



A LEGAL APPROACH TO CORPORATE GOVERNANCE STRUCTURES IN CENTRAL BANKING

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➤ Corporate governance is the body of rules which arrange the relationship of company management with shareholders and stakeholders.

TRADITIONAL GOVERNANCE AND CORPORATE GOVERNANCE

Traditional Governance	Comparison Criteria	Corporate Governance
Owner of the company administers and supervises at the same time	Power and Authority	Ownership, management and supervision of the company are separated from each other
Owners and administrators of the company administer the company with their own executive and arbitrary decisions	Rules and Arbitrary Decisions	“Rules” are determinant
The legal framework of responsibilities of company owners and administrators is not certainly determined	Responsibility	Company owners and administrators are accountable to the company and its shareholders
Representatives give account to owners and owners are not accountable	Accountability	Shareholders are obliged to give account to the company and shareholders
Company management publishes the data, which they want, to the public	Transparency	Owners and administrators of the company are obliged to conduct their activities obeying to the principle of transparency
The company owners appoint the board members	Establishment of the Board	There are some requirements to be a member of executive board
Audit and executive board members cannot execute their duties independently as they are appointed by the owner of the company	Independence	Independent management and audit principles are applied

Corporate Governance Principles

- Fairness
- Transparency
- Responsibility
- Accountability

Principle of Fairness

- This principle means protecting the rights of the shareholders including minority and foreign shareholders.
- Company management will treat equally to all shareholders and stakeholders, and provide to prevent possible conflicts of interest.

Principle of Responsibility

- Principle of responsibility refers to company's being responsible before all shareholders.
- It requires that all the activities conducted by the company management in the name of the company must be appropriate to legislation, articles of association and internal regulations.

Principle of Transparency

- Principle of transparency is complementary of principle of fairness.
- Within the scope of principle of transparency, developing enlightenment of the public, and increasing and accelerating flow of information to those who have interest relationship with the company are aimed.

Principle of Accountability

- This principle means accountability of executive boards not only to shareholders but also to all parties who have a relationship with the company.
- Accountability refers to clearly defining rules and responsibilities related to management, and protection of interest of shareholders by executive board.

- Cadbury Report
- Greenbury Report
- Hampel Report
- Sarbanes-Oxley Law
- OECD's Principles of Corporate Governance Report

OECD Principles of Corporate Governance

- Ensuring the basis for an effective corporate governance framework
- The rights of shareholders and basic ownership functions
- The equitable treatment of shareholders
- The role of shareholders in corporate governance
- Disclosure and transparency
- The responsibilities of executive board

Regulations Related to Corporate Governance in Turkey exist in

- Turkish Commercial Code No.6102
- Capital Markets Law No.6362
- Banking Law No.5411
- Capital Markets Board Communiqué On Corporate Governance (II-17.1)
- Legislation Related to Corporate Governance Principles of Banks

➤ **Article 1529 of Turkish Commercial Code**

- Capital Markets Board is authorized to determine corporate governance principles, rules of explanations of executive board related to corporate governance and rules and results of rating of companies in aspect of corporate governance, in open joint stock companies.
- Other state institutions and organizations have authority to make regulations related only to their own areas on condition that the regulation will be related to detail, and be approved by Capital Markets Board.

- **Article 17 of Capital Markets Law**
 - Capital Markets Board is authorized to determine procedures and principles related to content of corporate governance principles and corporate governance compliance report, its publication, rating of compliance of corporations with corporate governance principles and memberships of independent executive board in publicly-held corporations.
- **Capital Markets Board Communiqué On Corporate Governance (II-17.1)**

➤ **The Third Section of Banking Law**

■ Management

■ Internal systems

■ Competent Authorities

■ Financial Reporting

■ **Article 22** : Structures and processes related to corporate governance and principles related to this will be determined by Banking Regulation and Supervision Agency by taking opinions of Capital Markets Board

■ **Article 95**: Supervision, analyses and measurement of compliance level with corporate governance principles of the organizations within the scope of law will be conducted by Banking Regulation and Supervision Agency.

➤ **Legislation Related To Corporate Governance Principles of Banks**

- Corporate governance rules and principles can be applied for central banks just as long as they are complied with its attributes

➤ **Central Banks Are Atypical Joint- Stock Companies**

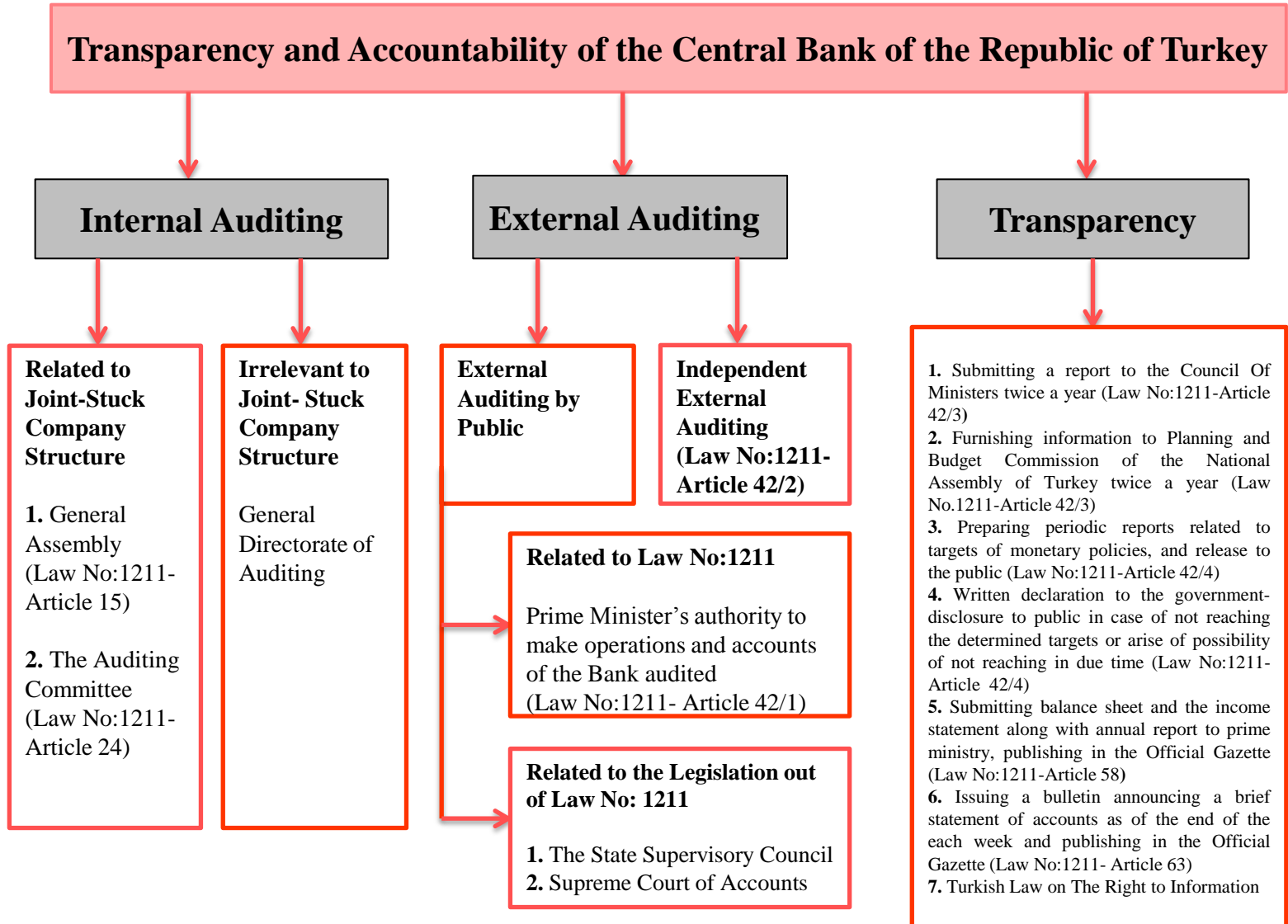
- Capital of Central Bank is symbolic.
- Central Bank has articles of association like corporations. However articles of association are consist of renovation of law inherently.
- Central Bank is characterized as a joint-stock company. However purpose of making profit which is the reason of existence of joint-stock companies, is not primary or secondary objectives of Central Bank.
- Central Bank is characterized as joint-stock company. But it is not engaged in trade, does not produce or market goods or service.

➤ Concepts of Capital and Capitalists are Symbolic for
Central Banks

- Corporate governance matter in aspect of central banks is establishment of sufficient and convenient corporate structure for achieving primary objective
 - In The Example Of CBRT
 - Election and removal of the Board Members
 - Terms of office of members of the Board
 - To file a suit against the Board members for responsibility in case of not being released

- Transparency and accountability as a corporate governance principle are more important than typical joint- stock companies for Central Banks
- Central Banks must be transparent and accountable
- It is important for the Central Banks to inform the public about its activities with regards to realizing the aim and minimizing the deviations from the aim

Approach to Corporate Governance Principles In Central Banks And In The Central Bank of The Republic Of Turkey



Consequently;

- Making profit isn't one of the objectives of the banks. Central banks are significantly distinguished from other joint-stock companies in this regard.
- One of the main elements of corporate governance concept is to protect the investor (particularly junior shareholder). However, the concepts of capital and investor have symbolic values only for the central banks.
- Investor - company relation anticipated by the corporate governance approach shouldn't be interpreted and applied contrastively with the independence of central banks.

- For the Central Banks, public duty and interests on main objectives such as price stabilization are in the foreground instead of relations order based upon the investor - administrator equality favoring the public interests laying the foundation of corporate governance approach.
- As a result of the public duties and independence given to them, concepts of accountability and transparency are much more important principles for the Central Banks. Additionally, this principle is applied as being transparency towards the public instead of corporate governance's transparency primarily towards the investor and the possible investments.
- So powerful and many public auditing mechanisms surpassing the anticipations of the corporate governance are present over the Central Banks.

Thank You For Your Attention