activities go beyond of financial activities of the companies in the eyes of domestic and foreign investors.

It is not possible to mention about a single good corporate governance model. However, the OECD working group created some common factors that can help to reach an ideal corporate governance framework. The Principles of the OECD are created in the light of those factors, to recommend the best to reach the best in a non-binding way. The aim of OECD is to help the law makers while they are developing their legal and regulatory frameworks and the principles will be the reference point to them to adapt in their own cultural, social and legal conditions. In a changing world, those principles would not always be stable and would need reviews on them in time. As they are not binding

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68 http://www.gcgf.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/global+corporate+governance+forum/about+us
69 OECD Principles of Corporate Governance, Foreword, 2004
70 The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries, Fianna Jesover and Grant Kirkpatrick, 2004
71 OECD Principles of Corporate Governance, 2004
rules, governments are free to adapt those rules. Also, they should take into account the costs and benefits of adapting.

The Principles are non-binding guidance for the countries and it supplies standards and good practices in a flexible way to be adapted to the special conditions of the regions, after exchanging the experiences of the member and non-member countries of OECD\textsuperscript{72}. The key players recognized the importance of corporate governance in improving the economical efficiencies, as well as enriching effect of corporate governance on investor trust. The good corporate governance focuses on the relationship of all the stakeholders in a company\textsuperscript{73} and it also structures the aim of the company and how to manage it. To reach a good result, the corporate governance of the company should provide incentives for the management and the board to act in the interest of themselves and at the same time for company and shareholders’ interest. Thus, the efficient monitoring should be eased\textsuperscript{74} and the investor confidence on the market economy should be facilitated, which would help to function properly. Institutional investors and the controlling shareholders have the power to affect the decision-making and the governance of the company. The principles of the OECD focuses on the problems on the governance and decision-making processes, and it can be easily said that these factors are important for a company to stay in a market with long-term success. These problems arise from the relationship between the minority and majority shareholders or because of the relationship of shareholder and management. Sometimes it arises from the problems between the other stakeholders. In that case, we can say that the principles are created to solve the problems, which are affected by the relationship among the participants in a governance system\textsuperscript{75}. The principles of OECD help the governments to improve their legal, institutional framework about the corporate governance of their countries. They are also helpful as a guideline to the actors, like investors, companies, who have a role in the development of good corporate governance\textsuperscript{76}.

Hereby, the OECD Corporate Governance Principles will be presented with annotations and comments in order to understand their purposes.

\textsuperscript{72} The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries, Fianna Jesover and Grant Kirkpatrick, 2004  
\textsuperscript{73} Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007  
\textsuperscript{74} OECD Principles of Corporate Governance, 2004  
\textsuperscript{75} OECD Principles of Corporate Governance, 2004  
\textsuperscript{76} OECD Principles of Corporate Governance, 2004
a. **Ensuring the Basis for an Effective Corporate Governance Framework**

The corporate governance framework of a country should promote efficient and transparent markets and at the same time it should be steady with the laws\(^\text{77}\). Transparency and efficiency are important keys in the purpose of disciplining the market players. In order to be ensured about the effective corporate governance framework, it should include the countries’ legislations, regulations, standards and self-regulations. Because that each country has its own rules and standards, the structures should be adjusted to each of them. For the growth of the company, the corporate governance form is a significant matter as the legal and regulatory environment is. The authorities that constitute the framework should be transparent and their rulings should be in a timely basis\(^\text{78}\).

b. **The Rights of Shareholders and Key Ownership Functions**

The OECD specified that the corporate governance framework of a country should protect the shareholders’ rights at the same time it facilitates the exercise of the rights. The basic rights of the shareholders are defined as to\(^\text{79}\):

- Protected methods of ownership registration
- Convey or transfer shares
- Obtain relevant and material information on the corporation on a timely and regular basis
- Participate and vote in general shareholder meetings
- Elect and remove members of the board
- Share in the profits of the corporation\(^\text{80}\)

The shareholders have a property rights as they have shares that can be sold or bought. That ownership provides information right and right to affect the decisions of the company for the shareowners. While the shareholders have the information about the corporation changes, like amendments on the articles of the association or similar documents, or decisions on the extraordinary transactions about the company asset, they should have the chance to participate to give decision and to be informed if they are not participated on decision-making\(^\text{81}\).

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\(^{77}\) OECD Principles of Corporate Governance, Ensuring the Basis for an Effective Corporate Governance Framework, 2004

\(^{78}\) OECD Principles of Corporate Governance, Ensuring the Basis for an Effective Corporate Governance Framework, 2004

\(^{79}\) OECD Principles of Corporate Governance, The Rights of Shareholders and Key Ownership Functions, 2004

\(^{80}\) OECD Principles of Corporate Governance, The Rights of Shareholders and Key Ownership Functions, 2004

\(^{81}\) OECD Principles of Corporate Governance, The Rights of Shareholders and Key Ownership Functions, 2004
According to the OECD working group, in order to reach a good corporate governance practice, the shareholders should have the right to attend the general meetings and vote in those meetings with the right to be informed about the date, location, and the agenda of the meetings. On the other hand, if they did not attend to the meetings, they should have the right to be informed about the decisions taken in the general meetings timely and completely. Like the nomination or electing the board members, the key corporate governance decisions should be given by the shareholders participation and their approval should be needed for employee or board compensation. So as to promote the shareholder attendance to the general meetings, some of the countries and their companies made easier rules for shareholders to file changes or submit questions about the general meetings or about the audit reports in advance. The transactions and capital structures of the shareholders should be disclosed in a transparent and efficient manner to obtain a corporate control. This means that the transactions of the company should be transparent and fair to protect all the shareholders for each of the classes. Institutional investors are also included in the concept of shareholders, so they have to disclose their transactions at the same time they use their rights like voting, participating to the meetings. Because that the institutional investors are commonly exist in the companies, they have to inform the shareholders about use of their shareholder rights. Institutional investors should disclose that information either to their clients and the market.

OECD has produced that practices in order to limit the agency costs in the companies. By doing that, the investor confidence would be promoted and as a conclusion the private investment capital flow would be supplied to the business world. If the shareholder protection would not be provided, it would result with the increased capital costs and low investment qualities in the economies of the countries. The promoted shareholder protection has a significant effect to attract both domestic and foreign investors.

c. The Equitable Treatment of Shareholders

Without the exception of foreign or minority shareholders, all the shareowners in the same series of a class should be treated equally and all of them should have the right to get compensation for the infringement of their rights. Each of the shareholders in the same kind of classes should carry the same rights. The investors have a confidence on the company that they have invested for their capital to

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82 Donald J. Johnston, OECD Secretary General, The OECD Corporate Governance Principles, 2004
83 OECD Principles of Corporate Governance, The Equitable Treatment of Shareholders, 2004
be protected from the abuses by the managers, controlling shareholders or the board members who could have an advantage to use those rights on their own interests\textsuperscript{84}. They have to be informed about all their rights and the changes on their rights and also the minorities should be protected from the abusive\textsuperscript{85} actions of the controlling shareholders. The investors should use their enforcement rights by legal and governmental proceedings against the managers and board members. According to OECD, the general meetings of the shareholders should have a process, which allows the equal treatment for all of the shareholders and the procedures should not make it expensive for the owners to cast the votes. The controlling shareholders and managers have the sought to discourage the minorities and foreign investors to participate in the decision-making, that is why they keep the voting expensive\textsuperscript{86}.

To get the best corporate governance practice, it is indicated that the insider trading and the self-dealings those cause the abuse should be prohibited and as a rule, the board members and the executives should disclose the transactions to the board in case they affect the corporation materially. Otherwise, it would result with an abuse by the persons who are closer to the company.

d. The Role of Stakeholders in Corporate Governance

The corporations in an attempt to reach the best practices of the corporate governance should respect to the rights of the stakeholders that are established by laws or mutual agreements\textsuperscript{87}. If those interests are violated, the stakeholders might have the opportunity to claim compensation from the violators according to their rights protected through the rules. At the same time, their rights to reach the relevant information should be established in the fact that they have the right to participate in the corporate governance process of the company. In the long-term interests of the companies, having a cooperation among the stakeholders has a significant role to create a wealth in the company. In order to get an effective practice, all stakeholders, including the employees should feel free to complain or state their concerns to the board about all the practices of the company and their rights. Those rights should not be taken away from them. Additionally, efficient insolvency outline and creditor enforcement should be complemented with the corporate governance framework. Because that the creditors are key

\textsuperscript{84} OECD Principles of Corporate Governance, The Equitable Treatment of Shareholders, 2004
\textsuperscript{85} OECD Principles of Corporate Governance, The Equitable Treatment of Shareholders, 2004
\textsuperscript{86} OECD Principles of Corporate Governance, The Equitable Treatment of Shareholders, 2004
\textsuperscript{87} OECD Principles of Corporate Governance, The Role Of Stakeholders in Corporate Governance, 2004
stakeholders, the credit extend to the companies would depend on the rights and enforcements entitled to the creditors\(^88\).

e. Disclosure and Transparency

The corporate governance framework according to OECD should ensure that the material matters relating to the company, like the financial situations, performances, governance and the ownership should be disclosed accurately and timely\(^89\). Most of the countries have the disclosing system in a mandatory basis, while the others have it voluntarily. The disclosing is mostly available in annual basis, though in some other countries companies have to disclose the material information in semi-annual or quarterly basis. Sometimes it is required for the companies to disclose the information in every materially significant event that would affect the company in a material way. The principles of OECD is also recommends the material information disclosing in a timely basis. By having a trustful disclosure system, OECD promotes the confidence on the markets and attracts the investors. The matters should include, but not limited to the material information on\(^90\); the business and the financial results, the purposes of the company, major shareholders, voting rights of the shareholders, related party transactions, risk factors, employee and other stakeholders issues, remuneration policy of the board members and the governance structures and policies. That information should be prepared and disclosed with the high quality financial and disclosure standards. The companies are generally using the financial situation as a source. In order to clarify the financial situation and provide objective information to the board and the shareholders, the independent and qualified auditors should conduct an annual audit. For an objective assurance the auditors should be external and they have to be responsible and accountable to the shareholders of the company. OECD recommends that the channels to reach the relevant information access should be timely and low-priced.

f. The Responsibilities Of The Board

The board members are responsible for their acts to the company and the shareholders. That is why they have to act in good faith and in the best interests of the company and the shareholders. It is possible that the decisions of the board should affect the different type of shareholders in different ways. For that reason, the board should act in a fair way for all types of the shareholders. At the same

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\(^{88}\) OECD Principles of Corporate Governance, The Role Of Stakeholders in Corporate Governance, 2004

\(^{89}\) OECD Principles of Corporate Governance, Disclosure and Transparency, 2004

\(^{90}\) OECD Principles of Corporate Governance, Disclosure and Transparency, 2004
time the board should take notice of all other stakeholders’ interests. We can enumerate the key functions of the board as follows;

- Conducting the corporate strategy, business plans, risk policy, annual fiscal
- Monitoring the corporate governance practices of the company and the key executives
- In the light of taking advantage for long term period supporting board remuneration
- Hedging a transparent board nomination and election procedure
- Taking precautions of potential conflicts of interests between the managers, shareholders and the board members
- Enhancing the systems about finance and accounting
- Controlling the disclosure process

According to the OECD, it would be the best practice if the company has independent board members in the room and the board committee works should be disclosed as the disclosing of the board practices. To fulfill those responsibilities board members should also have to be informed and have access to information about the relevant information timely and accurately.

IV. ROLE OF TRANSPARENCY IN CORPORATE GOVERNANCE PRACTICES

As mentioned before, beyond the legal and corporate structures, the principles of corporate governance established as a result of the efforts made to specify the rules and principles in the management and government of corporations. One of the corporate governance principles, transparency, is determined by the availability of the firm specific information. Hence, the corporations will be affected in the domestic economy area according to their information availability in the markets. It is possible for the countries to have strong capital market by having the legal and corporate structure which informs the minority shareholders sufficiently about the transactions related to the company and guarantees the minorities that the majorities and managers of the company would not take action against them or their investments. So, it can be said that the basic aim is to protect the investor rights by increasing the reliable and accountable information of the companies.

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91 OECD Principles of Corporate Governance, The Responsibilities of the Board, 2004
After the financial crisis which started in Asia, some working groups started to examine how to reach a financial stabilization and therefore, they worked on three areas; improving transparency and accountability, domestic economical strengthening, and financial crises management\(^95\). To focus on each issue separately, distinct working groups were formed. The Working Group on Transparency and Accountability suggested the improvements on the transparency and accountability in order to reach developed economic performance\(^96\). Accordingly, they define the transparency as a procedure that makes the information about the conditions, decisions and the actions of the companies available and clear. In the event, the companies provide imperfect or misleading information about their financial statements or any other information about their practices, the rights of the shareholders, who relied on that information, will be harmed. In this point, to prevent that damage, transparency principle is arranged in order to meet the middle point of the information right of the interest groups and privacy right of the companies\(^97\). According to Borgia, all the persons related to the company and have an interest on it, have the right to be informed about the management, operations and strategies of the corporation. On the contrary, he indicates the privacy right of the company as the holding the right to collect, use or make public all the information are connected to the company.

The corporate transparency allows others to be conscious of the truth about the enterprises. In order to reach a transparent market, disclosure is indicated the core element to achieve that goal. Disclosure system of the companies shall be active or passive\(^98\). Active disclosure states the information certified voluntarily, in order to be published and the passive disclosure refers to the information provided at the request of the interest owners\(^99\). At the same time disclosure also can be specified unilateral or bilateral, according if the information is classified as a reply to shareholder reactions or not.

As it is seen, the importance of information is emphasized when describing the transparency and disclosure. Transparency, as a principle of corporate governance, is determined by the accuracy and accessibility of the information provided to the public. As the information disclosed voluntarily is considered as publication, the other provided data given apart from the mandatory rules; given through

\[^{96}\text{Report of the Working Group On Transparency and Accountability, October 1998}\]
\[^{97}\text{Corporate Governance and Transparency Role of Disclosure: How Prevent New Financial Scandals and Crimes?, Fiammetta Borgia, 2005}\]
\[^{98}\text{Kurumsal Seffaflik ve Muhasebe Standartlari, Aylin Arsoy, 2008}\]
\[^{99}\text{Kurumsal Seffaflik ve Muhasebe Standartlari, Aylin Poroy Arsoy, 2008}\]
media, reports or via Internet are also considered in the scope of publication\textsuperscript{100}. The accuracy of the information is related to the presentation of the company’s condition with comprehensive and relevant data trustworthy. The related data should be consisted of full information about the company ownership structure, performance and management. The shareholders, who need the company information, should access that information precisely with the requirements for accurate information. Additionally, the provided information should be understandable for an average interest owner with its form and substance, as well as its importance. Therefore, the information should be accessible and expressed clearly\textsuperscript{101}.

Basically, the mandatory disclosure is established in order to organize the corporation system and to prevent the asymmetric information problem\textsuperscript{102}. Thus, the provider should supply the information with adequate quality to obtain the goal of disclosure system. It should not be forgotten that the information would cause differences in the actions of the informed people\textsuperscript{103}. They would act in accordance with the information and the companies would change their actions according to the acts of the informed people. For that reason, the officers of the companies should give their decisions if enhancing the transparency would improve the economic benefits or not and if the answer is yes, they should decide about which information, how and by whom to provide the information\textsuperscript{104}. Being transparent also has a moral dimension. In the principle-agent relation, the principles have the right to know about performs of the agents. Substantially, that right does not only belong to the principles but to all the beneficiaries related to the company including the potential investors. The reason of the asymmetric information problem is the more knowledge on the information of the directors about the operations and financial condition than the present and potential investors\textsuperscript{105}.

With the lack of transparency, it would not be possible for the investors to give decisions on reliable information and this would keep them away to contribute capital to those companies. Thus, the result would be negative for all the stakeholders\textsuperscript{106}. Also, the asymmetric information causes the

\textsuperscript{100} Rebuilding Stakeholder Trust in Business: An Examination of Principle-Centered Leadership and Organizational Transparency in Corporate Governance, Mark R. Bandsuch, Larry E. Pate, Jeff Thies, 2008
\textsuperscript{101} Rebuilding Stakeholder Trust in Business: An Examination of Principle-Centered Leadership and Organizational Transparency in Corporate Governance, Mark R. Bandsuch, Larry E. Pate, Jeff Thies, 2008
\textsuperscript{102} Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
\textsuperscript{103} The Benefits and Costs of Transparency: A Model of Disclosure Based Regulation, D. Weil, 2002
\textsuperscript{104} The Benefits and Costs of Transparency: A Model of Disclosure Based Regulation, D. Weil, 2002
\textsuperscript{105} Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
adverse selection and the moral hazard problems\textsuperscript{107}. That makes the jurisdictions constitute mandatory rules about the disclosing and improving standards about the financial reporting. The presentation of reliable, accurate information allows the investors and all shareholders to control and monitor the companies. By doing so, it would discipline the company management and enhance the corporate governance\textsuperscript{108}. In an attempt to discipline companies, the emphasis should not be laid on the financial information solitarily. At the same time, the main purposes, practices and implementations should be provided in the light of that information\textsuperscript{109}, too.

However, the existence of transparency would not lead to an immediate success, but the lack of transparency definitely would result with a failure for the companies\textsuperscript{110}. That is why the transparency is now a requirement for all the market systems for good corporate governance. According to Borgia, for completely successful transparent practices in the companies, four basics are required:

- Openness should be a cultural dedication for the company and the key executives should be depended on the transparency.
- Companies should have programs and processes, which provide and support openness by means of rewarding transparency and penalizing opacity and fraud.
- Qualified employee, managers and directors should be working in the company with wisdom, confidence to say the truth and for the best implementation of practices of the company.
- The company should be in an active communication with the important shareholders for all the time.

The board of directors of the company is responsible for ensuring transparency about their companies. For good corporate governance practices, they have to ensure and also reward transparency\textsuperscript{111}.

\textsuperscript{107} What Determines Corporate Transparency?, Robert M. Bushman, Joseph D. Piotroski, Abbie J. Smith, 2003
\textsuperscript{108} What Determines Corporate Transparency?, Robert M. Bushman, Joseph D. Piotroski, Abbie J. Smith, 2003
\textsuperscript{109} The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries, Fianna Jesover and Grant Kirkpatrick, 2004
\textsuperscript{110} Corporate Governance & Transparency Role of Disclosure: How Prevent New Financial Scandals and Crimes?, Fiammetta Borgia, 2005
\textsuperscript{111} Corporate Governance & Transparency Role of Disclosure: How Prevent New Financial Scandals and Crimes?, Fiammetta Borgia, 2005
With regards to development of the capital markets, the importance of transparency can be signified as follows:\(^\text{112}\):

- Transparency is a strong instrument to protect the investors. It helps to improve the confidence on the markets.
- Weak transparency induces unethical actions in capital markets and causes corruption of the market integrity. As a consequence of that, right along side with corporations the whole economy would be damaged.
- Insufficient and unclear information would damage the implementation of the capital markets and therefore increase the capital cost. However, transparency lowers the capital cost by reducing the asymmetric information.
- Reliable and timely information would improve the confidence of decision makers within the company and enable them to take successful decisions those promote the direct growth and profitability of the company.
- As well as the information given affects the share prices directly; it affects the initiatives of the shareholders.
- The more quality and quantity of the information would remove the uncertainties about the value of the company.
- With a developed transparency culture, the company would have the chance to make more affect on the long-term investors and would improve the accountability and credit worthiness of the management.

Right along with the advantages of the transparency, it should be noted that it also has some negative sides as well. The most important disadvantage of the transparency principle is its affect on the competitive environment\(^\text{113}\). Increasing transparency would cause losing competitive advantage of the companies, because of providing important information to the rivals. Good information, which is related to the power and stability of the company, would result with a strong appearance of the corporations in the market. However, the company management would think that, the good information about the

\(^{113}\) Outside Finance, Dominant Investors and Strategic Transparency, Enrico C. Perotti, Ernst-Ludwig von Thadden, 2000
current market should not be given to the public in order to prevent the rivals to break into the market\textsuperscript{114}. It can be said that the reaction of the share prices after the statements of bad information is stronger when compared to the good information\textsuperscript{115}. Therefore, it would be better for the managers when explaining the predictions about the company; the managers should give general opinions but not certain ones. Addition to this, the opponents of transparency are also alleging that more transparency is negatively affects the privacy and the confidentiality of the corporations in the markets\textsuperscript{116}.

For the publicly held firms, the regulators require the information given to the shareholders, creditors and other stakeholders by the companies. Various studies and authority works concentrate on the enforcement on providing fraudulent information. The authorities, like accounting firms, government authorities, are trying to guarantee about the information quality and reliability. The studies show that, more transparent companies with reducing the uncertain data perform better compared to others\textsuperscript{117}. The expectations of the investors are also getting higher when the companies disclose less information to their stakeholders\textsuperscript{118}.

\textbf{a. Turkey And Transparency Principle}

The corporate governance principles are regulated in Turkey with the Capital Market Board’s corporate governance principles and Turkish Commercial Code. Turkey’s capital market law subjected to regulate and control secure, transparent and stable functioning of the capital market. Additionally, its aim is to protect the investor rights and benefits with the investment savings to ensure efficient and widespread public participation in the improvement of the economy\textsuperscript{119}. As it is constituted, transparency is a key issue of the Turkish securities market regulators. Because of the majority of the concentrated ownership structures in the companies, the transparency was weak and it caused the lack of successful disclosure tradition in the capital market of Turkey\textsuperscript{120}. The weakness brought the chance for major shareholders and also for managers to avoid the disclosure and give misleading information to the

\begin{thebibliography}{99}
\bibitem{114} Outside Finance, Dominant Investors and Strategic Transparency, Enrico C. Perotti, Ernst-Ludwig von Thadden, 2000
\bibitem{115} Why Firms Voluntarily Disclose Bad News, Douglas J. Skinner, 1994
\bibitem{116} What Determines Corporate Transparency?, Robert M. Bushman, Joseph D. Piotroski, Abbie J. Smith, 2003
\bibitem{117} What Determines Corporate Transparency?, Robert M. Bushman, Joseph D. Piotroski, Abbie J. Smith, 2003
\bibitem{118} The Relationship Between Corporate Transparency and Company Performance in the Istanbul Stock Exchange, Mustafa Ozbay, 2009
\bibitem{119} Turkish Capital Market Law No. 2499, Article 1
\end{thebibliography}
In 2003, the Capital Markets Board declared the Turkish corporate governance principles with “comply or explain” basis for the listed companies. Additionally, the Turkish Commercial Code has amendments on its provisions to gain more effective transparency system, by ensuring high quality standards to the investors. For instance, the introduction of International Financial Reporting Standards, which became mandatory issue for Turkey, the higher audit standards brought into the country for more transparent companies. Also, the Internet usage is extended in every area of the commercial life and thus, the website obligation and online meetings will give the state chance to act in accordance with the technological developments in the corporate life.

The family-owned groups of businesses have the major role in the markets of the state, which causes the cross-ownership across the companies. That results with the abuse of the controlling shareholders against the rights of the minority shareholders or against the whole company.

b. Turkish Commercial Code And Transparency Principle

The Commercial Code of Turkey (The Code), which was entered into force on 1957, has been amended several times and after more than 50 years in order to make it up-to-date, Turkish Ministry of Justice formed a new code. Unfortunately, the Code could not satisfy the needs of the present time and as a consequence of those needs the new Commercial Code (The New Code) has been constituted. After a long waiting period, the Grand National Assembly of Turkey acknowledged the draft code as a law. The main objectives of the changes are adapting the code to the technological developments, introducing the internationally accepted auditing and reporting standards, improving the transparency of the corporations in accordance with the developments and changes are taken place in the political, social, economic and financial world. With the contribution of the background information and technological developments, the movement of capital gained an international qualification.

The Commercial Law of Turkey is one of the adjustment laws to European Union, as indicated in the negotiation process. Consequently, the amendments on the Commercial Code should be compatible

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123 A Blueprint for Future: Draft Turkish Commercial Code, PricewaterhouseCoopers Turkey, 2011
with the standards of EU\textsuperscript{124}. Turkey, as a candidate for European Union membership, firstly aims to attract foreign investors from the EU Member States to invest in the emerging market of Turkey. In this purpose, specially, the amendments and new structures were needed in the area of corporate governance. The massive corporate scandals of world’s biggest companies prompted the Turkish legislators to form more strict rules about corporate governance and auditing\textsuperscript{125}. In a broader view, the provisions added to the new code in order to adapt to the international corporate governance standards, hence more democratic shareholding structure is introduced. The access to the financial information facilitated and the independent auditors become a mandatory issue for the companies. It is projected by the authorities that the new code will put Turkey in a process of commercial changes after it enters into force\textsuperscript{126}. The New Code is constituted by six chapters; Commercial Business, Trading Companies, Commercial Documents, Transport Operations, Maritime Trade and Insurance Law. Hereby, the amendments on the Commercial Business and Trading Companies chapters will be discussed.

As mentioned above, the dominant concept in the New Code is the Corporate Governance and the purpose is to make it applicable to all enterprises in an attempt to attract the investors and create a confidence on them, at the same time ensuring a sustainable developed corporate life for whole country. The New Code brings a new face to the Turkish Commercial life with its provisions. According to the New Code, the interest rate of the commercial transactions will be determined independently and the interest of the commercial debts will be accrued beginning from the expiration date\textsuperscript{127}. Demergers of the corporations has mentioned in the New Code for the first time. Substantial changed articles are indicated below;

- **Website Requirement**

  The New Code imposes obligation to each companies to create a website\textsuperscript{128}. The address of the website should be denoted in the registration process. All the information regarding to the company, its documents, reports, tables, general assembly meetings invitations, financial statements, evaluation reports are required to be published on the website. In case of providing misinformation on the website, the companies will be confronted with the criminal and legal liability penalties.


\textsuperscript{125} Changes introduced by the new Turkish Commercial Code, Kerim Turkmen, Asli Basgoz, Meltem Akol, 2011

\textsuperscript{126} A Blueprint for Future: Draft Turkish Commercial Code, Five Minutes, PricewaterhouseCoopers Turkey, 2011

\textsuperscript{127} www.ticarethukuku.org

\textsuperscript{128} Turkish Commercial Code, Article 39/2
It became possible to have the general assembly meetings, board of directors meetings and the shareholders meetings online and to take the decisions under the electronic signs or latter appended signatures. Thus, the transparency of the companies will be improved and public shareholders would have the chance to attend the general assembly meetings\textsuperscript{129}.

In the event of the mergers of the companies, article 149 constitutes that the companies, which are subject to the merger transaction, are obliged to submit the mergers agreement, merger and audit report, annual activity reports, when required the balance sheets to an examination of all shareholders and beneficiaries within the 30 days before the general assembly meeting decision. Those documents should also be published on the company websites. In the demerger cases of the companies, the creditors will be invited through the websites and also with the Turkish Trade Registry Gazette in order to state their claims about the debts of the company.

With regard to the dissolution of the companies; the court decisions, registrations and the publication on the gazette should be issued via the website, too. If a legal entity had been chosen as a board member, this situation should be registered and at the same time, should be published through the website of the company\textsuperscript{130}. Similarly, the selection of the auditors should be published on the website.

The invitations of the general assembly meetings, as drawn up in the articles of association, should be convoked by an announcement published on the website and the Turkish Trade Registry Gazette. The minutes of general meeting of the board of directors, the respite of meetings, the changes on the articles of association, the annulment decisions, reduction of capital decisions are also have to be published on the website of the companies.

- Audit System

The New Code adopts an international approach on the audit systems of the companies and makes mandatory the adaption of Turkish Accounting Standards, which is almost completely translated

\textsuperscript{129} Yeni Turk Ticaret Kanununda Islem Denetcisi ve Uygulamasi, Tolga Erdogan, 2009
\textsuperscript{130} New Turkish Commercial Code, Article 359/2
from The International Financial Reporting Standards (IFRS)\textsuperscript{131}, in order to be accepted in the international markets. In today’s world, most of the countries like Australia, Canada, Russia, member states of the European Union and South Africa have adapted their rules and laws to IFRS. USA is also working on removing the differences between its financial reporting standards with General Accepted Accounting Principles\textsuperscript{132}. According to the old Code, an internal audit committee was required for companies. However, in time experiences showed that the committee started to lose its independence and that resulted in the New Code to consider the audit committees no longer as a corporate organ\textsuperscript{133}. The law constitutes that the big sized enterprises will be inspected by independent and objective audit companies and the medium and small sized enterprises will be inspected by at least two certificated public accountants. Hence, it became now compulsory for all types of corporations to enter into an agreement with an audit company. Additionally, the independent auditors are prevented by the New Code to provide consultancy services.

The independent audit companies are obliged to certify a report with exact information. In case of failing that obligation, they will be confronted by criminal, legal liabilities\textsuperscript{134}. These companies should not be the person, who also provides a service to prepare the book entries and the financial statements\textsuperscript{135}.

- **Loans in Joint Stock Companies**
  
  The shareholders would not get into debt to the company, except their debts about the subscription of the share capitals\textsuperscript{136}. Thus, the lame and bad practices in the commercial life will be precluded and the assets of the company will not be opened to the shareholders for their own expenditures. Due to their shares, the shareholders cannot be precluded to exercise their rights. Those rights cannot be eliminated through the general assembly or articles of association provisions or any authority like board members\textsuperscript{137}. Participants, who prepared the documents about establishment of the

\textsuperscript{131} Changes Introduced by the New Turkish Commercial Code, Kerim Turkmen, Asli Basgoz, Meltem Akol, White&Case, 2011
\textsuperscript{132} Draft Turkish Commercial Code, A Blueprint for the Future, PricewaterhouseCoopers Turkey, 2011
\textsuperscript{133} Turkey is Looking Forward To Welcoming the New Commercial Code, Sebnem Isik, Begum Yavuzdogan, 2008
\textsuperscript{134} Yeni Turk Ticaret Kanununda İslam Denetçisi ve Uygulamasi, Tolga Erdogan, 2009
\textsuperscript{135} New Turkish Commercial Code, Article 400
\textsuperscript{136} New Turkish Commercial Code, Article 358
corporation, capital raising, security issuing in unlawful, incorrect and dishonest way, will be responsible legally and criminally.\(^{138}\)

- **Regulations Against the Securities Fraud**

  In an attempt to collect money from public with the purpose of a corporation establishment or capital raising permission of the Capital Market Board is arranged as an obligation. The persons, who act contrary to that provision, and the board members, who were cognizant of that act, will be responsible conjointly for the value collected. After the Capital Market Board’s permission, it will be prosecuted if the collection purpose fit with the promised purpose. The reason of that legal arrangement is to prevent persons collecting money in abroad without the permission and to restrain the public infidelity in this way.

- **Companies with Single Shareholder**

  By means of adapting Turkish Law to the European Community Directive, this innovation has been introduced to the Turkish commercial life;

  It is now possible for the companies, which had multiple shareholders, to lessen the number to single shareholder. That company should maintain its business and carry out the same legal personality.\(^{139}\) However, it is also possible to establish a limited liability company by a single person as long as it is registered at the registry and announced within 7 days. This announcement requirement is necessary for the transparency principle and in acting contrary to that both the board of directors and the single shareholder shall be held responsible.

  The limited liability companies should be incorporated with any kind of subjects and any kind of purposes, which are not against the law. The significant matters to incorporate a limited liability company will be arranged in the articles of association and the founders should insert any provision into that document as long as it is not against the law. The partners are supposed to protect the company secrets. This provision cannot be abolished through the articles of association or general assembly

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\(^{138}\) www.ticarethukuku.org

\(^{139}\) Draft Turkish Commercial Code, , A Blueprint for the Future, PricewaterhouseCoopers Turkey, 2011
resolution. Accordingly, the acts against the company interests and company objective are precluded for partners\textsuperscript{140}.

- **The Moment of the Establishment**

  Signing moment of the articles of association in front of the public notary will be accepted as the establishment moment of the company. When the company will be registered to the Turkish Trade Registry that will be the moment of attaining the legal personality.

- **Changes About the Joint Stock Companies**

  According to the New Code, it is now possible to incorporate a joint stock company with one shareholder. For the establishment of a joint stock company, the minimum registration amount is regulated 100,000 TRY. Now, it is possible to register with the Intellectual Property Rights as capital, like trademarks and patent with the virtual media such as emblems\textsuperscript{141}.

  For establishing a board for the joint stock companies the previous code required at least three persons unlike now the New Code only requires one or more real or legal persons. The major amendment on this provision is the requirement on the board of directors to have at least one Turkish citizen of the members. Additionally, at least 25% of the members should be university graduate unless there is more than one person as a member in the boardroom.

- **Re-domiciliation of the Companies**

  It is now possible domicile a Turkish company, which was established in Turkey, to another country without liquidation or re-incorporation\textsuperscript{142}. However, to be able to do that the companies should fulfill the requirements to deregister from the trade registry, such as full creditor satisfaction.

c. **New Commercial Code And Transparency Principle**

  The old version of the Turkish Commercial Code embodied the transparency of the companies through entering into the register of issues related to the companies. Those issues were also subject to the announcement on the Turkish Registry Gazette in order to be published. Thus, the beneficiaries of the companies had the chance to reach the information about the structures of the companies that they

\textsuperscript{140} www.ticarethukuku.org
\textsuperscript{141} Investment In Turkey, KPMG, March 2012
\textsuperscript{142} Investment In Turkey, KPMG, March 2012
were related with. Obligations of the companies were limited about publications and registrations, which prevented the shareholders to be informed effectively. Besides, the books of the companies were the proofs of the financial situations of the companies, which are not arranged in the New Code. Also there was lack of provisions, which should constitute the standards about the accounting, auditing, disclosing of the financial statements. For the purpose of overcome the deficiencies the modifications on the Commercial Code made and the New Code became a new law, which will be entered into force in July 2012.

The aim of the changes on the capital raising and incorporations is to bring transparency and good corporate governance into the companies. After years of fraudulence and financial loss in Turkey, now it is believed that these problems will be prevented from the country by the amendments on the related parts. The first step to form a business structure, receiving the financial audit reports and process audit reports, is a major step to reach the aim, the transparency. As an innovation, it is now possible to incorporate a company online. All companies are obliged to launch a website and all the documents and the information will be published via Internet to the interest owners. All the books will be kept in an electronic environment and the financial statements will be updated periodically to serve the information society. That information is not only for the interests of the partners or the employees but also the creditors and other stakeholders. The corporate management is obliged to update the website, otherwise they will be sentenced to prison for six months.

The substance of the New Code is to adapt the country to the international corporate governance systems. Thus, the Turkish companies will be capable to compete with their transnational rivals. In order to cease the conflict of the interests, there are some rules restricting the majorities to prevent them abusing their conditions and using their conditions to act against the law. For instance, it is now not possible for the shareholders to use the corporate earnings whenever they want for their personal expenditures. The majority in the company, who has 90 percent or more, should buy out the shares of minority shares in case they act against the law. The other way around, the minority shareholders will have the right to ask for full transparency and change of auditors alleging that they act biased. Every interest holder will have the right to have an inspection for transactions like mergers and they can delegate outsiders to assess the data on legal and financial works. The persons, legal or real,

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144 Turkey’s New Commercial Code to Have Broad Impact on M&A, Caleb Lauer, March 5, 2012
have the right to file a claim against the infringers in case they suffer from the infringement. If the companies will continue their businesses contrary to the transparency principle, the managers will be sentenced to prison for three months.

The international standardization of the financial reports standards is arranged, as a mandatory implementation and an independent auditor for big sized companies and two certified public accountants will be inducted mandatorily for all other types of the companies. Within the scope of audit in line with the international standards, all the financial statements will be compared with the annual activity reports, which include the financial reports. Also, the existence of the prudential dangers and the necessary precautions those have to be taken will be inspected by the independent auditor. As an advantage, independent auditors would also diminish the actions like bribes and cash incomes without the invoices.

The law about the mergers, conversions and the divisions has been arranged in accordance with the European Union law and it is believed that regulations will benefit the investors.

The trade secrets are arranged as a significant matter in whole book of the law. However, in another book of the code, in order to act for transparency, attention is not paid on trade secrets. It is not obvious to understand the matters, which fall into the category of trade secret. Therefore, it is easily seen that the transparency principle came up broadly, which raises an issue if it violates the confidentiality right of the companies, or not.

As an example from a daily life, on the invoices of the companies will include name and addresses of all the board members. Thus, they will be responsible against any conflict with the customer. On such an occasion, the board members will be more careful about the business and this situation will influence the company and its customers in a positive way to enter upon more quality commercial life. Any spuriousness on the invoice would result with entering into a lawsuit by the sufferers.

145 Turkey’s New Commercial Code to Have Broad Impact on M&A, Caleb Lauer, March 5, 2012
146 Turkey’s New Commercial Code to Have Broad Impact on M&A, Caleb Lauer, March 5, 2012
According to the New Turkish Commercial Code Commission President, Prof. Dr. Unal Tekinalp, the provision arrangements on the code will bring the good transparency to the Turkish companies and the citizens will know the difference about the rich and poor people. Previously, it was not possible to understand the company or shareholder incomes or expenses, which is now will be available to public. Also, it will be possible to see the payable taxes for each of the companies and by this way evasion of tax will be diminished. In his view, transparent life of the companies would impact the Turkish citizens positively, by protecting them against any corporate fraudulent acts. On the other hand, the companies are demanding on the changes of those provisions like the launching a website and publish each documents or implementing the international financial standards. The small and medium sized companies also do not support the changes, because of the high expenses to be capable with the new code. In addition to that the partners are also object to removal of the partners’ current account, which helped them to borrow money from the companies’ assets. Previously, the shareholders had the chance to draw money from the assets, as it is their own assets to use it for their own personal expenses, which caused bad and faulty practice in the commercial area.

V. OECD TRANSPARENCY PRINCIPLE AND TURKISH COMMERCIAL CODE

OECD Corporate Governance Principles aimed to create a corporate governance framework to ensure efficiency and transparent markets. In Turkey, the new Commercial Code improves the transparency with new arrangements like international financial reporting, company disclosures through Internet. The information is sufficient for the investors to be aware of management and their practices.

The new Turkish Commercial Code has provided significant opportunities to Turkish companies to develop their corporate governance practices with the transparency principle. Adapting the financial standards with accepted international standards, disclosing obligations, International Financial Reporting Standards, obligation of launching company websites, affiliation of the mandatory independent audit, strengthening the rights of the minorities, risk management, extending the right to

149 Turkey’s New Commercial Code to Have Broad Impact on M&A, Caleb Lauer, March 5, 2012
demand information are the key amendments are the changes to come up with more transparent practices in the corporation area of Turkey\textsuperscript{150}.

In this part, I will assess the compatibility of the new amended articles of the Turkish Commercial Code for the purpose of improving transparency with the OECD Transparency and Disclosure Principle. As mentioned before, the OECD Disclosure and Transparency principle guides for accurate and timely material information about the companies and their financial situations, performs, ownership and governance structures\textsuperscript{151}. The core elements of OECD disclosure and transparency principle are\textsuperscript{152}:

- The disclosed information disclosed should be material.
- The information disclosed should be prepared and published compatible with the qualified financial and accounting standards.
- The information disclosed should be audited annually and the external auditor should be independent and qualified to ensure objective reports related to the financial situation and performance of the company.
- The shareholders should be able to account the external auditors while the auditors owe fiduciary duties about their audit exercises to shareholders.
- The information disclosed should be assessable to the beneficiaries equally, timely and low costly.
- The information disclosed should be supplemented with professional advice or analysis, by for instance analysts, brokers, etc.

While assessing, the structure will be as follows:

- Fully Compatible: That indicates the provisions amended in the Turkish commercial code in accordance with transparency provide all the significant matters of the OECD principle and can be assessed like they are almost like the transposition of the OECD Transparency and Disclosure principle.

\textsuperscript{150} Yeni Turk Ticaret Kanunu Isiginda Kurumsal Yonetim Uygulamalari, Corporate Governance Association of Turkey, Journal 2008/4

\textsuperscript{151} Corporate Governance in Turkey: A Pilot Study, OECD, 2006

\textsuperscript{152} Corporate Governance in Turkey: A Pilot Study, OECD, 2006
Partly-compatible: That indicates the new articles of the Turkish Commercial Code, which will bring transparency to the market, provide some of the significant matters, however one or more matters are missing to be compatible with the OECD Transparency and Disclosure principle.

Non-compatible: That indicates the majority of the above-mentioned core elements of the OECD Transparency and Disclosure principle are missing in the new Commercial Code transparency principles.

Firstly, it should be noted that the OECD transparency and disclosure principle provides for a disclosure about the material information of the companies. That material information refers to the financial activities and the financial reports, commercial purposes relating to the business, board members, the ownership structures and their voting rights, related party transactions, foreseeable risks, governance structures and the issues related to the employees and the other stakeholders, which could influence the financial decisions of information users. Financial harmonization rule and creating a website necessity has also been made mandatory for the non-public corporations with a noted rationale behind that change is an objective, fair, transparent, accountable corporate management; reliable and independent audit; and general assembly with full representation is not only need of the public corporations. Interests of the investors on companies are generally relied on the protection of the minority shareholders. Various studies indicate that most of the shareholders are not able to use their rights in an effective way in Turkey. Moreover, they are exposed to abuse of the major shareholders. In order to prevent the abuse of the major shareholders, the new code lays burden on them to act responsibly and transparently to the minority shareholders. It is determined that the shareholder rights were violated in the companies listed in the stock exchanges of Turkey before the changes. It was also seen that, when the investors lose their confidence or satisfaction they actually walk away not only from the companies but also from the capital market. The New Code approach is not just improving the rights of the shareholders but at the same time the stakeholder’s right in a broader view. That pluralistic approach on providing transparency is focused on the creditors, the beneficiaries especially the

153 Corporate Governance in Turkey: A Pilot Study, OECD, 2006
154 Corporate Governance in Turkey, An Investor Perspective, IIF Equity Advisory Group, 2005
156 Yeni Turk Ticaret Kanunu Taslagi Neler Getiriyor?, Prof. Dr. Unal Tekinalp, Journey of the Corporate Governance, 2008
157 Yeni Turk Ticaret Kanunu Taslagi Neler Getiriyor?, Prof. Dr. Unal Tekinalp, Journey of the Corporate Governance, 2008
employees, consumers, suppliers and the distributors along the shareholders. In other words, they also enabled to obtain information about the companies, which they are in a connection with. A strict attention is also paid on that information in order to be audited and reliable. This opportunity is provided through the website obligation and information society principle. If the information will be subject to a claim of the shareholders in case they are not reliable, not correct or against the law, they can ask to court for the joint liability of the board members. However, it is also possible for them to ask the courts to impose liability on the auditors because of their negligence on their works. Regarding to those issues, the relevant amended provisions on the Turkish Commercial Code will be assessed below.

-Independent Audit

In the purpose to reach a good corporate governance practice of the companies, external audit system became a core requirement to disclose the financial statements fairly. So as to have reliable documents, the statements should be audited by an independent audit company and disclosed to public afterwards. The independent audit corporations have an affect on the arrangement and operations of the companies by investigating the companies. As the Old Code had constituted the auditors in a committee within the company body, the audit companies are not longer entitled to work dependent to the related company as a committee. The reason of removing the audit committees is stated as the fair and objective reports given by the independent experts, as they gain independence from the companies. While the auditors stay dependent to the companies, it was possible for the companies to fire the auditors in case their reports against the interests of the company. In order to procure safety of the auditors, the dismissal right became possible only with the court decisions. That makes the auditors feel comfort against the company, which supports the independency of the audit and the fair, objective reports. According to the new code, if the auditors will find it necessary, they will have the right to argue against the financial statements in order to have a suitable concept with the transparency principle. They are entitled to present their opinions on the report to inform the board, which would improve the control over the company. Additionally, with intend of putting emphasis on the audit importance, it is regulated with the new code that the non-audited statements will be accepted as non-regulated. Thus,

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158 Yeni Türk Ticaret Kanunu Taslak Neler Getiriyor?, Prof. Dr. Unal Tekinalp, Journey of the Corporate Governance, 2008

159 Yeni Türk Ticaret Kanunu Taslak Neler Getiriyor?, Prof. Dr. Unal Tekinalp, Journey of the Corporate Governance, 2008
the distribution of dividends would not be possible in accordance to the non-audited annual financial reports.

OECD also provides the independent auditor requirement in order to supply fair information about the financial statements of the companies\textsuperscript{160}. The working group of OECD Corporate Governance practices suggests in order having a successful corporate governance practice in the companies, the conduction of an annual audit by independent auditor, who can present objective and external issues of the company with all the material information. Turkish Commercial Code conforms to the OECD guidelines successfully with rearrangements. Furthermore, the Code lays burden of responsibility on the auditors to act with the duty of care and accountable to the shareholders and company as a whole. As an element of OECD Disclosure and Transparency Principle, the accountability and duties of external auditors are fully complied with the new code.

-Adapting of International Financial Reports Standards

The new international standards in the field of accounting and finance are also a key issue to procure transparency to the corporations\textsuperscript{161}. Even as the standards are supporting the transparency principle with accuracy and honesty, they also will help on promoting the accountability principle, on the other hand. In the globalized commercial area, mostly in mergers and acquisitions of the foreign companies, it is not possible without the reliable financial reports to transfer information between the global companies\textsuperscript{162}. The international standardization of the accounting principles and financial reports, however, diminishes the differences between the practices of the companies.

The Turkish financial standards are harmonized with the IFRS, under the name of Turkish Accounting Standards. Thus, Turkey will get a chance to talk in the same language with the international markets and the shareholders will have reliable information about the companies they invested in\textsuperscript{163}. In the previous code, the financial reporting standards did not appear, however the Capital Markets Board

\textsuperscript{160} Corporate Governance in Turkey: A Pilot Study, OECD, 2006
\textsuperscript{161} Public Disclosure and Transparency as a Component of Corporate Governance: Turkish Capital Markets, Selen Derin, 2006
\textsuperscript{162} Yeni Turk Ticaret Kanunu Uygulamasi, Uluslararasi Finansal Raporlama Standartlari, Basel Kararları, Erdal Kenger, 2011
\textsuperscript{163} Yeni Turk Ticaret Kanunu Taslagi Neler Getiriyor?, Prof. Dr. Unal Tekinalp, Journey of the Corporate Governance, 2008
of Turkey had some studies on applying international standards\textsuperscript{164}. Nevertheless, the lack of basic standards in the previous code about the financial reporting had caused some difficulties to measure the differences between the Turkish companies among themselves or between the Turkish and foreign companies those already used the IFRS\textsuperscript{165}. Now, all types of the Turkish companies are obliged to perform their financial statement disclosures in the light of the IFRS rules.

Adapting the IFRS to all types of the companies will remove the non-conformity problem that existed before\textsuperscript{166}. Also, the requirement of OECD for high quality disclosing system for the good corporate governance practices is fulfilled by the putting IFRS into the practice. According to OECD, high quality accounting, financial reporting standards would improve the investor monitoring on the companies with reliable knowledge\textsuperscript{167}. On the purpose of developing transparent market of Turkey, the adaptation of IFRS as Turkish Accounting Standards is a big step for the Turkish companies to be comparable with other international companies. Thereby, this improvement is fully compatible with OECD suggestions about the information to be disclosed with the qualified standards of accounting and financial disclosure.

-Company Groups and Informing About the Related Party Transactions

In previous years, Turkish companies did not pay attention to disclose their related party transactions. However, in the controlling and controlled companies, there was a continuing trend among the controlling shareholders to channel their pockets with the profits and assets of the company through the related company transactions\textsuperscript{168}.

Company Groups are introduced by the new code, in the articles 195-209, as a direct or indirect controlling of a company with majority of the voting rights on another company/Companies in home country or abroad\textsuperscript{169}. Those companies are all together constitutes the Turkish company group if only one of the companies is registered office is in Turkey. The majority numbers of the listed companies in

\textsuperscript{164} Avrupa Birligi ve Turkiye’dede Finansal Raporlama ve Uluslararasi Muhasebe Standartlari ile Uyumlastirma Calismaları, Serkan Terzi, 2006
\textsuperscript{165} Corporate Governance in Turkey: A Pilot Study, OECD, 2006
\textsuperscript{166} Yeni Turk Ticaret Kanunu Uygulamasi, Uluslararasi Finansal Raporlama Standartlari, Basel Kararlar, Erdal Kenger, 2011
\textsuperscript{167} Corporate Governance in Turkey: A Pilot Study, OECD, 2006
\textsuperscript{168} Corporate Governance in Turkey, An Investor Perspective, IIF Equity Advisory Group, 2005
Turkey are family businesses, with a parent company and affiliates. Generally, only one family, or a family member is a controlling shareholder, which prevents the effective protection of the minority shareholders. The surveys indicate that the 45 percent of the companies listed in the Istanbul Stock Exchange have a single controlling shareholder from the family who carries half of the voting rights. This situation gives the family members an opportunity to withdraw money from the company cheating through the company assets or the transactions with other related companies. In order to make the related party transactions of the parent company and affiliate companies transparent, accountable and balanced, the parent company kept responsible to inform about their transactions with the affiliates. However, the parent company shareholders may request the financial reports of the affiliates while the board members are also entitled to request those reports from the affiliate companies. In the so called loyalty reports, the affiliate companies should inform the parent company about the transactions for the benefit of the related companies or parent company in an operating cycle of the affiliate with the losses and profits. The law passed over this company groups as a structure till the amendments on the Commercial Code and acknowledged the related companies as separated business corporations. That situation caused damages on either the minority shareholders and creditors. Now, assuming the parent company as a merchant make the controlling company to bear the consequences of being a merchant.

Disclosure of the related party transactions is mentioned as a core element for the OECD transparency principle. The new arrangements on the new code about the mandatory disclosure of the transactions between the companies are fulfilled in regard to inform the market about the company and its operations. Thus far, the implementation of the company group and disclosure of the related party transactions are fully compatible with the OECD suggestions.

-Information About the Foreseeable Risks

The companies should inform the beneficiaries about the foreseeable risks to allow them to know about the forward-looking risks regarding to the company. According to the studies in this area, more than half of the Turkish companies did not disclose their information about the risk. However,

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170 Corporate Governance in Turkey, An Investor Perspective, IIF Equity Advisory Group, 2005
171 Corporate Governance in Turkey, An Investor Perspective, IIF Equity Advisory Group, 2005
172 Yeni Turk Ticaret Kanunu'nda Sirketler Toplulugu, Bekir Baykara, 2011
173 The OECD Principles of Corporate Governance, OECD, 2004
174 Kurumsal Yonetim ve Risk, Prof. Dr. Mustafa A. Aysan, 2007
the New Code brings a mandatory implementation for the publicly held companies to disclose the possible risks. To assess those risks, the risk management committee is also required by the New Code to provide an early detection of the risks those would endanger the company substance, progress or development\textsuperscript{175}. Thus, the quality of the information given will be improved and the number of companies, which disclose the information, will be increased.

Even though the amendments are exposed to some criticizes of authors because that it is only compulsory for the public companies\textsuperscript{176}, it is fully compatible with the OECD suggestions about disclosing the risk factors to reach a good practice.

\textbf{Information on Remuneration of Board Of Directors}

The new code provides opportunity to the companies to establish their boardrooms with only a director. The reason of this arrangement is argued as the harmonization of EU Law, which has most companies with only one director and the facilitation of the management\textsuperscript{177}. Although the number is only one director in the boardroom or more, it became mandatory by the law to disclose the information about the all board members and in the website obligation provision it is also noted that the remuneration of board members, all kinds of payments to them should be also disclosed by the company to the public.

OECD is also suggests the board of directors members, in order to inform investors about the companies they invested in. Besides, the investors will have the chance to evaluate foreseeable conflict of interests in the company with obtaining the relevant information\textsuperscript{178}. However, the obligation to have an independent board member for the public companies\textsuperscript{179} and all the above-mentioned developments on the code brings a fully compatible relationship with OECD guidelines.

\textbf{Major Shareholders Disclosure}

Before the New Code, the companies were providing information about their major shareholders and their voting rights rarely. The implementation of IFRS, however, will have a positive

\textsuperscript{175} Yeni Türk Ticaret Kanunu ve Risk Yönetimi, C. Coskun Kucukoğuzmen, 2012
\textsuperscript{176} Yeni Türk Ticaret Kanunu ve Risk Yönetimi, C. Coskun Kucukoğuzmen, 2012
\textsuperscript{177} Yeni Türk Ticaret Kanunuна Gore Anonim Sirket Yönetim Kurulunun Yapısı ve Uyelerinin Nitelikleri, Soner Altas, 2011
\textsuperscript{178} The OECD Principles of Corporate Governance, OECD, 2004
\textsuperscript{179} New Commercial Code Article 360
effect to improve this requirement practice in the commercial area. IFRS implementation on all types of the companies will also improve the number of companies who disclose their information about the major shareholders, their share numbers and voting rights. Also, the arrangements about the group companies in the new code also brings the obligation to disclose the majority shareholders and their voting rights, which was not a legal responsibility for none of the type of companies. Also, the information obligation about the related party transactions is an improvement in order to satisfy that international guidelines.

OECD, for the good corporate governance practice, suggests the disclosure of shareholders data with the major shareholders, shareholders agreements and their voting rights. With the previous code, Turkey was in need of that information whereas it is now fully compatible with the OECD major share ownership and voting rights element.

-Website Launching Obligation

The primary innovation about the transparency principle is the website creation obligation of each corporation with Article 1524 of the New Turkish Commercial Code which was not arranged on the previous code. According to the provision, boards of the public corporations are obliged to state their corporate governance practices annually with a report on the corporation websites. This obligation is specified as a legal duty, which is also a non-assignable authority of the boards. Right along with keeping informed the public and relevant institutions, the report also causes the self-control of the board while it controls the company. By this way, board tests itself about its coherence with the transparency principle. Additionally, all the documents relevant to the shareholders and their decisions, the financial and audit reports also became a mandatory disclosure matter.

“The information opportunity” signifies the accession of the interactive- information about the financial situation of the company in case of beneficiaries’ needs. “The information right” expresses the right to sue against the persons who prevent the information opportunity. The opportunity and right of information are pursued through the website. That website will be created to involve the audit, survey and commitment reports, general assembly invitations and documents, dividend policies, financial statements. If the companies had created a website already, they may harmonize the site to include the

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180 Yeni Türk Ticaret Kanunu Taslak Neler Getiriyor?, Prof. Dr. Unal Tekinalp, Journey of the Corporate Governance, 2008
above-mentioned information and will register the website to the Turkish Trade Registry. It is expected from the companies to improve their quantity of information after applying this rule. Thus, the actors of the capital markets will obtain the information without any let or hindrance and give their decisions according to that data. In case of any substance lack, the beneficiaries are entitled to sue against the company.

The other novelty that has been brought by the new code is the online general assemblies. Therefore, the shareholders will have the opportunity to participate in the general meetings on themselves or with the representatives and to follow the meeting online in a confidential way and to vote online safely\textsuperscript{181}. By this way the transparency in the benefits of the shareholders will be improved. Also, the obligation to save the frequently asked questions on the website will bring a developed knowledge area for all the interest holders. However, the limitation about the questions should be also arranged by the code, which would otherwise cause confusion\textsuperscript{182}.

While it is known that the aim of the new code is to bring more transparency accountability and stability to the companies, it can be said that by that obligation the aim should be reached\textsuperscript{183}. The information launched on the website will be stable there at least 6 months. The criticism on this provision is come mostly for the condemnation of all types of the companies, like small sized or big sized, with the same judicial fines. Also, the corporate management is obliged to update the website, otherwise they will be sentenced to prison for six months.

In accordance to access the website obligation with the compatibility of OECD Disclosure and Transparency Principle, this disclosing system will bring the core elements of the OECD principle to the Turkish market. The material information on the financial and operating results of the company and the company objectives\textsuperscript{184}, as two of the core elements of OECD Disclosure and Transparency principle will be implemented on the Turkish companies through this obligatory regulation. In OECD’s ideal corporate governance framework, it is stated that the financial conditions and the practices of the companies should be disclosed annually. Apparently, the arrangement for the Turkish companies satisfies the element of OECD Transparency and Disclosure principle with the disclosure of financial and performing

\textsuperscript{181} OECD Principles of Corporate Governance, Disclosure and Transparency, 2004
\textsuperscript{182} \textit{Turk Ticaret Kanunu Limited Sirketlere Ne Diyor?}, Adem Aslan, 2012
\textsuperscript{183} \textit{Yeni Turk Ticaret Kanunu’na Gore Internet Sitesi Acma Ve Bilgi Verme Zorunlulugu}, Erkan Kipik, 2011
\textsuperscript{184} OECD Principles of Corporate Governance, Disclosure and Transparency, 2004
conditions. Additionally, the same article includes the mandatory disclosure of the corporate governance structure and policies of the companies, which is also an element of OECD guidelines for the good corporate governance practices and complies successfully with.

OECD suggests taking cognizance of the channels, which is for the dissemination of timely and cost efficient information. In the OECD guidelines, it is stated that the channels of information have the same signification as the information itself. Providing the information by the website of the companies should prevent the cumbersome and high costs of accessing to the relevant information. Using the website as a disclosure method in order to improve information dissemination is a great step for Turkey to align with the international standards.

Although the new code satisfies the OECD principles with the disclosing of commercial purposes on the company websites, OECD, however, arranges the non-commercial purposes within the scope of material information to be disclosed mandatorily in the annual reports\(^\text{185}\). The Capital Market Board of Turkey works to improve the disclosure system of the companies also about their business ethics and social responsibilities, with awareness of the non-commercial purposes also needed to be disclosed for a transparent market economy. Unfortunately, comparing with the OECD principles, it can be said that the disclosing requirements arranged in the new code does not include the disclosure of non-commercial objectives of the companies. This publication usually made by some of the Turkish companies voluntarily, like informing about their social activities and about the profits regarding those activities. That voluntary practice should be a mandatory rule by the law in an attempt to improve investors’ assessment on the company. By this way, it can be said that the deficiency of the non-commercial purpose disclosure deprives of satisfying the OECD transparency and disclosure principle fully.

**Disclosure of Employee or Other Stakeholders Issues**

For a good corporate governance practice, OECD suggests the disclosing the material information, which could affect the company practices about the employees or other stakeholders. Moreover, it shows that some countries submit the reports about their human resources. It is obvious that Turkish Commercial Code regulators did not take that issue account. Thus, the subject can be assessed as a lack in the code in light of the OECD corporate governance disclosure and transparency principle.

\(^{185}\) The OECD Principles of Corporate Governance, OECD, 2004
VI. CONCLUSION

In response to the financial scandals of biggest companies of the world, like Enron, Parmalat, Worldcom, significance of corporate governance became more of an issue. It is determined that the managers did not act in the interests of the companies or the shareholders, but for their own self-interests. With comprehending the reasons of the scandals as the lack of controlling systems on the managers and executives, the focus had been brought into transparent, accountable business practices with the equal treatment of shareholders and conferring responsibilities on the board members.

When corporate governance became a significant issue to determine the companies to invest in for the domestic and foreign investors, the working groups in this field started to create international standards in order to reach good corporate governance practices. OECD Corporate Governance Principles, which were issued in order to find an ideal corporate governance framework, provide specific recommendations to help the policy makers of the member and non-member countries as a guide to enhance their legal and corporate structures. For a good corporate governance framework, OECD had issued six key areas of corporate governance; ensuring the basis for an effective corporate governance framework, the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency and the responsibilities of the board. Among these principles, disclosure and transparency were assessed in this paper with regard to their importance in organizations to reduce asymmetric information problems and to protect the investors. Transparent companies provide visibility to stakeholders about the functions and structures of the organization. Therefore, transparency builds confidence of the stakeholders on the companies; the companies become reliable, successful to attract the investors and hence it lowers the cost of capital and cost of security trading. Regarding the significant benefits of transparency, OECD suggests companies to provide accurate and timely information with cost efficient channels related to all material matters such as business and financial results of the companies, the business purposes, foreseeable risks, major shareholders and their voting rights, related party transactions, employee and other stakeholder issues, remuneration of the board members and governance policies. The best practice of corporate governance, according to OECD, is related to provision of high quality disclosing system and standards which is conducted with an annual audit by independent external auditors in order to obtain objective and reliable reports.

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186 OECD, Principles of Corporate Governance, Paris, 2004
On the other hand, after the massive corporate scandals of the world’s biggest companies, Turkish regulators had made substantial changes in the area of corporate governance and audit system, primarily to create transparency, which was a noticeable deficiency on the corporate governance practices of the country. The majority of the Turkish companies are family controlled businesses and thus the founders are enabled to have multiple voting rights, which render the effective protection of the minority shareholders\textsuperscript{187} and created the abuse of majority shareholders. Addition to that weak investor protection, the lack of public disclosure system on the companies’ material information, the Commercial Code of Turkey amended after its more than 50 years old version not only for the improvement of the shareholders rights, but all the stakeholders’. However, the increase on the foreign capital investment in Turkey had a significant effect to work on complying with the international standards because of the foreign investors’ interests in internationally standardized companies with their financial and governance structures\textsuperscript{188}. In this respect, the New Commercial Code brings Turkish business life into a more transparent market and makes it compatible with the international arrangements\textsuperscript{189}. The amendments on the Code according to the transparency principle were the focal point with the assessment about their compatibility with the above mentioned international standard for good corporate governance practices; OECD disclosure and transparency principle.

Nowadays, the Internet has been accepted as a tool of transparency of the companies to transfer the information electronically. In consideration of the technological developments, the most significant innovation brought by the new code is the website creation obligation of each capital stock companies. That obligation is regulated under the influence of high technological developments and the negotiations of EU full membership, in order to make Turkey a part of the international markets with the same level of developed countries’ practices. In accordance with those purposes, Turkish regulators have arranged fully compatible regulation with the OECD standards. While the arrangements are at the level of international standards, the fines, which will be sentenced against the non-executed companies, should be distinguished between the big, middle and small sized companies in order to equalize the impacts on each company. Apart from that, the jail sentences arranged against the board members in case of not implementing that obligation would carry the obligation into practice quickly. Although the

\textsuperscript{187} Corporate Governance in Turkey, An Investor Perspective, IIF Equity Advisory Group, 2005
\textsuperscript{189} Yeni Turk Ticaret Kanunu Isiginda Kurumsal Yonetim Uygulamalari, Corporate Governance Association of Turkey, Journal 2008/4
companies are against to that obligation by putting forward the trade secrets, protection of the shareholders should take into account. Having said that without the confidence of the shareholders, it would not be possible for capital markets to grow.

Furthermore, the countries have to adapt their financial statements and related accounting reports, in the light of transparency, with the international standards in order to attract foreign investors and attain a place in the competitive markets. The implementation of IFRS, also, should bring the country into the international markets and the Turkish companies, now, should gain the power to compete with their international rivals in those markets. While adapting the international financial standards, Turkey will not only acquire international reputation but at the same time the power of the national companies will become comparable with all the international market actors. Addition to that, in accordance with the IFRS, Turkish companies will be obliged to disclose their major shareholders with the share numbers and their voting rights. By having that arrangement it is seen that the developments on the standards are fully compatible with the OECD guidelines and Turkish companies would present high quality accounting and financial reports to the all beneficiaries as OECD stated. However, it is propounded by some opponents that the IFRS adaptation would cause high costs for companies in order to employ specialist on those international standards. Despite the expenses, becoming an international capital markets actor would bring higher incomes to the companies.

One another improvement fully complied with OECD transparency and disclosure principle is the new audit system, especially the independent auditor requirement for each of the Turkish companies. The practice will have a beneficial effect on the capital markets in order to have objective reports, at the same time it will diminish the bribes and prevent the cash incomes of the corporations without the invoices. Separately, the disclosing of the board members remuneration and the foreseeable risks of the companies are also positive developments, which are arranged fully compatible in the light of the OECD guidelines.

As a core element of OECD transparency and disclosure principle, OECD suggests the disclosure of related party transactions in order to create good corporate governance practice for the countries. With the lack of that practice, previously, Turkish companies were suffering the abuses of the controlling shareholders by getting the company assets into their pockets through the related party transactions. In order to prevent those problems, the new code introduced the company groups and their related party
transaction disclosure obligations. As it caused a lot of losses for the country in previous years, it is believed that the regulation with full compatibility with the OECD suggestions would cease the abuses of the controlling shareholders and provide high protection of the other shareholders, moreover the stakeholders.

As it is seen that the new arrangements, which bring transparency into the Turkish capital market with fully compatibility with the OECD principle so far, the disclosure of employees and stakeholder issues requirement as suggested by the OECD for the purpose of good corporate governance is not placed in the forefront of regulators. Turkish regulators should take into the account the materially significant information disclosure that could affect the company practices materially. For instance, OECD suggests the disclosure of the relations between managers and employees or managers and other stakeholders. By doing so, it can be said that if the arrangements will be implemented completely, the changes will open a new era for Turkish commercial life with the transparency, accountability and reliability, which would result the best practice of corporate governance in the country.

In conclusion, it can be said that, the principles, which brought transparency into the market are successfully arranged mostly compatible with highly accepted international OECD corporate governance disclosure and transparency principle, although it is stated by the New Commercial Code Commission President Prof. Dr. Unal Tekinalp that the new code interpreted the international principles in its own way and did not inspire directly from any international arrangements.
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