

# Rules Concerning “Publicly Held Joint Stock Companies” as per the Turkish Commercial Code Numbered 6102 and Capital Markets Law Numbered 2499

by Ayça Sarıkamış

Publicly Held Joint Stock Companies (“PHJSC”) are those having shares offered to public or are presumed as offered to public. As a result of being a PHJSC, in addition to being subject to the Turkish Commercial Code, such companies get also regulated by special provisions imposed by Capital Markets Law.

The definition of Public Offer is expressed in article 3(c) of the Capital Markets Law. According to this article, a public offer occurs in three different scenarios:

- Announcing the public for the purchase of shares;
- Continuous trading of the shares in stock exchanges or other organized markets; the invitation of public to participate in a joint stock corporation or to act as its founder;
- Every kind of appeal to public for the purchase of capital market instruments.

The processes of Public Offer get completed in five steps. Initially, after receiving the approval of the Capital Markets Board (“**Board**”), a prerequisite gets collected. As per the results of the collected prerequisite, the stipulated public offer may be cancelled, or a capital increase may be realized and additional sales may be made. In the second step, the companies shall prepare a Prospectus and a Circular as per the procedural rules brought by the Board. Prospectus and circulars are collectively signed by the issuers and intermediary institutions. Following the completion of the prospectus and circulars, the companies become registered within the Board. After the circular gets registered and announced, public offers and sales may be realized.

The shares that are sold through a Public Offer shall be fully paid in advance. As per the legislation, the ones that will be selected by the Board among founders, shareholders and intermediary institutions shall undertake to buy all shares that did not get sold within the prior sales period and to pay all their costs. Therefore, any shares that did not get sold at the end of the sales period will be purchased by shareholders and intermediary institutions and their costs will be fully paid.

The definition of joint stock companies that are “assumed to be a PHJSC” is made under Article 11 of the Capital Markets Law. According to it, the shares

of joint stock corporations having more than 250 shareholders shall be considered to have been offered to public and such companies shall be subject to the provisions applicable to publicly held joint stock corporations.

The Board is authorized to keep the registration of the PHJSC’s. Issuers are required to inform the Board within 30 (thirty) days following the date on which they learn that in any manner their capital market instruments are sold to public or they have gained the status of a publicly held joint stock corporation.

The incorporation and amendment of their Articles of

Association are subject to the approval of Ministry of Science, Industry and Technology. Prior to applying to the Ministry, assent of the Board shall be granted.

Capital Markets Instruments have two sub-groups: securities and other capital market instruments. Securities are negotiable instruments which represent a share or participation in the property of the issuer or an obligation of the issuer, represent a specified quantity of money, are of a series of instruments of the same nature, have the same wording, are dealt in as a medium for investment, are fungible, earn periodic income, and have the terms and conditions determined by the Board.

The delivery of capital market instruments<sup>1</sup> shall be made at the time of sale and therefore, in joint stock companies that have adopted registered capital systems, the right to shareholding is acquired with the delivery of the capital market instruments. However, joint stock corporations that adopt the share capital system may deliver their shares to the buyers within 30 (thirty) days following the registration of the capital increase. This period is 90 (ninety) days for registered shares.

In addition, Article 412 of the Turkish Commercial Code which states that issuance of shares before the registration of the company shall be null and void; and Article 395/3 of the Turkish Commercial Code which states that issuance of the shares before the registration of capital increase decisions shall be null and void will not be applied upon PHJSC's. Therefore, in a registered capital system, shares may be issued before registering the incorporation or capital increase decision of a company, and the people who receive these shares become shareholders.

Records on capital market instruments and rights related to them shall be kept in book entry form by the Central Registry, which is a legal entity under private law. Regarding the rights which are electronically recorded with respect to issuers, intermediary institutions and owners of rights, the date of notification to the Central Registry will be taken as reference in claiming against third parties the rights on the dematerialized capital market instruments. With respect to all sorts of administrative and civil claims on the shares, the necessary amendments on the shares do not get realized by the shareholders themselves, but by the Central Registry.

The notification that will be made to the Central Registry has a founding effect, rather than having an explanatory nature. Therefore, Article 955 of the Civil Code which states that "in order to impose liens on the shares, the delivery of the share is mandatory" will not be applied for the shares issued by PHJSC's. Therefore, although the shares get delivered to the owner, if the necessary registration is not completed by the Central Registry, in the event that they are delivered to a third person, the share would be owned by a third person if the shares were registered by the Central Registry before the actual right owner.

Joint stock companies, as per Article 417 of the Turkish Commercial Code register their shares in the share ledger with the names, last names and addresses of the shareholders. However, while registering the shareholders in PHJSC's, without the necessity of the request of the shareholders, the records are made with reference to the Central Registry. The Central Registry, issuers and intermediary institutions shall be liable in the proportion of their fault for damages to the holders of a right due to errors in the records they keep. The prior seen liability here is "defect liability" as defined in the Turkish Code of Obligations. Therefore, the party requesting the compensation shall prove the defect of the opposing party. As per an agreement that will be signed by the parties, the liabilities may be imposed on the other party, or strict liability may be imposed.

In capital of PHJSC's which accept the registered capital system is called, "issued capital" and up until the registered capital amount that is indicated in the Articles of Association, the Board of Directors of the company may increase capital without being subject to the regulations of the Turkish Commercial Code regarding the capital increase. Without fully paying the value of the issued shares, new shares shall not be issued.

In the case of a publicly held joint stock corporation, the quorum requirements set forth in Article 372 of the Turkish Commercial Code shall apply with respect to shareholders meetings concerning the matters set forth in the second and third paragraphs of Article 388 of the Turkish Commercial Code, provided that there is no contrary provision in the Articles of Association of the company. Therefore, the General Assembly convenes with shareholders representing one fourth of the company capital. If this quorum is

<sup>1</sup> Previously established joint stock corporations intending to offer their securities to public by increasing their capital may adopt the registered capital system, provided that they obtain permission from the Board.

not provided, then in the second meeting, no quorum is required.

Concerning the subjects expressed below, the Board of Directors shall grant special authorization with the company's Articles of Association order to:

- adopt resolutions to issue privileged shares and shares with a premium over their nominal value, or
- limit shareholders' preemptive rights, or
- restrict the rights of holders of privileged shares.

Against the decisions that are taken by the Board of Directors, a) members of the Board of Directors, b) auditors, or c) shareholders whose rights have been infringed upon may initiate a nullity suit in the Commercial Court that is located in the center of the company. However, the taken decisions shall be contrary to regulations in the law, Articles of Association, and good faith; and the case shall be initiated in at most three (3) months following the decision date.

The rights set forth in Articles 348, 356, 359, 366, 367 and 377 of the Turkish Commercial Code that can, under Article 341, be exercised by shareholders representing ten (10) percent of the equity capital of the company may, in the case of publicly held joint stock companies, be exercised by shareholders representing at least one twentieth of the paid-in capital of the company.

As per Article 368 of the Turkish Commercial Code, in joint stock companies, the invitation to the General Assembly shall be sent at least two (2) weeks ahead, and be in compliance with the terms and conditions as stated in the Articles of Association. In addition, concerning the shareholders owning registered shares, if they state their address, the time of the meeting shall be sent with a registered mail. However, with regard to PHJSC's, this article does not get applied because the share ledgers do not get updated. In other words, the registered shares get proceeded as if they are bearer instruments, and sending the invitation to the registered address carries the risk of reaching the person not intended.

In joint stock companies, no regulation can be stipulated with the absence of a right to vote. As per the Turkish Commercial Code, each shareholder shall have at least one (1) voting right. However, PHJSC's may issue shares that do not have voting rights, yet provide privileged dividend rights. In other words,

as per the Capital Markets Law, if the voting right is released, then privileged dividend rights shall be granted.

The Articles of Association of PHJSC's shall set forth a rate for the first dividend. This rate shall not be below the rate determined by the Board and announced in its communiqués. The Board may abolish or postpone the requirement for distribution of dividends for types of issuers and amounts of distributable profits. Dividends shall be distributed equally to all the existing shares as of the end of the accounting period without taking into account the dates of issue or acquisition of such shares.

Profit shall not be distributed to members of the board of directors, officials, employees or workers unless the Articles of Association so provide. No decision may be made to set aside profits for other reserves, to transfer profits to the following year, or to distribute a share from the profits to the members of the board of directors, officials, employees, or workers unless the first dividend is paid as provided and unless the reserves required to be set aside as required by law have been so set aside.

Without taking into account the dates of issue or acquisition of such shares, provided that its Articles of Association so permit and there has been a decision of the General Assembly giving such authority to the Board of Directors limited to the current year, PHJSC's may distribute an interim dividend from profits shown on their quarterly financial statements prepared in conformity with the capital market legislation and independently audited, provided that the dividend does not exceed half of the amount remaining after subtracting the reserves required to be set aside according to law and the Articles of Association plus funds designated for taxes.

The members of the Board of Directors and the juristic persons whom they represent, the company auditors, and the independent auditors and the real and juristic persons to whom they are connected, are jointly responsible for not reflecting the truth on the periodic balance sheets and income statements and for the damages arising from their not being prepared in accordance with law and applicable accounting principles and rules, to the company, the shareholders, the company creditors and furthermore, directly to the persons who have acquired shares within the balance sheet year in which an interim dividend has been decided to be paid or paid and to the third persons. In case of the existence of conditions where legal responsibility arises, an annulment case may be

filed by the shareholders, the members of the board of directors, auditors and the Board within thirty days as of the announcement of the decision.

Issuers and capital market institutions shall prepare financial statements, financial reports and other information required by the Board to be disclosed, including consolidated financial statements, in compliance with the form and principles to be determined

and generally accepted accounting principles, definitions and standards. The idea behind bringing a compulsory independent audit firm's audit is to provide uniform and realistic information of the company which will be announced to public. Another stipulated rule behind this idea is rendering the auditors mutually responsible for the damages that will rise due to unrealistic and deceptive information stated in the reports.

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Ayça Sarıkamış | [asarikamis@gsimeridian.com](mailto:asarikamis@gsimeridian.com)