

Türkiyede Kurumsal Yönetim: Genel Bir Değerlendirme

Corporate Governance In Turkey: An Overview

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ÖZET

Şirketlerin yönetiminde gözlemlenen başarısızlık ve suistimallerin, yaşanan finansal krizlerde ya tetikleyici ya da derinleştirici rol oynaması nedeniyle kurumsal yönetim, son zamanlarda sıkça tartışılan bir konu haline gelmiştir. Bu çalışmada, şeffaflık, hesap verebilirlik, adillik ve sorumluluk gibi temel ilkeler çerçevesinde şirket ile ilgili tüm çıkar gruplarının menfaatlerinin gözetildiği bir yönetim sistemini ortaya koyan kurumsal yönetim anlayışının OECD'nin en hızlı büyüyen ekonomileri arasında yer alan Türkiye'de, benimsenmesine ve gelişmesine dönük yapılan faaliyetler incelenmektedir. Çalışmada öncelikle Türkiye'nin makro ekonomik durumu ve bunun kurumsal yönetim ilkelerinin uygulanmasına etkileri ele alınmakta, ayrıca OECD'nin belirlediği kurumsal yönetim ilkeleri çerçevesinde Türkiye'de yapılan yasal düzenlemeler ve SPK Kurumsal Yönetim İlkeleri hakkında bilgi verilmektedir. Özellikle Türk Ticaret Kanunu Tasarısı'nın yasallaşmasının, Türkiye'de faaliyet gösteren şirketlerin kurumsal yönetim uygulama düzeylerinin yükselmesine katkı sağlayacağı düşünülmektedir.

Anahtar Kelimeler: Kurumsal Yönetim, Yasal Düzenlemeler, Türkiye
Çalışmanın türü: Araştırma

ABSTRACT

Recently, corporate governance has become a frequently discussed subject considering failure and misconduct in governance of corporations have played a triggering and deepening role in financial crises encountered. In this study, activities carried out for the corporate governance mentality, which suggests a governance system that observes all interest groups related to the corporation within the framework of basic principles such as transparency, accountability, fairness and responsibility, to be adopted and developed in Turkey are reviewed.

Firstly, macro economical situation of Turkey and effects of applying this to corporate governance principles are being discussed in the study. According to this, the government has played an effective role in economy in Turkey until 1980s. At the beginning of 1980s, policies to minimize government intervention have begun. The bottom line of these policies were based more on export, private sector and competition, oriented for free market conditions and incentive for foreign capital to be implemented instead of import substitutional politics. Inflation rate generally being above 60%, real interest rate being over 30% during the 1990s and average economical growth being relatively low have made the economical conditions hard for the companies acting in Turkey.

Macro-economical instability resulting from high inflation and interest rates has made financial-industrial group companies in Turkey to become widespread. Owners of corporations have organized their businesses separately in order to distribute their risks and that has caused for the effective executive control of the corporate group at the controlling corporation level to concentrate among one or a few shareholders. As a result of this, cross-ownership, controlling minority structure and privileged ownership structures have become widespread in Turkey. Besides, instable tax management has pushed the companies to off-record applications to hide the profits.

Responding to these problems which stem from economic crisis of 2000-2001, the Turkish authorities implemented a bank restructuring programme as well as regulatory reforms. Effective audit implementations have been realized and standards for internal control and risk management have been increased. Besides, reforms in banking law including advanced corporate governance standards and limitations about lending have come into effect in November 2005. As a result of the reforms that have been made consumer price index which was 54% in 2001 decreased to 10.44% in 2008 and GDP growth which was approximately 7.5% in 2001 has increased at an average of 7.1% each year. Today, Turkish economy is one of fastest growing economies in the OECD.

As it known, corporate governance has come to the agenda with the Cadbury Report for the first time in Europe. Following Asian Crisis in 1997 and corporate scandals in the 2000s such as Enron and WordCom, many countries have published principles in terms developing corporate governance mentality. By taking reference the OECD Corporate Governance Principles, which was published in 1999 for the first time and then drawn up in 2004 after being reviewed, the Capital Markets Board of Turkey (CMB) published its Corporate Governance Principles in 2003 with the aim of developing corporate governance applications and integrating Turkish capital market to the global markets and then finalized them in 2005 by reviewing those principles.

Generally, corporate governance principles determined by the OECD are being gathered under six titles as "ensuring the basis of an effective corporate governance framework", "the rights of shareholders and key ownership functions", "the equitable treatment of shareholders" "the role of stakeholders in corporate governance", "public disclosure and transparency" and "the responsibilities of the board". The CMB's corporate governance principles consist of titles such as "shareholders", "public disclosure and transparency", "stakeholders" and "the board of directors". There is no obligation for implementation of the

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CMB's Corporate Governance Principles. However, the corporations have to state whether they comply with these principles or not.

The OECD corporate governance principles are the cornerstones of corporate governance principles in Turkey as in many other countries. For this reason, in this study, corporate governance principles determined in Turkey by the CMB and the activities for putting these principles into practice will be discussed after drawing a general framework with corporate governance principles determined by the OECD. Also, the regulations regarding the corporate governance mentality in the Turkish Commercial Code Draft (TCCD) will be discussed.

Other than the CMB principles, different studies are being made to contribute to the development of corporate governance mentality in Turkey. The regulations regarding the corporate governance rating which makes the corporate governance principles implementation levels of the companies to be determined by a standard and comparable measurement system, the ISE Corporate Governance Index established to contribute the corporate governance implementations to settle in Turkey and to encourage the companies acting responsibly about this issue and The Corporate Governance Association of Turkey (CGAT), which has adopted the mission of being the guide for the corporate governance to be settled and implemented correctly in the companies in Turkey, may be considered among these.

When we generally evaluate implementation of corporate governance principles in Turkey, we reached the finding which is still 554 public companies in Turkey and 326 of them are traded on the ISE while the shares of 228 of them are not traded on the ISE. If we are to remember that Corporate Governance Index has 25 companies, it will be seen that only 8% of the companies traded on the ISE has a corporate governance rating of 6 or more. This situation may be interpreted as the CMB principles published in Turkey generally complies with the OECD principles but the companies are not so eager or conscious about the implementation of these principles. This may be a result of the fact that the CMB principles are not based on a legal obligation.

This situation brings to mind La Porta et al.'s study in which it is stated that "*the companies with weak legal systems have the least developed capital markets*". When the findings of the study are considered within this framework, it can be concluded that it is necessary to secure these basic principles legally and not to leave the implementation of basic corporate governance principles to the initiative of the companies for having an advanced and reliable capital market. Within this context, it is expected for the Turkish Commercial Code Draft to establish a legal system within which the basic corporate governance principles are concretized. It is considered that the enactment of Turkish Commercial Code Draft will contribute to the increase of corporate governance principles implementation levels of the companies in Turkey.

Keywords: Corporate Governance, Regulations, Turkey

Type of Study: Research

1. INTRODUCTION

Corporate governance is a control and management system in which the regulations and procedures for the decisions about the company operations are explained in detail, and the rights and responsibility sharing of various shareholders are revealed clearly (Clarke, 2004: 1). Corporate governance defined as rules and applications governing the relations between employees and creditors as well as managers and shareholders; contributes to the growth and financial stability by supporting market confidence, integrity of financial markets and economic efficiency (Kirkpatrick, 2005). The OECD (2004) also considers corporate governance as one of the key elements in terms of earning investors' confidence.

Corporate governance has come to the agenda with the Cadbury Report for the first time in Europe. Following Asian Crisis in 1997 and corporate scandals in the 2000s such as Enron and WorldCom, many countries have published principles in terms developing corporate governance mentality. By taking reference the OECD Corporate Governance Principles, which was published in 1999 for the first time and then drawn up in 2004 after being reviewed, the Capital Markets Board of Turkey (CMB) published its Corporate Governance Principles in 2003 with the aim of developing corporate governance applications and integrating Turkish capital market to the global markets and then finalized them in 2005 by reviewing those principles.

The second section of this study focuses on macro economical outlook of Turkey and its effects on the development of corporate governance mentality in Turkey. The studies conducted about the corporate governance mentality in literature are given in third section. In the fourth section corporate governance principles determined by the CMB in Turkey have been evaluated within the framework of the OECD's Corporate Governance Principles. In addition to that, general information is given about other studies which are prepared considering the adaptation and development process of corporate governance principles in Turkey. In the conclusion, general evaluations concerning adaptation of the corporate governance mentality in Turkey are being made and some recommendations are given.

2. MACRO-ECONOMICAL OUTLOOKS OF TURKEY AND ITS EFFECT ON CORPORATE GOVERNANCE MENTALITY

The government has played an effective role in economy in Turkey until 1980s. At the beginning of 1980s, policies to minimize government intervention (Şahin, 2007: 193-194) have begun. The bottom line of these policies were based more on export, private sector and competition, oriented for free market conditions and incentive for foreign capital to be implemented instead of import substitutional politics (Soydemir and Derin, 2009). As it can be seen in Figure 1 inflation rate generally being above 60% (OECD, 2006a: 40), real interest rate being over 30% during the 1990s and average economical growth being relatively low have made the economical conditions hard for the companies acting in Turkey (IIF, 2005: 6). In addition to high tax rates, inflationary conditions made the companies confront the risk of capital meltdown (OECD, 2006a: 40).

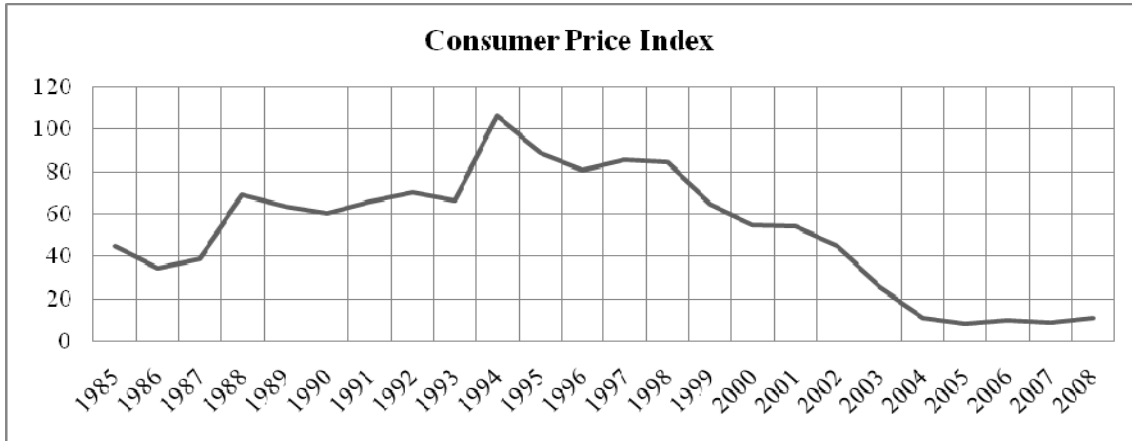


Figure 1. Inflation rates by years in Turkey

Resource: <http://evds.tcmb.gov.tr>

Macro-economical instability resulting from high inflation and interest rates has made financial-industrial group companies in Turkey to become widespread. Owners of corporations have organized their businesses separately in order to distribute their risks and that has caused for the effective executive control of the corporate group at the controlling corporation level to concentrate among one or a few shareholders. As a result of this, cross-ownership, controlling minority structure and privileged ownership structures have become widespread in Turkey. Besides, instable tax management has pushed the companies to off-record applications to hide the profits (OECD, 2006a: 40).

The economic crisis of 2000-2001 led to severe capital losses in the banking and broader corporate sectors, a large number of bankruptcies and an extraordinary number of non-performing loans. Responding to these problems, the Turkish authorities implemented a bank restructuring programme as well as regulatory reforms. Effective audit implementations have been realized and standards for internal control and risk management have been increased. Besides, reforms in banking law including advanced corporate governance standards and limitations about lending have come into effect in November 2005 (OECD, 2006a: 40).

As a result of the reforms that have been made consumer price index which was 54% in 2001 decreased to 10.44% in 2008 and GDP growth which was approximately 7.5% in 2001 has increased at an average of 7.1% each year. Today, Turkish economy is one of fastest growing economies in the OECD (OECD, 2006a: 41).

Table 1. Distribution of security stocks by years (%)

	2001	2002	2003	2004	2005	2006	2007	2008
Private Securities	7,9	8,0	8,4	10,0	11,5	14,0	17,0	18,9
Share	7,9	8,0	8,4	10,0	11,5	13,9	16,8	18,7
Bond	0,0	0,0	0,0	0,0	0,0	0,0	0,1	0,1
Commercial Paper	0,0	0,0	0,0	0,0	0,0	0,0	0,1	0,1
Asset-back securities	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
Public Securities	92,12	91,97	91,59	89,97	88,52	86,01	83,02	81,11
Government bond	76,6	68,8	79,0	77,3	81,6	82,4	81,0	77,0
Treasury bill	15,0	22,6	11,9	12,1	6,4	3,3	2,0	4,1
Privatization bond	0,5	0,7	0,8	0,6	0,5	0,3	0,0	0,0
TOTAL	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

Resource: www.spk.gov.tr

Securities' distribution among private sector and public sector is given in Table 1. According to the table, in 2001 approximately 92% of total securities belonged to public sector whereas 8% of them belonged to private sector. In 2008, this rate has been approximately 81% for public sector and 19% for private sector. Because of the government's borrowing from the market with a high real interest rate the borrowing opportunities of the private sector from the market has been limited considerably. This situation, happening together with weak macro-economical conditions, has significantly increased the companies' cost for accessing external capital (OECD, 2006a: 40). In addition to that, it is seen that the share of public sector within the total amount has decreased relatively in recent years.

Government bonds have the largest proportion among public sector securities. On the other hand, among the private sector securities shares have the largest proportion. While 7.9% of total securities belonged to shares in 2001, this percentage has increased up to 18.7% in 2008. Increase in the proportion of shares among the securities shows us that more importance should be given to corporate governance applications in Turkey.

3. LITERATURE

La Porta et al. (1997) have evaluated the effect of law systems on the capital markets. According to the findings of the study, it has been determined that the countries which have the weakest law system in terms of protecting the investor have the least developed capital markets whereas the countries which protect the investor most have the most developed capital markets.

According to *Easterbrook (1996)* the difference in corporate governance results from the difference between the markets not the one between the law systems.

Varis et al. (2001) have made a survey to determine the implementation level of the corporate governance and standards in the listed companies and the institutions which are members of the Istanbul Stock Exchange (ISE) in Turkey and to study the effect of those on corporate performance. According to the results of this study, it has been found that the ones which apply the corporate governance principles above the average could make use of the leverage more than the ones that apply these principles below the average and that they can provide a higher profitability. Besides, it has been concluded that the average return of the ones that apply the corporate principles above the average has been determined significantly higher than the ones that apply these principles below the average and corporate governance implementation level has been efficiently evaluated by the market.

Gompers et al. (2003) have established a "Corporate Governance Index" which had 24 different parameters for 1500 companies in the 1990s. They have come to the conclusion that with an investment strategy of selling the shares of firms with low corporate governance levels and buying the shares of firms with high corporate governance levels a 8.5% abnormal returns has been earned. In addition to this, they have determined that the companies with high corporate governance levels had a higher firm value, profit and growth rate.

Gugler and Yurtoglu (2003) have suggested in their study that dividends are an important informative element and this element signals the severity of confliction between large controlling owners and small,

outside shareholders. 736 different dividend announcements made in Germany over the period 1992-1998 have been used as a data in the study. According to the results of the study; it has been found that largest owners kept the dividend pay-out ratio low while the second largest shareholders intended to increase this ratio. Besides, it has also been found that deviations from the one share-one vote rule due to pyramidal and cross-ownership structures are associated with larger negative wealth effects and lower pay-out ratios.

Lemmon and Lins (2003) have studied the effects of ownership structure on firm value in 800 firms throughout 8 Asian countries. At the end of their study, they have come to the conclusion that the impulses of the majority shareholders to obtain the shares of minority shareholders have increased and the investment opportunities of the firms have been negatively affected by that. They have determined that, especially in the companies which have capital structures¹ separating the voting right from the capital provided to the company by shareholders, cumulative returns decreased approximately by 12% in crisis periods when compared to the other companies.

Gurbuz and Ergincan (2004) have studied the relation between the corporate governance levels and performances of companies on the ISE-30 Index. At the end of the research, they have come to the conclusions that return on equity in the companies which implement the corporate governance principles at an advanced degree has been higher. Besides, the market performance of the companies, which have implemented the corporate governance principles in a better way, have been found to be higher than the performance of the companies who cannot implement these principles sufficiently. Another prominent result in the study is that the companies which have a high rate of publicly held shares also have a high level of implementing corporate governance principles.

In *Aksu and Kosedag's (2005)* study, 98 criteria used in the studies of S&P have been adapted firstly to legal, institutional, cultural and economical environment in Turkey and then to public disclosure and transparency principles in the CMB Corporate Governance Principles. According to the results of the study, the public disclosure and transparency degree has been considerably low and the average public disclosure and transparency grade of Turkey has been estimated as 5 out of 10. Average public disclosure and transparency grade of Europe is 6. In addition to this, it has been found that return and accounting profitability of the companies which apply more advanced public disclosure and transparency values are higher.

In the study conducted by *Yoruk et al. (2005)*, it has been studied that whether there has been a change in financial performances of 12 Turkish banks traded on the ISE after 2003, which was the year when the CMB published its corporate governance principles, compared to the performances of 2002. According to the information that has been obtained, considering 2003 terms of corporate governance, power of variables such as profitability, productivity, return on equity and rate of leverage in terms of explaining the market added values has increased in 2004. From this point of view, it has been concluded that corporate governance mentality strengthens the relation between these variables and the market value.

In their study *Kocer et al. (2006)* focused on qualities of Turkish management, attitude against the corporate governance in Turkey and implementation of corporate governance. According to the result of the study, it has been concluded that since the legal, cultural and institutional environment is not sufficient in SMEs, it is too early for the corporate governance to be implemented in Turkey where the most important stakeholders are still the suppliers. On the other hand, the most important stakeholders in the companies on the ISE 30 Index are shareholders and employees. Besides, it has also been ascertained that SMEs think applying public disclosure and transparency rules will cause a competitive disadvantage and conflict of interest. On the other hand, it has been determined that the ISE 30 companies have adapted to public disclosure and transparency in a limited manner.

As a result of the study conducted by *Abdioglu (2008)* in order to display the role of internal audit within the context of the corporate governance mentality of companies on the ISE 100 Index and to determine the elements related to the internal audit applications affecting that mentality, it has been found that internal audit activities play an important role in terms of realizing corporate governance applications and maintaining their continuity. Besides, it has also been concluded that the internal audit is

¹ Capital structures separating the voting rights from the capital provided by the shareholders are pyramidal structures, cross-ownership structures or the privileged shares that have limited or multiple voting rights.

a complementary part of the system in terms of establishing corporate governance mentality and applications in companies, increasing its value and maintaining its quality.

Dittmar and Mabrt-Smith (2007) have studied how the corporate governance has affected the firm value by comparing the cash flow management in well vs. poorly governed companies. At the end of the study, it has been ascertained that the performance of firms with low corporate governance level has decreased since they could not use the cash in a positive manner.

The studies of *Ertuna and Tukul (2008)* aim to determine the public disclosure levels of the ISE companies after starting to implement Corporate Governance Principles in Turkey and to explain the differences between public disclosure performances of the companies. At the end of the study, it has been found that the public disclosure level is higher in the corporations which have foreign portfolio investments in comparison to the large companies which have a higher rate of publicly held shares. In addition to that, it has been determined that corporate governance committee has a positive effect on voluntary public disclosure.

The study conducted by *Ararat and Cetin (2008)* aims to determine the factors affecting the density of public disclosure of the banks traded on the ISE. Besides, differences have been determined by comparing the corporate governance qualities of the banks with the qualities of 25 European banks which have the highest market value and the underlying factors for these differences have been researched. In the study, it has been observed that the corporations on the ISE 100 Index are more transparent compared to the average and the situation has accelerated with post crisis banking regulations and IFRS coming into effect in 2005.

4. CORPORATE GOVERNANCE MENTALITY IN TURKEY

Corporate governance principles of the OECD were published in 1999 for the first time and then they have been revised in 2004. The CMB published its corporate governance principles in 2003 for the first time with the aim of integrating Turkish capital market to the global financial markets and then revised these principles in 2005 parallel to the revision in the OECD corporate governance principles.

Generally, corporate governance principles determined by the OECD are being gathered under six titles as “ensuring the basis of an effective corporate governance framework”, “the rights of shareholders and key ownership functions”, “the equitable treatment of shareholders” “the role of stakeholders in corporate governance”, “public disclosure and transparency” and “the responsibilities of the board”. The CMB’s corporate governance principles consist of titles such as “shareholders”, “public disclosure and transparency”, “stakeholders” and “the board of directors”. There is no obligation for implementation of the CMB’s Corporate Governance Principles. However, the corporations have to state whether they comply with these principles or not².

The OECD corporate governance principles are the cornerstones of corporate governance principles in Turkey as in many other countries. For this reason, in this part of the study, corporate governance principles determined in Turkey by the CMB and the activities for putting these principles into practice will be discussed after drawing a general framework with corporate governance principles determined by the OECD. Also, the regulations regarding the corporate governance mentality in the Turkish Commercial Code Draft (TCCD) will be discussed.

4.1 Basic shareholder rights

The OECD basic shareholder rights should include following specifications and fulfill basic ownership functions: Transferability of the shares, obtaining relevant and material information, participating and voting in general shareholders meetings and participation to the profit of the corporation (OECD, 2004: 33). Besides, the OECD principles also require disclosure in cases which shareholders obtain the control of the corporation in a way that is not in accordance with the proportion of their shares (controlling minority structures) (OECD, 2004: 35). Within the framework of these principles, the applications regarding the usage of basic ownership rights in Turkey and the structures of controlling minority structures are discussed below.

² The principle of “comply or explain!”.

4.1.1 Ownership registration right

The companies listed on the ISE have to dematerialize their securities via the Central Registry Agency Inc. (CRA). The CRA has two main functions: To conduct the activities as the central storage institution for exported dematerialized capital market tools in Turkey and to represent and manage the Investors' Protection Fund which has a legal entity³ (CRA, 2008).

The important functions which are expected to be carried out by the CRA with the legislation concerning dematerialization of securities hence contribute to the corporate governance in Turkey are cited as follows (Gurbuz and Ergincan, 2004: 87):

- Monitoring all the public and non-public shares of a joint stock company,
- In the case of fully paid and/or no-par increase of capital and dividend payments to enable the usage of ownership rights in the fastest, safest and cheapest way,
- To enable share transfer easily and instantaneously to third parties and institutions,
- Momentary submission of latest shareholders list and blockage list to the relevant joint stock company by the CRA enabling participation in the shareholders general meeting,
- Enabling a general meeting blockage easily,
- Continuous information flow to the joint stock companies about their shareholders.

The CRA is not only considered as a mere registration institution but also as a corporate governance platform increasing the social and economical benefits of capital market in Turkey. Therefore it will be easier for both foreign and domestic investors to have concrete criteria at hand concerning financing opportunities and liquidity by decreasing the average capital cost of the companies (Gurbuz and Ergincan, 2004: 88).

4.1.2 Right to obtain and evaluate information

All information required to exercise shareholders' rights in a sound manner should be accessible to all shareholders. The CMB Corporate Governance Principles have underlined the necessity of reaching all the information required for the shareholders' rights to be used soundly in favor of all the shareholders (CMB, 2005: 12). It has also been underlined that shareholders' right to obtain information simultaneously also refers to the obligation of the board of directors and auditors to provide such information (CMB, 2005: 13). In addition to the regulations in the CMB principles, the TCCD also grants the shareholders to obtain information and examine the documents of the company in a more secure and extensive way compared to the present system (TCCD, 2005, Article 437). It also enables the shareholders to obtain accurate and fair information (CGAT, 2007a: 12).

4.1.3 Rights of participation and voting in general shareholders meetings

According to the CMB principles all shareholders should be informed about the date, agenda and location of the general meeting (CMB, 2005: 13). The procedure, content and timing of invitation to the general shareholders' meeting should allow shareholders to acquire adequate information about items on the agenda to be evaluated prior to the meeting and for preparation (CMB, 2005: 14).

The right to vote is an indispensable right which cannot be abolished in any way by the articles of association. Also its essence cannot be violated and the implementations which make the use of the right to vote difficult should be avoided (CMB, 2005: 18). A shareholder may use his/her right by participating in the general meeting personally or he/she may use his/her vote by means of a representative (CMB, 2005: 19). Furthermore, the fact that this representative does not have to be a shareholder has been stated both in the CMB principles (CMB, 2005: 19) and the TCCD (Article 425). Besides, according to the Draft

³ Investors Protection Fund has been established as a legal entity with Article 46/A added to the CMB with 23rd article dated 15.12.1999 and numbered 4487. The fund aims to prevent especially the small investors from incurring losses since the financial situation of the intermediary institutions disrupts, to protect the investors against the risks resulting from the intermediary institutions and thus increasing the confidence in capital markets. The fund has begun its activities with the establishment of the CRA on 12.10.2001 which is the structure authorized by the CMB to represent and manage the fund.

the shareholder may prefer one of the individual or mass representation⁴ (TCCD, 2005, Article 428-429). The Draft allows general meetings and board meetings to be held in an electronic environment as well as enabling on-line voting (TCCD, 2005, Article 1524-1528).

4.1.4 Dividend right

The corporate governance framework provides that shareholders of the same class are to be treated equally with respect to the dividend payment (OECD, 2006b). The companies should develop a clearly defined and consistent dividend policy and disclose it to public (CMB, 2005: 20). In case the board of directors proposes that dividends should not be distributed completely or partially at the general shareholders' meeting, the basis for such proposal and information on the method of profit usage should be explained in the annual report, prospectus and circulars (CMB, 2005: 21). In addition to that, in the case when the company does not pay dividends or when the financial situation urges the company not to pay dividends for a long time, the Draft grants minority shareholders to sue for the dissolution of the company (CGAT, 2007a: 14).

4.1.5 Transfer of shares

The CMB proposes that practices which hinder shareholders to freely transfer their shares should be avoided and such kind of regulations is not allowed in the articles of association (CMB, 2005: 21). According to the TCC which is still in effect, some restrictions about to-the- name share transfer is possible. When written in the articles of association, it can be concluded that to-the-name shares can only be transferred to people who fulfill some prerequisites or the act of transfer can be left to the approval of the board of directors without such criteria (TCCD, 2007a: 14). In the latter case, the articles of association can provide that on behalf of the corporation the board of directors may refuse to register a transfer without cause. However, this situation is handled in detail in the TCCD and transferability of shares has not been complicated (TCCD, 2005, article. 491-498).

4.1.6 Ownership structures

Capital structures separating voting right from the capital which shareholders bring into the company (controlling minority structures) can be sorted as pyramidal structures, cross-ownership structure and application of preferred shares. Pyramidal structures are used frequently to establish control over other companies with less capital contribution (Holmén and Högfeldt, 2004). A pyramidal structure displays the other companies whose management rights belong to the controlling company through a top-down chain (Ariffin, 2009). Turkish corporate sector is generally dominated by family-controlled companies⁵ and pyramidal ownership structure is common

(OECD, 2006a: 37). The most important reason for the use of pyramidal structures in the companies is to make use of leverage by outsourcing more while retaining the right to control (Morck and Yeung, 2003: 367).

In the Draft, with the aim of increasing transparency in terms of intra-group relations within company groups and to reduce the possibility of minority shareholders abusing their controlling position through the dominant company, it has been required for the board of directors of the affiliated +company to draw up a report called "subordinate states report" which explains the interactions between affiliated companies during the first three months of the year (TCCD, 2005, Article 199). All the legal transactions concluded in favor of the parent company or another affiliated company during the last year of operation and all the precautions taken or avoided in favor of these companies are explained in the subordinate states report (TCCD, 2005, article. 199). The reasons of precautions, the losses resulting from these and benefits provided by these are specified. How the losses are actually compensated during the year of operation is explained in detail. Besides, the parent company's shareholders can also request information about the financial status and assets of the affiliates, about the transactions made between parent company and

⁴ Mass representation is provided by an organ or institution, which fulfill certain conditions and represent various shareholders' interests at the general meeting.

⁵ There are 99.400 joint stock companies in Turkey 99% of which are family companies (Alacaklioglu, 2009, p.14).

affiliated companies or between affiliated companies and also about the results of such transactions at the general meeting of the parent company (TCCD, 2005, Article 200). It is expected for the subordinate states report to increase disclosure and verification regarding intra-group relations. Therefore the new section on company groups is intended to enhance transparency with respect to intra-group relations and restrict opportunities for abuse of controlled (and controlling) companies' minority shareholders (OECD, 2006a: 50-51).

Cross-ownership structure is one of the most important tools used to increase the controlling power in the company (Dietzenbacher and Temurshoev, 2008). Cross-ownership is established when the companies in a corporate group retained their mutual ownership positions (Kiyilar and Belen, 2005). In contrast to pyramids, companies in cross-ownership structures are linked by horizontal cross-holdings of shares that reinforce and entrench the power of central controllers (Bebchuk et al. 1999). Besides, this structure may be preferred by the companies since it makes the relations between group companies complex and reduces the transparency relatively (Claessens et al., 2000). There is a high degree of cross-ownership within some corporate groups in Turkey (OECD, 2006a: 38).

The TCCD includes provisions against the abuse of cross-ownership structure. According to the TCCD, if the affiliated company holds the shares of parent company it can use one quarter of total votes and rights belonging to these shares at most and remaining shares will not be taken into account at meeting and decisions quorum (TCCD, 2005, Article 201). If a parent company has participations with more than one affiliated company, the limitations will be the same for every single company. With this provision, the Draft aims to prevent the corporate group to be used in favor of a minority by means of participations (TCCD, 2005, Article 201).

Another mechanism which provides control with a little amount of capital is the implementation of dual-class shares (Attig et al. 2003: 2). It is a system where the controlling minority structure can be clearly seen. Despite being simple and easily applicable dual class equity is the least common structure among controlling minority structures. This may be because of the fact that corporate law of some jurisdictions restrict upper and lower limit of voting rights for dual class shares and imposes some restrictions (Bebchuk et al., 1999).

When the corporate law in Turkey is reviewed, it can be seen that privileged and non-voting shares are widely used. Privileged shares are the shares in which superior rights compared to ordinary shares, are vested. In general, privilege kinds are voting, nomination, dividend privileges and privileges in liquidation. For shares with voting privileges no upper limit has been imposed under present legal regulations (Poroy et al. 2005: 451-471). However, in the TCCD, voting rights of privileged shares has been limited to 15 votes (PwC, 2008). Controlling shareholders of the companies in Turkey often hold shares with nomination privileges and/or multiple voting rights (OECD, 2006: 38).

Another share type in Turkish corporate law is non-voting shares. Non-voting shares are issued with the aim to cover the capital need of companies while maintaining the balance of voting power. Small investors preferring such kind of shares make investment without a thought of having control in the management. Their aim is just to have profit. The companies issue non-voting, dividend privileged shares with this assumption (Poroy et al., 2005). It is an obligation in Turkey to provide dividend privilege for non-voting shareholders and it is necessary for the privileged shares to be distributed in cash (CMB, 2009).

Some capital structures allow a shareholder to exercise a degree of control disproportionate to the shareholders' equity ownership in the company. The OECD principles state that pyramidal structures, cross-ownership and shares with limited or multiple voting rights, which allow the shareholders to have control of the company out of proportion with the shares they have in the company, may be used to decrease the capacities of shareholders who do not have a controlling majority to affect the policies of the company and for this reason such kind of capital structures need to be disclosed to the public (OECD, 2004: 35). Within this context, in the CMB principles it is suggested to disclose the basic information about the ownership structure of public companies in Turkey in annual reports and footnotes of financial statements (CMB, 2005: 27-30). Besides, the companies are obliged to disclose in their annual corporate governance report whether they have privileged shares or not. In addition to that, the CMB principles

(CMB, 2005: 13) suggest that the shareholders should be informed about the legal and commercial relations between their company and the other companies in terms of capital, governance and audit as well as to publish these information in the annual reports and web page of the company.

4.2 Public disclosure and transparency

The OECD has established its corporate governance principles about public disclosure and transparency considering that an efficient public disclosure and transparency system is audited by the markets to which the companies are related (OECD, 2004: 49). It has underlined that public disclosure and transparency system to be established within this context, should serve the aim of increasing the transparency especially about the subjects concerning financial situation and activities of the companies, company objectives, risk factors, shareholders and voting rights, related party transactions, employees and other shareholders (OECD, 2004: 50-54).

The CMB also established a provision in its corporate governance principles which states that companies should establish an information policy regarding public disclosure and share that with the public (CMB, 2005: 24). Besides, the CMB has obliged the public companies to prepare a “Corporate Governance Principles Compliance Report” in addition to the annual reports. In this report which is an indispensable part of the annual report, it is necessary to state whether the companies complied with the CMB Corporate Governance Principles or not and their excuses if they have not complied with those (Sakarya and Ozmen, 2008: 112). In addition to that, the CMB has regulated that the companies should use their websites actively, establish an investment relations section on their websites and how necessary it is for them to include updated information about the company in this section (CMB, 2005: 26). It is also regulated in detail in the TCCD that joint stock companies should create a website and a part of this website should be allocated to public disclosure (TCCD, 2005, Article 1524-1528).

Apart from the corporate governance principles, the CMB has regulated the necessity of disclosing the provisions⁶ specified in “Communiqué on Public Disclosure of Material Events” to public by means of the ISE Daily Newsletter.

The Public Disclosure Platform (PDP) is an organization which aims to transfer financial statements, special condition explanations and other notifications of the public companies and all the intermediary institutions in Turkey in a safe manner by means of using electronic signature technology through a computer network started to act on June 1st 2009. PDP’s aim is to make the information disclosed to the public in a fast and simultaneous manner. Thus, it will be possible not only to prevent the insider trading but also to minimize the level of asymmetric information which is one of the important obstacles for the development of capital markets throughout the world. Existence of sub-systems which makes it possible to compare the financial statements in the system also allows the gathered data to be used in an efficient manner (Dogan, 2005: 129).

Finally, Turkey’s “Investors Protection Indicator” note has increased from 5.3 to 5.7 in “2009 Doing Business (DB)” report which is prepared by the World Bank. This report takes basis indicators which can affect investment environment of the countries such as employment, tax policy and protection of the investors’. Besides, Turkey has got a grade of 9 out of 10 in Public Disclosure Indicator which is one of the subheadings of this indicator (DB, 2009).

⁶ Information which require a public disclosure and which are regulated in Communiqué with Serial: 8, No:54 have been specified below:

- Changes about the capital structure and management control of the partnership,
- Obligation for notification regarding the instruments of market capital based on shares,
- The partnership’s acquiring its own shares,
- Changes about the voting rights and capital amount of the partnership,
- Disclosure of the additional information,
- Disclosure of information about using the rights of partnership,
- Obligation of notifications regarding the debt instruments.

4.3 Disclosure of financial statements and reports

According to the OECD, financial information should be prepared and disclosed in accordance with high quality internationally recognized accounting standards (OECD, 2004: 50). These Principles support the development of high quality internationally recognized standards, which can serve to improve transparency and the comparability of financial statements and other financial reporting between countries (OECD, 2004: 54). Within this context, compliance with International Financial Reporting Standards (IFRS) increases the reliability and comparability of financial statements and affects the transparency, thus affecting the corporate governance mentality in a positive way. Providing timely access to the financial statements of the company which includes qualified, reliable and comparable information is vital in terms of corporate governance principles. Transparent, reliable and comparable information helps the shareholders to make right decisions at the right time (Aktas, 2005).

Within this framework, the CMB has made IFRS obligatory for the public companies beginning from January 1st 2005. The TCCD will also make it obligatory for the financial statements to be prepared in accordance with Turkish Accounting Standards which is identical to IFRS (Tekinalp, 2008: 637).

4.4 Company objectives

According to the OECD, the companies have to make a public disclosure about their commercial objectives, relations with the society, work ethics and policies for the environment with the aim of informing their investors and other users of information (OECD, 2004: 50-51).

The CMB also suggests that the companies should provide information about social responsibility policies and ethic rules and strategic and commercial objectives in their annual reports (CMB, 2005: 30).

4.5 Foreseeable material risk factors

The OECD principles also regulated the provision regarding the disclosure of information about foreseeable risk factors. Within this scope, beginning from January 1st 2005 the companies listed on the ISE in Turkey have been obliged to disclose their financial risks in their financial statements prepared according to IFRS. Also the CMB principles have regulated the necessity of the public for a detailed explanation about the foreseeable risk factors regarding future operations (CMB, 2005: 30). In addition to that, opinions and statements of an independent auditing company and the company's board of directors about the internal control system, with which the risk factors of the company are discussed, must be attached to the annual reports (CMB, 2005: 30).

4.6 Shareholder and voting rights

One of the basic rights of investors is to be informed about the ownership structure of the enterprise and their rights vis-à-vis the rights of other owners. Besides, this right should also extend to information about the structure of a group of companies and intra-group relations (OECD, 2004: 51).

The CMB principles also regulate the necessity of the information concerning the corporate structure, the amount and proportion of shares and share classes which the shareholders own, to be put in a table format and to be incorporated into the annual report and financial statement footnotes (CMB, 2005: 27).

4.7 Related party transactions

According to the CMB principles, board members, executives, shareholders who directly or indirectly own 5% of the company's capital (CMB, 2005: 28) and the companies with which the company has a commercial transaction, have to be disclosed to the public when a transaction concerning capital market instruments is performed (CMB, 2005: 31). Besides, the wider implementation of IFRS-based standards by the companies listed on stock exchange will lead the related party transactions to be disclosed to public in a more detailed and periodic manner (OECD, 2006a: 52).

4.8 Issues Regarding employees and other stakeholders

According to the OECD, corporate governance framework should encourage the companies to inform their employees, creditors, suppliers and other shareholders about the subjects of their concern (OECD,

2004: 53). The CMB also suggests the companies to inform the public sufficiently about the policies and procedures concerning the protection of the rights of employees and other stakeholders (CMB, 2005: 37). With this regulation, it has been observed that many companies in Turkey have disclosed their policies about shareholders to the public (OECD, 2006b: 78).

4.9 Auditing

Auditing in Turkey has been being conducted as independent audit and internal audit. Independent audit is the audit made in terms of the accuracy of companies' annual financial statements and other financial information and their compliance with the relevant criteria (for example, the financial reporting standards for the public companies which are determined or accepted by the CMB). Independent audit should be carried out by a competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects (OECD, 2004: 54). Independent auditing and reporting activities in capital market are conducted within the framework of "Communiqué Amending the Communiqué Regarding Independent Auditing in Capital Markets" (CMB, 2006) which came into effect after being published in the Official Gazette numbered 26196 and dated 12.06.2006 and which was prepared in compliance with International Independent Audit Standards.

The OECD states that if an independent auditor provides the company with services other than auditing, this may adversely affect the independency of the auditor (OECD, 2004: 55). Hence with the regulations done by the CMB an institution providing independent auditing service can work with their customers, to whom they provide this service, at most for five years (CMB, 2005: 31) and they cannot provide any other services than auditing (CMB, 2005: 32).

On the other hand, internal audit is an auditing function established within a company to investigate and evaluate the company's activities. Generally an auditing committee or another equivalent organ is accepted as a body providing the supervision of internal auditing activities. Such kind of organs should be responsible for the supervision of the whole relation with external auditor including the quality of services provided by the auditor to the company other than the auditing. Besides, internal auditing helps the institution to reach its aims by bringing a systematic and disciplined approach intended for evaluating and developing the processes of internal audit, risk management of the institution, control and corporate governance (Uyar, 2004: 74). The companies listed on the ISE are responsible to form an "Audit Committee" of at least two people to be chosen among the board of directors.

4.10 Insider trading

Insider trading may be defined as profiting from information which has not been disclosed to public and which can affect the capital market instruments, having undeserved gain in a way to impair the equality of opportunities among the people who are trading in capital market or as eliminating a loss by means of establishing close relations with the company and using these relations. According to the OECD principles, any kind of precautions must be taken to prevent such a misuse of information (OECD, 2004: 44). According to the principles of the CMB, a list of probable insiders are being published in the corporate governance compliance report of the companies and this information can be accessed both on the web site of the company and in annual reports (CMB, 2005: 32).

4.11 Stakeholders

According to the CMB principles, the companies should develop some policies to protect the interests of stakeholders (CMB, 2005: 37). Besides, these policies must be a well-balanced in terms of protecting the rights of stakeholders in case of an interest conflict among the stakeholders (CMB, 2005: 24). The companies should establish a human resources policy including subjects such as career planning, job definition and employment (CMB, 2005: 38), within the scope of trade secret confidentiality of information relevant to customers and suppliers should be respected (CMB, 2005: 39).

Minority shareholders are also an important stakeholder group relevant to the company. Despite the fact that most of the public companies belong to a shareholder with controlling power minimizes the

agency problem by allowing the executives to be monitored closely on one hand, it increases the risk of the shareholder who has the controlling shares to abuse this power by ignoring the minority shareholders. This risk occurs especially when controlling shareholders have a controlling right at a level which does not compensate the risk they will undertake by means of legal instruments separating ownership from control such as pyramidal structures or multiple voting rights (OECD, 2004: 41-42). In addition to the policies intended for protecting stakeholders and with the aim of minimizing this risk in corporate governance principles, the CMB regulated that the companies need to develop mechanisms providing the company's stakeholders to participate in the governance of the company (OECD, 2004: 47) and even these mechanisms need to be placed in internal regulations or articles of associations of the companies (CMB, 2005: 27). Besides, it is also stated that cumulative voting procedure should be prioritized for the minority shareholders to be represented in the board of directors (CMB, 2005: 20).

In addition to that, the CMB principles demand from the board of directors, executives and controlling shareholders to disclose the activities performed on their own behalf. (CMB, 2005: 22).

4.12 Structure of the board of directors

According to the OECD, the structure of the board of directors that undertakes an important role for the corporate governance mentality to be adopted by the company is responsible for (OECD, 2004: 60) the company to be governed in a fair, transparent, accountable and responsible manner (CGAT, 2007b: 4). In its corporate governance principles, the CMB also has attributed this responsibility to the board of directors (CMB, 2005: 44). According to this, the board of directors is responsible for acting in accordance with the interests of the company and its shareholders. While fulfilling this responsibility, the board of directors is expected to equally consider the interests of shareholders such as employees, creditors, customers, suppliers and local communities (OECD, 2004: 58). The board of directors needs to provide the balance between the interest groups within the framework of laws, articles of association, in-house regulations and policies (CMB, 2005: 43).

4.13 Functions of the board of directors

The board of directors is an organ shaping the strategic management of the company and is responsible for guiding and reviewing major plans of action and risk policies (OECD, 2004: 60). According to the CMB principles, the board of directors should determine the vision/mission of the company and disclose to the public (CMB, 2005: 43). Besides, the board of directors is responsible for determining the performance objectives of the company within the framework of this vision and mission (OECD, 2004: 60) and auditing whether the company is properly managed or not by taking these objectives as basis. The board of directors which makes the activity results of the company to be projected to accounting records in accordance with present legislation and international accounting standards (CMB, 2005: 43) should act as a pioneer in resolving and settling disputes that may arise between the company and shareholders (CMB, 2005: 43).

With the aim of fulfilling all these tasks and responsibilities in a healthy manner, the chairman of the board of directors is elected among the independent members. An audit committee should be established for the coordination of auditing activities and a corporate governance committee should be established in order to make the company comply with the corporate governance principles and sustain this compliance (CMB, 2005: 55). In addition to the principles of the CMB, the Draft also brings regulations regarding establishing committees within the structure of the company (TCCD, 2005, Article 366).

According to the principles of the CMB, the responsibilities and powers of the board of directors should be clearly distinguished from the responsibilities and powers vested to board members, executives and general assembly and should be placed in the articles of association of the company. Within this framework, a work distribution should be made among the board members. Power and responsibilities of the board members and executives should be included to the annual report (CMB, 2005: 44).

4.14 Formation of the board of directors

The board of directors is composed of two different types of members. These are executive and non-executive members. In case a member bears its administrative duty as a managing member, then the mentioned board member is defined as the board member having an execution duty. A non-executive member is defined as an individual not having any administrative duties within the company. The chief executive officer (CEO) is the individual who is responsible for the implementation mentioned under the articles of association at the highest level. In case there is no CEO in corporate structure, same function will be fulfilled by the general director (CMB, 2005: 5).

According to the OECD, for the board of directors to be objective and independent while fulfilling its duties a certain number of board members should be independent of management. Objectivity and independency of the board of directors should also be provided by separating the roles of general director and board chairman (OECD, 2004: 56). The CMB also requires for the number of the board of directors to be not less than two, one third of which are independent members. Besides, it also underlines that the board chairman and chief executive officer should not be the same person and more than half of the board of directors should be non-executive members (CMB, 2005: 51).

The OECD principles underlines that the board of directors should consist of experienced, expert and independent members. Expertise and experience requires the board members to act on a fully informed basis, in good faith and with due diligence and care (OECD, 2004: 59). It is suggested in the CMB principles that the board members should have higher education and (CMB, 2005: 51) the TCCD obliges it for some of the board members to have higher education (TCCD, 2005, Article 359).

4.15 Functioning of the board of directors

In order to fulfill their responsibilities, board members should have access to the necessary information (OECD, 2004: 58). For this reason, the CMB requires from the companies to establish mechanisms to inform the board members in a timely and accurately manner about significant developments that may impact the company (CMB, 2005: 44).

The board of directors should convene on a regular basis at least once a month (CMB, 2005: 49). The agenda of the meeting is determined by the chairman by consulting general director and other members of the board (CMB, 2005: 48). However, the members of the board are entitled to propose any amendments on the agenda to the board chairman (CMB, 2005: 49). The board of directors meeting and decision quorum should be included in the articles of association (CMB, 2005: 50). While the regulation of TCC in effect leaves this uncertain, meeting quorum has been determined in TCCD as the majority of the total number of members (TCCD, 2005, Article 390). Besides, the meetings of the board of directors should be planned and conducted in an effective and efficient manner (CMB, 2005: 48). To make this happen, the procedures for invitation and preparation of the board members should be designed so as to allow board members to be properly prepared for such meeting (CMB, 2005: 49). If deemed necessary, all executives may attend to the board of directors meetings (CMB, 2005: 44).

4.16 Executives

Healthy functioning of management mechanisms in a company requires establishing an expert and experienced management organization (CMB, 2005: 57) and to determined the power of all the people within this organization in a clear way (CMB, 2005: 57). In this sense, a transparent system which will prevent any kind of conflicts of powers should be established and a balanced power and responsibility area should be drawn for each executive. The TCCD attributes the duty of determining the organization chart and preparing an organization regulation especially in the cases when the management is transferred (TCCD, 2005, Article 375-367).

The executives perform their duties in accordance with the principles of corporate governance while they are ensuring that the company conducts its business within the framework of its mission and vision (CMB, 2005: 57). Besides, according to the principles of the CMB, the executives cannot undertake any responsibilities in a place other than the company (CMB, 2005: 57).

4.17 Pricing

The board members are paid a fee which is close to the wage of general director by taking the time spent for the company into consideration (CMB, 2005: 53). Attendance fee is paid to members of the board of directors, provided that it does not exceed a certain rate of his/her compensation⁷ (CMB, 2005: 53). The fees to be paid to an executive between lower and upper limits determined by market conditions are directly related to the personal quality and contribution to the success of the company (TCCD, 2007b: 15). The CMB principles deem it inappropriate for the company to lend money or provide credit facilities to members of the board of directors and executives (CMB, 2005: 54).

5. OTHER ACTIVITIES TO DEVELOP CORPORATE GOVERNANCE MENTALITY IN TURKEY

Other than the CMB principles, different studies are being made to contribute to the development of corporate governance mentality in Turkey. The regulations regarding the corporate governance rating which makes the corporate governance principles implementation levels of the companies to be determined by a standard and comparable measurement system, the ISE Corporate Governance Index established to contribute the corporate governance implementations to settle in Turkey and to encourage the companies acting responsibly about this issue and The Corporate Governance Association of Turkey (CGAT), which has adopted the mission of being the guide for the corporate governance to be settled and implemented correctly in the companies in Turkey, may be considered among these. Besides, basic regulations regarding the corporate governance mentality in Turkish Commercial Code Draft are given in this section.

5.1 Rating of compliance to the corporate governance principles

Rating of compliance to the corporate governance principles is the activity of independently, neutrally and fairly evaluating and classifying the compliances of the companies to the corporate governance principles published by the CMB (CMB, 2007). The aim of rating the compliance to the corporate governance principles is to determine the level of companies for implementing the corporate governance principles by means of a standard and comparable measurement system (Sandikcioglu, 2005: 12). In other word, the rating of compliance to the corporate governance principles puts forward standard criteria which not only determines the companies' level of implementing the corporate governance principles but also allows making a comparison between corporate governance principles implementation levels of different companies (Sandikcioglu, 2005: 1).

According to the Communiqué on Principles Regarding Ratings and Rating Agencies, while rating the compliance to the corporate governance principles the implementation level of the principles are evaluated in terms of four main criteria consisting of shareholders, public disclosure and transparency, stakeholders and the board of directors. Each criterion is graded in terms of rating between 1 and 10. Besides, a grade is given for representing the compliance of the company to the principles as a whole. 1 presents the lowest level while 10 represents the highest level in rating compliance to the corporate governance principles (CMB, 2007).

According to this communiqué, it is optional for the companies to have rating done. The CMB may oblige it for them when it deems that necessary. Rating activity is conducted by rating agencies which are founded in Turkey and authorized by the CMB to conduct rating activities and also by international rating agencies which are accepted by the CMB (CMB, 2007).

5.2 The ISE corporate governance index

In 2005, the ISE announced that it will establish a Corporate Governance Index to contribute the corporate governance implementations to settle in Turkey, to encourage the companies which are acting responsibly for this issue, to provide references to others and especially to attract foreigners. It aims to measure prices and return performances of the companies traded on the ISE which have the corporate governance principles compliance grades within the context of communiqué by the CMB regarding to

⁷ The fee paid to the chairman and members of the board is called attendance fee.

rating activities (Persembe, 2007). A condition requiring 5 companies which have a corporate governance rating grade of at least 6 to be notified to the ISE has been laid for the index to begin to be estimated. The ISE Corporate Governance Index (XKURY) has begun to be estimated on 31.08.2007 with the notification of 5 companies, which has a minimum corporate governance rating grade of 6 (ISE, 2009). There are still 18 companies⁸ in the ISE Corporate Governance Index.

The ISE has provided a facility of benefitting from 50% quotation prices deduction incentive for the companies included to the corporate governance index. Besides, it is expected that taking place in that index will provide advantages such as providing important contribution to the firm value and reputation and creating a priority for the interest of foreigners (Persembe, 2007).

5.3 The corporate governance association of Turkey

The Corporate Governance Association of Turkey (CGAT), an association which adopted the mission of providing guidance and leadership for the settlement and correct implementation of corporate governance in both private companies and public institutions in Turkey. It has been conducting its activities since 2003 with the aim of making the companies to become institutions with high performance, competitive, well-managed and adding the maximum value to its shareholders.

5.4 Reflections of corporate governance mentality in Turkish commercial code draft

While the TCCD predicts principal and general provisions in terms of corporate governance on one hand, it has also brought regulations in compliance with the basic principles such as fairness, transparency, accountability and responsibility in various subjects on the other hand. The Draft has not specified the rules as a list as it in the CMB's communiqué (Tekinalp, 2008: 635) and has concretized these basic principles which serve as bearing columns defining corporate governance mentality⁹. In the draft, transparency has been provided with the company's website as well as many provisions regarding formal and financial publicity (Article 1524). It has gained a legal quality by looking out for fairness, differentiated continuity¹⁰, principles of equal treatment and projecting responsibilities regarding accountability, preparing subordinate states reports, explanation and notification (Tekinalp, 2008: 638).

The Draft has adopted principles such as fairness, transparency, accountability and responsibility. It has made the standards of audit and accounting and the company's website applicable for not only public companies but also non-public companies and limited companies as an instrument of transparency (Tekinalp, 2008: 637). In addition to that the Draft has provided the CMB with the sole power in determining the corporate governance rules in terms of public companies¹¹, the principles of annual corporate governance statement and criteria regarding the rating of these companies in terms of these principles. Other relevant public institutions will be able to make limited corporate governance regulations which are only valid for their own areas, provided that they obtain the consent of the CMB (Tekinalp, 2008: 639).

Some of the eye-catching elements in the Draft, which take place within the framework of the corporate governance mentality, may be listed as it follows (PwC, 2008):

- Opportunity for a board of directors formed of a single member has been provided.
- It has been conditioned that at least half of the members of board of the directors should have had higher education.
- The condition obliging for the members of the board of directors to be a shareholder has been removed.

⁸ The companies on the ISE Corporate Governance Index (as of 01.10.2009): Doğan Yayın Holding (9.00), Doğan Holding (8,26) Vestel Elektronik (8.50), Tofaş (8.16), Türk Traktör (8.12), Hürriyet (8.50), Tüpraş (8.20), Asya Katılım Bankası (7.82), Otocar (8.12), Şekerbank (8.00), Dentaş Ambalaj (7.82), Anadolu Efes (8.27), Yapı ve Kredi Bankası (8.02), Petkim (7,71), T.S.K.B. (8,77), Coca Cola İçecek (8.30), Arçelik (8.21), TAV (8.50).

⁹ Empowering the principles with legal content is meant by the term "concretization".

¹⁰ Differentiated continuity predicts for the responsible entities to compensate not for all the loss but the loss they caused together with the joint failure while it leaves the loss other than the joint loss out of the continuity. It attributes this to the member or executive who caused that loss.

¹¹ The Draft has used the term "public companies" intentionally thus not limiting the power to the companies traded on the ISE.

- Privileged shares have been limited to a maximum of 15 votes in terms of voting rights. Also, privileges cannot be used in terms of voting rights in some decisions.
- The system providing the difference between the concepts of board members and management has been adjudicated.
- It has been allowed for the other legal entities to be a member of the board of directors.
- Opportunities for the representation of shareholder groups and the minority in the board of directors have been increased.
- Minority rights list has been enriched.
- Companies have been obliged to establish a website and to allocate a part of this website to the services of information society if such kind of website already exists. Besides, this website should make it possible for the general meetings and the meetings of the board of directors to be conducted and the votes to be casted on-line.
- It has been obliged to establish a committee for the early diagnosis of the risks.
- The Draft has made it obligatory to comply with Turkish accounting standards in preparation of financial statements and to international auditing standards in auditing.

6. CONCLUSION

Corporate governance adopts a mentality which seeks for the rights of all the interest groups as well as the traditional structures carrying the main element of making profit and distributing it to shareholders in the management and activities of companies. The aim of corporate governance is to increase investors' confidence by minimizing the misconduct risks of people in charge of the company with determining mutual rights and obligations of relevant parties and increasing the transparency level of the company's management and to provide consistent growth and high profitability by increasing the performance of the company.

As it is in many other countries, the works for adopting and developing corporate governance principles have also been increased during recent years in Turkey. Within this framework, the principles of corporate governance in Turkey have been determined by the CMB. The TCCD leaves the power of determining corporate governance principles to the CMB completely.

When the structures of companies in Turkey are examined, it is seen that a large majority of the ownerships belong to the family companies. Pyramidal structures are common among some company groups and the cross-ownership is at high rates. Shareholders have an important role both in strategic and daily management of the companies.

There are still 550 public companies in Turkey. 322 of them are traded on the ISE while the shares of 228 of them are not traded on the ISE. If we are to remember that Corporate Governance Index has 18 companies, it will be seen that only 6% of the companies traded on the ISE has a corporate governance rating of 6 or more. This situation may be interpreted as the CMB principles published in Turkey generally complies with the OECD principles but the companies are not so eager or conscious about the implementation of these principles. This may be a result of the fact that the CMB principles are not based on a legal obligation.

This situation brings to mind La Porta et al.'s (1997) study in which it is stated that "*the companies with weak legal systems have the least developed capital markets*". When the findings of the study are considered within this framework, it can be concluded that it is necessary to secure these basic principles legally and not to leave the implementation of basic corporate governance principles to the initiative of the companies for having an advanced and reliable capital market. Within this context, it is expected for the Turkish Commercial Code Draft to establish a legal system within which the basic corporate governance principles are concretized. It is considered that the enactment of Turkish Commercial Code Draft will contribute to the increase of corporate governance principles implementation levels of the companies in Turkey.

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Appendix:

Milestones of capital markets and corporate governance in Turkey

July 1981	Capital Market Law was enacted.
December 1985	Istanbul Stock Exchange Market was opened.
July 1989	Settlement and Custody Centre was founded.
January 1992	Settlement and Custody Centre was turned in a separate company.
June 1993	Communiqué on Public Disclosure of Material Events was published with the aim of disclosing public in capital market.
July 1995	ISE Settlement and Custody Inc. was turned into a bank.
	Istanbul Gold Exchange started its activities.
July 1997	First portfolio management company started its activities.
February 1998	First rating agency was founded.
September 2001	Central Registry Agency Inc. was founded.
July 2002	Turkish Derivative Exchanges was founded.
December 2002	Turkish Industrialists' and Businessman's Association (TİBA) published the work named "Corporate Governance: Best Code of Practice".
July 2003	Corporate governance principles were published.
November 2003	CMB Accounting Standard was brought into conformity with International Accounting Standards.
December 2003	Regulation regarding the Corporate Governance Rating was published.
June 2004	Public Disclosure Project tests took start.
December 2004	CMB made it obligatory for the corporate governance compliance reports of the companies listed on to the ISE be included to annual reports and to create a investor relations section on their websites.
February 2005	Turkish Derivatives Exchange Inc. started its activities.
February 2005	ISE determined the rules regarding corporate governance index.
February 2005	CMB made amendments in corporate governance principles after the changes in OECD corporate governance principles.
November 2005	New Turkish Commercial Code Draft has been submitted to the Parliament.
November 2005	Banking Law including corporate governance principles was published by BRSA.
June 2006	CMB prepared the regulations regarding independent auditing standards.
July 2007	CMB updated the communiqué regarding rating activities and agencies.
August 2007	ISE Corporate Governance Index started to be estimated.