

# Independent Audit of Joint Stock Companies in Türkiye

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## Introduction

Audit in Joint Stock Companies (“JSC”), in general, refers to the audit of the Board of Directors’ (“BoD”) actions and/or the compliance of the financial statements with the relevant legislation and principles. Auditing can be performed with two different approaches depending on whether the audit is conducted internally or externally. Unlike the previous Turkish Commercial Code (Law No. 6762), the current Turkish Commercial Code (Law No. 6102 “TCC”) does not contain any provision on internal audit. However, the new code does not prevent the company to form a sub-organ or a committee under BoD to ensure an internal surveillance. External audit, by definition, is the inspection of the company by independent auditors or by public legal entities on behalf of the government.

The JSCs which are subject to independent audit are determined by the Presidential Decree No. 64034 (Official Gazette No. 32029) published on November 30, 2022. This article briefly examines the independent audit and its scope.

## Subject and Scope

Independent audit is the examination of the company's financial statements and the annual reports prepared by BoD. The audit also includes an assessment on whether the company complies with the Turkish Accounting Standards (“TAS”), the law, and Articles of Association (“AoA”) of the company.

The audit must be performed diligently in accordance with the ethical standards of the auditing profession and the principles set by the Public Oversight, Accounting, and Auditing Standards Authority (“POAASA”).

Whether the company's assets and financial status are presented in accordance with the principle of integrity shall be inspected and if not presented as such, the reasons shall be detected by the auditors.

The auditor also considers whether the financial statements and the annual reports are consistent with the information obtained during the audit.

Upon completion of the audit, the auditor prepares a report. If the auditor detects any alterations on the financial statements and the annual reports after the submission of the report, and if these alterations are of a nature to affect the report, the auditor has to conduct a re-audit and disclose the result in a separate report.

### **Appointment of the Auditor**

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The auditor is appointed by the General Assembly (“GA”). The election must be made before the end of each fiscal period and, in any case, before the end of the fiscal period in which he/she will fulfil his/her duties. The election and dismissal of the auditor, unless otherwise stipulated by law, are among the non-assignable powers of GA.

As TCC does not require a special quorum for the appointment of an auditor, the ordinary quorums set forth in Article 418 of TCC, which is the majority of the votes, is applicable.

The auditor must be a certified public accountant, or an independent accountant authorized by POAASA and/or a capital company whose shareholders are composed of certified independent accountants.

In other words, besides being a certified public accountant or an independent accountant, it is also necessary to be authorised by POAASA in order to become an independent auditor.

To ensure impartiality and independence of the auditor, certain individuals cannot undertake the auditing assignment in the company to be audited. For example, being a shareholder, having an executive role in the last three years prior to becoming an auditor, or

working in the company to be audited are disqualifications for becoming an auditor.

### **Appointment of the Auditor by a Court Decision**

Although the auditor is elected by GA, in some cases the auditor may also be appointed by the court.

If GA has not elected an auditor within the first four month of the fiscal year or the elected auditor has refused the assignment or has terminated the contract, or if the decision of GA to appoint an auditor is cancelled or became null and void or the auditor is unable to fulfil his/her duties for any other reason, the auditor shall be appointed by the court.

### **Obligations of the Company and the Auditor**

#### **Obligations of the Company**

The main obligation of the company is to pay the audit fee. Pursuant to the Independent Audit Regulation (Official Gazette No. 28509), POAASA may set a fee tariff on audit services for the relevant year.

An audit contract must be concluded between the auditor and the company. One of the compulsory provisions of this agreement is the fee which cannot be subject to any other conditions other than the audit service.

The company is obliged to provide the necessary information and documents for the audit. In cases where the members of BoD fail to provide the necessary information and documents by their own fault, they shall be legally liable.

#### **Obligations of the Auditor**

The main obligations of the auditors are as follows:

- ▶ to prepare a report, and to make explanations to GA on the audit's outcomes,
- ▶ to comply with the provisions regarding the election and dismissal of auditors and to comply with the provisions on the termination of the contract,

- ▶ in the event of termination of the contract, to submit an appropriate report to GA on the results of auditing process until the date of termination,
- ▶ to ensure quality and reliability,
- ▶ to comply with the advertising bans, and not to engage in unfair competition,
- ▶ to conduct the audit in an impartial manner and to comply with the confidentiality requirements.

### **Audit Report**

The auditor shall prepare a comprehensive report on the scope, nature, and results of the audit.

Companies' sustainability and potential future developments according to the financial statements and their accuracy are assessed in the first part of the report.

Main part of the audit report includes;

- a) Whether the bookkeeping system and financial statements comply with the relevant provisions of the law and AoA,
- b) Whether BoD has given information and provided the documents requested by the auditor.

The auditor indicates his/her overall opinion about the audit in the final part.

Audit reports may be classified as follows:

#### **1- Unqualified Opinion – Clean Report**

An unqualified opinion is considered a clean report.

In clean reports, the auditor does not have any kind of adverse comments about the audit process. In other words, the auditor is satisfied with the company's financial reporting. The issuance of a clean report constitutes a basis for the discharge of board members but does not eliminate their liability.

## **2- Limited Unqualified Opinion**

A limited unqualified opinion means that there are inconsistencies in the financial statements which can be corrected by the company.

## **3- Adverse Opinion**

An adverse opinion is provided in cases where the auditor is not satisfied with the financial statements or discovers a high level of material misstatements or irregularities. In this case, BoD has to call a GA meeting within four business days and GA has to elect new board members. Unless otherwise stipulated in AoA, former board members may be re-elected. The new board members have to prepare financial statements that reflects the material facts and submit it to GA together with the audit report.

## **4- Disclaimer of Opinion**

The auditor may refrain from giving an opinion by explaining the reasons.

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## **Conclusion**

Independent audit is an essential procedure for inspecting companies' compliance with the law, TAS and AoA. It also builds trust in companies and allow the company managements in taking the right decisions. Hence, it is beneficial for both the audited firm, the community, and the government.

GURULKAN ÇAKIR GÜNAY AVUKATLIK ORTAKLIĞI

Beybi Giz Plaza, Office 43  
Maslak 34398  
Istanbul, Türkiye

T +90 212 215 30 00  
M info@gurulkan.com  
W www.gurulkan.com



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