

# Turkey

## Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 14 companies in Turkey as of 15 May 2008.

Shareowner engagement has not yet been a particular focus of market activity in Turkey. Shareowners have limited ability to exercise power through the mechanisms available in established capital markets, such as proxy battles, threatened takeovers, shareowner resolutions, board member removal, litigation, or negotiation with management. Although shareowner rights have improved in recent years, Turkish shareowners remain constrained by a number of legal and structural obstacles.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	27%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	0%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	93%	
Is voting by proxy permitted?	Yes	Shareowners are allowed to vote by proxy but must have their ballots notarized; voting by telephone, the internet, or postal ballot is not permitted.
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	No	
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	Yes	Notarization is required for in-person proxies, and telephone, internet, and postal ballots are not valid.
Do companies adhere to a majority voting standard in the election of board members?	Yes	
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not permitted for publicly traded companies.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or otherwise?	No	This right is not generally provided for, although an individual company could determine to allow it. None of the Turkish companies researched for this manual provide for this opportunity.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	A dissident may also request that notes of the dissident resolution(s) be included in the minutes of the annual general meeting (known as the general assembly meeting in Turkey).
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	Shareowners whose holdings represent at least 5% of the company's outstanding capital are permitted to call extraordinary general meetings. A company may lower the 5% threshold in its articles of association.
What percentage of companies include golden shares in their capital structure?	14%	A few companies in Turkey do incorporate a golden share scheme in their structure. Typically, these companies have been privatized and are of strategic importance. For example, Türkiye Petrol Rafinerileri A.S. is the sole supplier of fuel to Turkish armed forces, Turk Telecom is the key telecommunications operator, and Ereğli Demir ve Çelik Fabrikaları T.A.S. is the largest supplier of steel in Turkey. These companies, and a few others, have a golden share to protect Turkish strategic interests.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Such plans are allowed but are neither common nor relevant in many cases because most Turkish companies are majority controlled.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Shareowners provide their approval via the endorsement of an amendment to the articles of association.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	According to Turkish Commercial Code
Do companies require a supermajority vote to approve a merger?	Yes	According to Turkish Commercial Code

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	The Capital Markets Board (CMB) of Turkey requires that when a transaction would give control or a significant, specified percentage of the company's capital or voting rights to the party making the offer, the company must make a follow-up offer to the remaining shareowners. It must offer them cash consideration equivalent to the highest per-share consideration that would be paid to the shareowners in the transaction (or transactions) that triggered the follow-up offer requirement.
Are class action suits commonly used in this market?	No	Not permitted
Are derivative suits commonly used in this market?	No	Not permitted

### Current Engagement Practices and Shareowner Rights Developments

From the mid-1980s until after the economic crisis of 2000–2001, thin markets, relatively few active institutional investors, and an unpredictable macroeconomic environment limited incentives for Turkish companies to adopt good corporate governance practices. Since then, however, the return of foreign investors, greater opportunities for Turkish companies to transact business abroad, and increasing competition for foreign capital appears to be encouraging companies to implement good corporate governance as a tool in establishing their competitive advantage.

Despite an expanded recognition of improved corporate governance in general, the kind of shareowner engagement practiced in other markets is still rare in Turkey. Shareowners have limited opportunities to seek redress through the mechanisms commonly exhibited in more established capital markets, such as proxy battles, threatened takeovers, shareowner resolutions, board member removal, litigation, or negotiation with management.

The Turkish corporate sector is presently dominated by family-controlled, complex financial/industrial company groups, usually composed of both publicly held and privately held companies. Conversely, the group of large institutional investors—such as pension funds and mutual funds regulated by the CMB—is small. The balance of power between corporations and institutional owners is skewed heavily toward the corporations, so the opportunities to engage in a proxy battle or initiate a takeover are few.

The current Turkish government prepared a draft commercial code for discussion in 2005. The draft has been accepted by the Justice Commission and is still pending before the Turkish Grand National Assembly. It is expected to be enacted in 2009, but it is unclear how long parliamentary deliberations will take. The government has signaled that certain sections of the draft law could be implemented gradually amid concerns the package could be further postponed or canceled as a result of political battles or by additional challenges from the Constitutional Court. Shareowner rights and the balance of power between companies, majority shareowners, and minority investors may be somewhat changed as a result of proposed reforms to the Turkish Commercial Code (TCC), which has been in place since 1956. The current TCC has some serious limitations. For example, non-shareowner real persons and shareowner legal entities (such as corporations) are not allowed to serve on boards of directors. The draft code would change this situation by stipulating that non-shareowner real persons and shareowner legal entities may be appointed as members of boards. In cases of a shareowner

legal entity being appointed to a board, the draft code would provide that the entity be represented by a real person it appoints. Under the draft code, real persons representing the legal entities would have to be registered for this purpose with the relevant trade registry as the sole representative of the subject legal entity and would have to have a university degree.

Pyramidal structures are common in the Turkish market, as is a high degree of cross-ownership within Turkish corporations. Controlling shareowners frequently hold shares with nomination privileges and/or multiple voting rights, and controlling family members typically serve on the board and play a leading role in the daily management and strategic direction of publicly held companies. Preserving family control is the norm in Turkey, where a small number of families control a large number of the listed companies. Some listed companies in Turkey adopt dual- or multiple-class shares. In other cases, companies issue founders' shares with extremely high voting rights. All of these methods tend to preserve family controls.

Turkey has no takeover code, and the concentrated ownership structure of Turkish companies further restricts takeover attempts. Golden shares exist in a few state-owned companies.

Pension funds—and, to a lesser degree, mutual funds—are the typical drivers of shareowner engagement in developed markets. However, Turkish restrictions on the participation of mutual funds and pension funds in the governance of the companies in which they invest limit shareowner engagement in Turkey. Furthermore, because the TCC does not confer legal status on such funds, there is uncertainty about whether the votes attached to shares held by such funds can be exercised at all. Through their guidance statements, the CMB also has prohibited such funds from pursuing the aim of “participating in the management” of the companies in which they invest. This restriction clearly prohibits fund representatives from serving on the board of a company in which the fund has invested. Less clear is whether the restriction also prohibits the fund’s asset managers from discussing possible management or governance improvements with the company’s board.

On a procedural level, shareowners that are unable to vote in person face a number of obstacles. Although some proxy voting is permitted, shareowners may not vote online, by telephone, or by postal ballot; they must appoint an in-person representative through a notarized power-of-attorney statement, which is costly and thus a serious deterrent to voting shares by proxy. The new draft code provides for holding general meetings by video or audio conferencing, which may provide some relief. Shareowners that hold at least 5 percent of the company’s capital are granted minority rights and may call an extraordinary general meeting or propose agenda items.

Corporate practices that have an impact on shareowner rights may be altered only with the agreement of the majority of shareowners present at a meeting where at least half of the company’s share capital is represented. In case of adjournment, the quorum requirement is reduced to 33 1/3 percent. In meetings concerning the alteration of the articles of association, each share carries one vote.

Turkish companies are subject to a fair price provision. The Capital Markets Board mandates that any person or legal entity acquiring individually or collectively more than 25 percent of share ownership or voting rights must make a tender offer for the remaining shares equivalent to the highest per-share consideration paid to the shareowners in the transaction. The offerer must obtain the CMB’s approval before launching the offer, provide a disclosure document to the offerees summarizing the terms of the offer and the offerer’s plan for the company, and keep the offer open for at least 15 days.

Recent positive trends with regard to shareowner rights have occurred. Consistent with the CMB governance principles, some listed companies are encouraging participation by minority shareowners in shareowner meetings. Also, some companies that previously restricted attendance at shareowner meetings are opening up such meetings to stakeholders, analysts, and the media. Some companies report in their corporate governance compliance reports about shareowner attendance at meetings and whether or not shareowners asked questions; some also publish summaries of shareowner meetings on their websites.

## Legal and Regulatory Framework

Turkey is a civil law country. The Capital Markets Board, the Istanbul Stock Exchange (ISE), and Takasbank (the Turkish settlement and custody bank) are the major institutions involved in regulating Turkey's capital market. The CMB regulates the operations of ISE. A simple picture of the corporate governance and shareowner rights framework in Turkey is difficult to develop because corporate governance standards, enforcement mechanisms, and remedies are specified in a range of statutes, instruments, and other documents.

The CMB consists of a seven-member, full-time executive board appointed to a six-year term by resolution of the Council of Ministers. The CMB is equipped with ample regulatory power and is capable of directly imposing on companies such penalties as warnings, fines, suspension, or cancellation of licenses. It cannot directly take cases to court, however, because this right is granted to public prosecutors only. The CMB board may request the courts to prosecute violators by submitting a written complaint to the public prosecutor's office. If the prosecutor decides not to press charges, the CMB is empowered to raise an objection in compliance with the criminal procedure code.

The CMB develops corporate governance standards for publicly held companies and approves the ISE's listing standards for companies that trade in the national market. The CMB principles adopted in 2003 are the primary source of (nonbinding) corporate governance standards for publicly held companies. Listed companies must publish an annual corporate governance compliance statement disclosing, among other things, which of the CMB principles have not been adopted and why (a "comply or explain" requirement).

The principal sources of general mandatory corporate governance standards are the joint stock company provisions in the TCC, the Capital Markets Law (CML), and subordinate instruments published under the CML (usually in the form of the CML's media statements, Capital Markets Communiqués).

In Turkey, the fundamental document governing shareowner rights is the company's articles of association, which should provide for the rights to participate in the general assembly meeting, to vote and acquire information, to have the company audited, to file a complaint, and to take civil or legal action. The TCC contains no mandatory provisions for the articles of association. In addition, the TCC provides for privileged shares and imposes practically no limit on the extent of privileges that may be granted, such as multiple voting rights, a predetermined dividend rate, or priority entitlement at the time of liquidation. According to the Commercial Code, minority rights start with ownership of 5 percent for public companies and 10 percent for nonpublic ones.

Neither class action nor derivative action are concepts that exist under Turkish law; nevertheless, several channels for investor redress do exist. If a company tries to prevent certain rights, shareowners representing at least 5 percent of share capital have the right to petition the company's internal auditors to remedy the situation. If decisions made at the annual general meeting are against the law, the articles of association, or good faith, any shareowner who was present at the AGM and opposed the resolution, was illicitly deprived of his or her voting rights, or otherwise claims that proper procedures were not followed may request that the courts nullify the resolution in question. Shareowners may file a complaint with the Ministry of Industry and Commerce, CMB, and/or ISE.

Shareowners generally refrain from bringing their cases to court, however, because the legal system is complicated, slow, and costly. Furthermore, Turkey has no specialized courts and judges to address shareowner or corporate issues, and existing civil remedies appear to be insufficient deterrents to misconduct. In addition, some anecdotal evidence suggests that shareowners are seldom aware of the means available to them to either understand or protect their rights.

### **Key organizations with information relevant to shareowner rights in Turkey include the following:**

Capital Markets Board ([www.cmb.gov.tr](http://www.cmb.gov.tr))

Istanbul Stock Exchange ([www.imkb.gov.tr](http://www.imkb.gov.tr))

Corporate Governance Association of Turkey ([www.tkyd.org](http://www.tkyd.org))

Corporate Governance Forum of Turkey (<http://cgft.sabanciuniv.edu/eng/>)

SAHA Ratings ([www.saharating.com](http://www.saharating.com))