

# Meeting electronically

Seda Akipek and Müjdem Aksoy of Cerrahoglu examine the implications of changes to Turkey's commercial code which allow for electronic company meetings

One of the new mechanisms introduced by the new Turkish Commercial Code (TCC) numbered 6102 and dated January 13 2011 (which has been in effect since July 1 2012) is the option for joint-stock companies in Turkey to hold or attend meetings by electronic means.

This new mechanism is of interest especially to global investors in Turkey who had been experiencing difficulties with getting their shareholders, managers and directors located outside of Turkey to participate physically in meetings.

All references to companies in this article should be understood to refer to joint-stock companies. Holding a general assembly meeting by electronic means is an option for private joint-stock companies, but is legally mandatory for public joint-stock companies. The TCC also provides for the option for limited liability companies to hold meetings by electronic means.

## Relevant legislation

The legal basis of meetings by electronic means is derived from Article 1527 of the TCC which sets out the relevant basic principles and requirements.

The Regulation on Attendance at General Assembly Meetings of Joint-stock Companies by Electronic Means (the Regulation on Electronic GA Meetings) was published in the Official Gazette dated August 28 2012 and has been in force since October 1 2012. It outlines the principles and procedures with respect to attendance, making proposals, expressing opinions and voting by electronic means at the general assembly meetings of joint-stock companies.

In the Regulation, a general reference is made to the "right holders", which are defined as the real persons or legal entities who have the right to attend the general assembly meetings of joint-stock companies by electronic means in accordance with the TCC: for example shareholders or usufruct rights holders. This article refers only to shareholders.

The Communiqué on Meetings of Commercial Companies, other than General Assemblies of Joint-stock Companies, by Electronic Means (Communiqué on Electronic BoD Meetings) was published in the Official Gazette dated August 29 2012 and has been in force since October 1 2012. It outlines the principles and procedures with respect to attendance, making proposals, expressing opinions and voting at, as well as the operation and control of, meetings other than the general assemblies of joint-stock companies by electronic means.

Finally, the Communiqué on Electronic General Assembly Meeting System to be Implemented at the General Assembly Meetings of Joint-stock Companies was published in the Official Gazette dated August 29 2012 and has been in force since October 1 2012. It outlines the principles and procedures with respect to the establishment, operation, technical matters and security criteria of the Electronic General Assembly Meeting System.

## Required electronic meeting systems

Companies are required to have certain information systems in place in order to hold general assembly or board of directors meetings by electronic means. They can either establish such systems by themselves or outsource to service providers.

Electronic general assembly (GA) meetings are held using an Electronic General Assembly Meeting System (EGAS), whereas electronic board of directors (BoD) meetings are held through an Electronic Meeting System (EMS).

A company must establish (or have a service provider establish) an EGAS/EMS in line with the TCC and relevant legislation. It must have an EGAS/EMS controlled by the entities designated in the relevant

**“Companies are required to have certain information systems in place in order to hold meetings by electronic means”**

legislation. Such designated entities will issue a technical report which will determine whether the EGAS/EMS bears the minimum required qualifications foreseen in the TCC and relevant legislation. The details regarding the entities that can issue such technical report and the frequency to issue such report are also specified in the relevant legislation. The company must register this technical report at the Commercial Registry and announce it in the Commercial Registry Gazette. It must also announce the terms of use of the EMS on its website.

It should be noted that GA meetings do not only have to be held electronically. The relevant legislation requires that GA meetings are held physically, but allows shareholders to attend the meetings by electronic means. As will be explained below, unlike electronic GA meetings, electronic BoD meetings can be held only electronically provided that none of the directors notifies that they will attend the meeting physically.

### Security measures

Companies using an EGAS/EMS must take a number of security measures. As a minimum requirement, the EGAS/EMS must bear design and capacity, back-up and disaster recovery plans and the necessary network and system security features against unauthorised access and hacking in order to enable the secure performance of the transactions stipulated in the relevant legislation.

The EGAS/EMS must accommodate the infrastructure to enable and ensure: audio and video transfer from the venue of meeting by electronic means; messaging; rapid and simultaneous placement of more than one secure electronic signature; response to system access demands within the shortest time possible; transactions bearing secure electronic signatures as stipulated in the relevant legislation; and confidentiality of entries in EGAS by shareholders before GA meetings (for EGAS only; not applicable to EMS).

### Electronic general assembly meetings

In order for companies to hold electronic GA meetings, they must incorporate a specific provision set

out in the Regulation on Electronic GA Meetings in their articles of association without making any changes. Once this provision is incorporated in the articles of association, the company is obliged to make the EGAS available for its shareholders (or their proxy holders) for them to attend and vote by electronic means in each GA meeting.

The company holding the electronic GA meeting is obliged to make certain documents available for the review of its shareholders within the legal periods stipulated under the relevant legislation: the mandatory invitations that must be made in accordance with the TCC and the company's articles of association; the documents that must be made available to shareholders before the meeting (for example financial statements, activity report of the board of directors, auditor's report, and so on, depending on the agenda items); and the documents related to the agenda of the meeting.

All of these documents must bear the secure electronic signature of the company.

In order for a shareholder to attend the GA meeting by electronic means, either in person or by proxy, the shareholder must have notified the company through the EGAS at least two days before the meeting date. The company evaluates these notifications and accepts or declines them within two business days of receipt at the latest.

The shareholder can withdraw the notification through the EGAS one day before the meeting date. Unless the shareholder withdraws the notification to attend the GA meeting by electronic means, the shareholder (or the proxy) cannot attend the meeting physically.

In a case where a shareholder attends the meeting by proxy, the identification details of the proxy holder must be recorded on the EGAS.

In order for shareholders (or their proxy holders) to be able to attend the GA meeting by electronic means, the EGAS must be made available by the company one hour before the meeting time for shareholders (or their proxy holders) to sign in. Sign-in must be closed five minutes before the meeting time.

In order to attend the GA meetings by electronic means, the shareholders (or their proxy holders)

must sign in to the EGAS using their secure electronic signatures. Each shareholder intending to attend GA meetings by electronic means must, therefore, have a secure electronic signature.

Meeting and decision quora required under the articles of association of the company or the TCC will continue to be applicable for electronic GA meetings.

The GA meetings must be opened on both the physical and electronic media at the same time.

The attendance of the government representative is mandatory in electronic GA meetings. Opening of the meeting requires confirmation of the government representative that all conditions stipulated in the relevant legislation for electronic GA meetings are fully satisfied.

Shareholders (or their proxy holders) can express their opinions on the relevant agenda items by electronic means in writing on the EGAS. The shareholders (or their proxy holders) can express a maximum of two opinions (each containing a maximum of 600 characters) for each agenda item.

The shareholders (or their proxy holders) cast their votes on the EGAS upon the announcement by the chairman of the meeting that voting has commenced for the relevant agenda item. Each agenda item must be voted on separately and within five minutes' following the commencement of voting. Shareholders (or their proxy holders) cannot change their votes on the relevant agenda item once cast. The voting results are conveyed to the chairman of the meeting through the EGAS. Voting results and dissenting annotations sent by electronic means, if any, must be recorded in the minutes of the meeting by the chairman.

Upon closing of the electronic GA meeting, the attendance list and the minutes of the meeting must also be delivered to the government representative through a medium by which it is convenient to carry and store electronic documents (such as a USB memory stick or portable hard drive).

Until commencement of the implementation of the Central Registry Record System (which is an application that was built and is being managed by the Ministry of Customs and Trade where the trade registry transactions are conducted by electronic



### About the author

Seda Akipek graduated from the Law School of the University of Marmara in 2005. She qualified as an associate in 2006 and is a member of Cerrahoglu's corporate law department. Her practice is focused on the law of contracts and commercial law (giving consultancy regarding all corporate issues of clients for example incorporation, holding of general assembly meetings and board meetings, amendment of articles of association) as well as on the areas of mergers and acquisitions (including due diligence studies) of both public and private companies and joint ventures in various industry fields. She also has experience in capital markets law and provides consultancy services in respect of corporate and commercial issues of public companies.

Akipek speaks English and Turkish and is a member of the Istanbul Bar Association.

Publicly disclosed transactions in which she has been involved include:

- representing Affinion in the acquisition transaction of Boyner Bireysel Urunler Satis ve Pazarlama Anonim Sirketi (Back-up) and Bofis Turizm ve Ticaret Anonim Sirketi.
- representing Asda Stores with regard to the acquisition of 100% of the shares of Turkmen Tedarik Hizmetleri Anonim Sirketi, which was formed upon the full de-merger of GAAT Dis Ticaret ve Sanayi Anonim Sirketi into three separate companies; and
- representing Daikin Europe in the acquisition of Airfel Isitma ve Sogutma Sistemleri Sanayi Ticaret Anonim Sirketi.

### Contact information

Seda Akipek  
Cerrahoglu

Barbaros Bulvari, Mustafa Izzet  
Efendi Sok.

No:11 Cerrahoglu Binasi  
Balmumcu - Besiktas  
34349 Istanbul, Turkey

T: +90 212 355 30 00

F: +90 212 266 39 00

E:

seda.akipek@cerrahoglu.av.tr

W: www.cerrahoglu.av.tr

means and which also includes the central common data base where the trade registry records and content that must be registered and announced are regularly stored and submitted by electronic means), however, there are certain requirements regarding the documents related to GA meetings. Those documents must be sent to the corporate e-mail account of the government representative or to his registered email account (which means the qualified version of the electronic mail that provides legal evidence with respect to usage of electronic messages including their transmission and delivery; registered electronic mail has been regulated in specific legislation and ownership and usage of it is subject to the provisions thereof). Alternatively, they must be delivered to the government representative through a medium by which is convenient to carry and store electronic documents, by the chairman upon closing of the electronic GA meeting.

A company holding electronic GA meetings must also fulfil two additional obligations. It must submit the information of the organ representative, independent representative and corporate representative, if any, to the shareholders on the EGAS. The company must also keep records of all transactions performed on the EGAS, as well as the identification information of the shareholders and their proxy holders on an electronic medium for a period of 10 years while maintaining the confidentiality and integrity thereof. These obligations also apply to service providers where the establishment of the EGAS is outsourced.

If a shareholder suffers a loss arising out of any reason related to the EGAS, the company will be liable to the extent provided for under general principles of law. The same applies for service providers where the establishment of the EGAS is outsourced.

## Electronic board of directors meetings

In order for companies to hold board meetings by electronic means, the provision set out in the Communiqué on Electronic BoD Meetings must be incorporated in the company's articles of association.

The company holding the electronic BoD meeting must make the invitation in accordance with the TCC and the company's articles of association.

The documents and information related to attendance and voting by electronic means, which include

the Request Form to Attend the Meeting by Electronic Means, must be made available for the review of directors on the company's website along with the meeting invitation.

In order for a director to attend the board meeting by electronic means, the director must: fill in the Request Form made available at the company's website, sign the Request Form using a secure electronic signature, and convey the Request Form to the registered email account of the company at the latest one day before the meeting date.

After the company receives the request from the director, the company must make the necessary identifications in order for the director to attend the meeting by electronic means and must notify this to the registered email account of the director.

Companies can determine different procedures for notification by taking a board resolution in this regard.

In order for directors to be able to attend the board meeting by electronic means, the EMS must be made available by the company one hour before the meeting time for directors to sign in.

Unlike electronic GA meetings, the board meeting can only be held by electronic means provided that none of the directors has notified the company that they will attend the meeting physically.

The directors who have notified their attendance by electronic means must sign in to the EMS using their secure electronic signatures. Therefore, directors of companies intending to hold electronic BoD meetings must have electronic signatures.

Meeting and decision quora required under the articles of association of the company or the TCC will continue to be applicable for electronic BoD meetings.

Directors express opinions on the agenda items of the meetings on the EMS either orally or in writing.

Upon the announcement by the chairman of the meeting that voting has commenced, directors can cast their votes on the relevant agenda items on the EMS.

Voting results and the dissenting annotations sent by electronic means, if any, must be recorded in the minutes of the meeting and/or the resolution of board of directors by the chairman.

If none of the members of the board of directors

requests to hold a physical meeting, as foreseen under Article 390/4 of the TCC, the resolution of the board can be taken in an electronic BoD meeting by their secure electronic signatures.

It should be noted that Article 390/4 of the TCC states:

*In case none of the members of the Board of Directors requests to hold a meeting, the resolutions of Board of Directors can be taken by obtaining the written approval of the majority of the number of directors due to a proposal given by one of the directors regarding a certain matter written as a resolution. In order for the resolution to be taken by the aforementioned way to be valid, all directors must receive the same proposal. Approvals are not required to be on the same paper; however, all papers containing directors' approvals must be affixed to the Board of Directors' resolution book or converted into a resolution containing the signatures of affirming directors and affixed to the Board of Directors' resolution book to ensure the validity of the resolution.*

Upon closing, the company must upload the resolutions of the board of directors, which are subject to registration, on the Central Registry Record System.

A company holding electronic BoD meetings must keep the records of all transactions performed on the EMS, as well as the identification information of the directors, on an electronic medium for a period of 10 years while maintaining the confidentiality and integrity thereof.

The chairman of the electronic BoD meeting must supervise that the EMS is being operated in line with the Communiqué on Electronic BoD Meetings.

Where a director suffers a loss arising out of the EMS, the company holding the Electronic BoD Meeting will be liable to the extent provided for under the general principles of law.

Where the company has outsourced the establishment of the EMS, the company and the service provider will be liable in proportion to their fault.

Electronic attendance to meetings is conceptualized as a convenience brought about by the TCC for private joint-stock companies. Since the relevant legislation is new and there have not been many examples in practice so far, both the companies and legal practitioners are waiting to observe further developments in this field.



## About the author

Müjdem Aksoy graduated from the Law School of the University of Marmara in 2002. She has an LLM in International Law from Indiana University School of Law. She qualified as an associate in 2006 and is a member of Cerrahoglu's corporate law department. Her practice is focused on corporate law (giving consultancy regarding all corporate issues of clients, such as incorporation, holding of general assembly meetings and board meetings and amendment of articles of association), commercial law, insurance law, health law and privatisation. She also has experience in the areas of mergers and acquisitions (including due diligence) of both public and private companies and joint ventures in various industry fields.

Aksoy speaks English and Turkish and is a member of the Istanbul Bar

Association.

Publicly disclosed transactions in which she has been involved include:

- representing Azure Group Holdings in its investments in Turkey; and
- representing The Nuance Group in the process of increasing its share capital by way of acquisition of shares in three companies, namely Net Magaza, Urart and Opus.

## Contact information

**Müjdem Aksoy**

Cerrahoglu

Barbaros Bulvarı, Mustafa İzzet Efendi Sok.

No:11 Cerrahoglu Binasi

Balmumcu - Besiktas  
34349 Istanbul, Turkey

T: +90 212 355 30 00

F: +90 212 266 39 00

E:

mujdem.aksoy@cerrahoglu.av.tr

W: www.cerrahoglu.av.tr