

Initial Public Offerings in Turkey

1. Introduction

Public offering may basically be defined as sale of stocks (shares) of a joint stock company to several unknown investors through a call and announcement. Public offering includes (i) every kind of appeal to public for purchase of capital markets instruments, (ii) invitation of public to subscribe in a joint stock company or act as its founder; (iii) continuous trading of shares in stock exchanges or other organized markets and (iv) sale of shares of publicly held joint stock companies to increase the capital of such companies. Accordingly, public offering may be conducted through issuance of any type of capital markets instruments excluding derivatives.

Under Turkish law, joint stock companies are the only private corporate entities entitled to conduct public offerings and issue capital markets instruments. Both joint stock companies with equity capital and joint stock companies with registered capital can make public offerings.

The main purpose of public offerings is to provide financing to joint stock companies. By public offerings joint stock companies can provide liquidity inexpensively. In case a joint stock company conducts public offering through capital increase, such company will have a larger amount of capital without causing any further expenses to the existing shareholders.

2. Types of Public Offerings Practicable in Turkey

Public offering involves either (i) public offering of shares of a non-publicly held joint stock company (“issuer”) in the primary market by the issuer itself (“initial public offering”) or (ii) sale of shares by an existing shareholder(s) of the company (“secondary public offering”). Alternatively, (iii) these two methods may be combined and the issuer can undertake a capital increase while an existing shareholder(s) of the issuer proceed to sale of all or part of its/their shares to public.

In addition, it is possible for Turkish joint stock companies to conduct global public offerings and offer their shares to public in different countries concurrently.

2.1. Initial Public Offering (“IPO”)

IPO means sale of capital markets instruments which are newly issued in primary markets. IPO can be conducted either during gradual formation of joint stock companies or through capital increases undertaken by already existing joint stock companies. However, in Turkey, IPOs are being conducted through capital increases in most cases.

In practice, a typical IPO procedure conducted through capital increase may take six weeks to four months.

2.2. Secondary Public Offering (“SPO”)

SPO is conducted through sale of existing capital markets instruments by existing shareholders of joint stock companies. Turkish capital markets legislation sets forth certain specific restrictions in relation to public offerings conducted by existing shareholders of joint companies.

2.3. The Combination

A single public offering can be conducted in the primary and secondary markets concurrently. In this type of combined public offering, the issuer offers newly issued capital markets instruments to public while existing shares held by the shareholders becomes publicly traded.

3. Steps of an IPO Through Capital Increase

3.1. Getting Ready for Initial Public Offering

In order for a non-publicly held joint stock company to conduct IPO, it shall amend its articles of association in accordance with the capital markets legislation. In case the current articles of association of the issuer contains provisions restricting transfer and/or circulation of shares and/or preventing exercise of shareholder rights, such provisions shall be cancelled and also other provisions of the articles of association shall be adapted to Turkish capital markets legislation.

In addition, a resolution regarding capital increase which includes provisions restricting preemptive rights of the current shareholders shall be adopted. The type of such resolution is to be determined based on the share capital system of the company.

Furthermore, the issuer company has to get its financial statements drawn up in accordance with Turkish capital markets legislation and have them inspected by an independent authorized audit firm.

3.2. Intermediary Institution

Excluding the exceptional cases, it is mandatory for an issuer company to execute a brokerage agreement with an intermediary institution authorized by the Capital Markets Board (the "CMB"). Significant strategic issues such as responsibilities of the intermediary institution (e.g. underwriting obligation of the intermediary institution) and the method to be adopted for IPO shall be determined under the brokerage agreement.

3.3. Registration of Shares with the CMB

Capital markets instruments can be issued and offered to public provided that they are registered with the CMB. Therefore, an issuer shall apply to the CMB for registration of its shares with the CMB.

During a regular IPO procedure, the CMB would first review the proposed amendments to the issuer's articles of association. In addition, *prospectus* and *offering circular* shall be presented to the CMB during this application.

The CMB conducts a due diligence and visits the headquarters and facilities of the issuer during this procedure. The CMB determines whether registration of shares shall take place based on the outcome of the examination of the prospectus and offering circular and the due diligence conducted by the CMB.

3.4. Istanbul Stock Exchange (the “ISE”) Listing

The ISE is the only stock exchange of Turkey. Listing on the ISE means the acceptance of registration with the respective market of the stocks which are requested to be continually traded on the securities exchanges.

An issuer shall apply to the ISE for listing of its shares at the ISE. This application is subject to certain listing requirements specified in the relevant regulations. The ISE conducts due diligence at the headquarters of the issuer in order to decide whether the issuer is eligible for listing of its shares at the ISE.

ISE listing and registration enables the stocks offered to public to be traded on the ISE. In addition, listing of stocks on the stock exchange provides companies with creditworthiness, institutionalization, recognition, and improves integration of the company with national and international markets.

3.5. Other Significant Requirements

Registration of the prospectus with the trade registry, announcement of the prospectus in the trade registry gazette, and announcement of the offering circular in daily newspapers shall take place following registration with the CMB.

In addition, a general assembly or board of directors meeting shall be held in which a resolution regarding approval of the earlier proposed amendments will be adopted. The type of the resolution required shall be determined based on the share capital system of the issuer.

Furthermore, the issuer shall apply to the Central Registry Agency at this stage for records on capital market instruments and rights related to them are kept by the Central Registry Agency.

3.6. Trading of Shares

Trading on stock exchange means purchase and sale of stocks by investors. Trading of shares at the ISE shall take place in accordance with the terms and conditions designated under the prospectus.

Following the sale of stocks, issuers and intermediary institutions shall inform the CMB and ISE regarding results of the public offering.

3.7. Sale Methods

Book building is a sale method which enables underwriters to collect orders from investors prior to offering of shares. Through book building underwriters will be able to determine the amount of demand for the stocks of the issuer.

Sale through the ISE is a sale method applicable by issuers with net asset value exceeding TL 10,000,000. Book building does not take place in case the sale through the ISE method is used for IPO.

Sale without book building is a sale method which can be used by already publicly-held joint stock companies under certain conditions. Under the sale without the book building method, issuers are authorized to offer capital markets instruments at a pre-determined fixed price to investors.