

## Independent Auditing Requirement for Turkish Companies

29 January 2013

The Council of Ministers Decree regarding the Determination of the Companies Subject to Independent Audit (the "Decree") was published in the Official Gazette dated 23 January 2013 and entered into force as of **1 January 2013**.

As per Article 3 of the Decree, companies who, **alone or together with their affiliated companies and subsidiaries**, meet at least two of the following conditions are subject to the independent auditing requirement:

- companies with total assets equal to or higher than **TL 150 million**;
- companies with annual net sales revenues equal to or higher than **TL 200 million**;
- companies with total employees equal to or higher than **500**.

As to the determination of whether these criteria are met for the year 2013, the financial statements for years 2011 and 2012 shall be taken into account regarding total assets and annual net sales revenue, and the average number of employees for years 2011 and 2012 shall be taken into account regarding the number of employees. If at least two of the three conditions are met, the company shall be subject to the independent auditing requirement as of 1 January 2013. The financial charts and the annual report of the board of directors shall be deemed null and void if they are not audited in accordance with such requirement.

In addition, the companies listed in Annex I of the Decree (such as the companies which are already subject to the auditing of the Capital Markets Board or the Banking Regulation and Supervision Agency) are automatically subject to the independent auditing requirement, whereas the companies listed in Annex II (such as the license holding companies operating under the regulations of the Energy Market Regulatory Authority and public companies under the Capital Markets Law) shall be subject to the independent auditing requirement only if they meet certain criteria specifically determined in Annex II.

Accordingly, the companies having a license, certificate or an authorization certificate and operating under the regulations of the Energy Market Regulatory Authority as per Electricity Market Law No. 4628, dated 20 February 2011, Natural Gas Market Law No. 4646, dated 18 April 2001, Petroleum Market Law No. 5015, dated 4 December 2012, and Liquefied Petroleum Gas (LPG) Market Law No. 5307, dated 2 March 2005, are subject to independent auditing if at least two of the following three conditions are met (the independent auditing requirement under the energy legislation is reserved):

- companies with total assets equal to or higher than **TL 75 million**;
- companies with annual net revenues equal to or higher than **TL 100 million**;
- companies with total employees equal to or higher than **250**.

Pursuant to Temporary Article 6 of the new Turkish Commercial Code ("TCC"), an auditor shall be selected by 31 March 2013, at the latest, by the authorized body of the company which is subject to the independent audit. The term of office of the internal auditor selected under the former TCC shall expire upon the selection of an independent auditor.

Furthermore, pursuant to Article 1524 of the new TCC, companies subject to the independent auditing requirement are under an obligation to create a website and a certain section of such website shall be allocated for the obligatory announcements as provided under the new TCC. Failure to comply with this requirement shall result in an annulment of the relevant general assembly and board of directors' decision, liability for the consequences of such noncompliance, and personal liability for the managers and board members at fault.

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