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Research Article

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Are the Mandatory Takeover Bid and Shareholders' Disclosure Requirements Exceptions to the Principle of the Shareholder's Sole Obligation?

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Abstract

Under Article 480(1) of the Turkish Commercial Code ['TCC 480(1)'], save for the exceptions provided for by law, no obligation may be imposed on a shareholder by the articles of association other than the payment of the share price. Based on Article 680(1) of the Swiss Code of Obligations ['CO/OR 680/1'], the rule is referred to in Turkish scholarship as '*tek borç ilkesi*' (the principle of the shareholder's sole obligation) and in Swiss scholarship as '*Grundsatz der beschränkten Leistungspflicht des Aktionärs*'.

In both jurisdictions, it has been argued that certain requirements laid down by capital markets legislation call the principle into question or create exceptions to it. This study asks what makes a provision an exception to the principle and applies the answer to the mandatory takeover bid and the disclosure requirements triggered by changes in shareholding structure.

The question matters both for whether those provisions are to be understood narrowly under the canon *singularia non-sunt extendenda* and for determining the meaning and scope of the principle itself.

TCC 480(1) is examined through literal, systematic, historical, and teleological interpretation to establish a criterion for the scope of the provision, and that criterion is applied to the two capital markets provisions. Since the two provisions correspond in substance, Swiss and Turkish scholarship are assessed together. The views advanced in the literature are evaluated separately regarding the conclusions they reach and the reasoning on which they rest.

It is concluded that the principle prohibits only the imposition of obligations by the articles of association, and that capital markets requirements imposed on the shareholder directly by legislation constitute neither an exception to the principle nor an infringement of it.

Keywords

Principle of the shareholder's sole obligation · Grundsatz der beschränkten Leistungspflicht des Aktionärs · Mandatory takeover bid · Disclosure of inside information and major shareholdings · Articles of association

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I. Statement of The Problem

Article 480(1) of the Turkish Commercial Code No 6102[1] ['TCC 480(1)'], headed 'A) Principle'[2], is worded as follows:

'*Save for the exceptions provided for by law, no obligation may be imposed on a shareholder by the articles of association other than the payment of the share price or of any premium exceeding the nominal value of the share*'.

This principle, referred to both in the explanatory note to the TCC 480(1) and in the legal literature as 'the principle of the shareholder's sole obligation / sole-obligation principle' (*tek borç ilkes*i, *Grundsatz der beschränkten Leistungspflicht des Aktionärs*)[3], is predominantly interpreted in Turkish scholarship as no obligation of any kind may be imposed on the shareholder of a joint stock company. Moreover, one line of opinion holds that capital markets legislation lays down extensive exceptions to the principle—notably through Article 15, Article 25(1), and Article 26[4] of the Capital Markets Law[5] ('CML')—with the result that, for publicly held joint stock companies, even the existence of the principle has become questionable[6].

[1] Date of adoption: 13.1.2011, Official Gazette 14.2.2011/27846

[2] The Turkish Commercial Code expressly provides that the headings of its articles form part of the text of the Code [TCC 1534(1)].

[3] The explanatory note to TCC 480 [Arslan Kaya, *Gerekçeli Karşılaştırmalı – Notlu Türk Ticaret Kanunu ve Ticaret Kanununun Yürürlüğü ve Uygulama Şekli Hakkında Kanun* (2nd edn, Beta 2021) 580].

[4] Gül Okutan Nilsson, *Anonim Ortaklıklarda Paysahipleri Sözleşmeleri* (Çağa 2004) 37 [the author advanced this view in relation to Article 16/A of the repealed Capital Markets Law No. 2499 (Date of adoption: 28.7.1981, Official Gazette 30.07.1981/17416). That provision conferred on the Capital Markets Board ('CMB') the power to regulate the mandatory takeover bid. It also required shareholders holding ten per cent or more of the capital of companies whose shares were traded on stock exchanges or other organised markets to disclose such information concerning their shares as the CMB considered necessary for the purposes of public disclosure. The disclosure was to be made to the CMB and to the exchanges and other markets concerned. Although that provision has been repealed, the CML contains the mandatory takeover bid, which involves no change as regards the imposition of obligations; and the Communiqué on Material Events Disclosure (II-15.1) continues to require the public disclosure of information by shareholders meeting various criteria]; Esra Hamamcıoğlu, 'Anonim Ortaklıklarda Tek Borç İlkesi' (Master thesis, Marmara University 2005) 64; Özlem Akıncı Albayrak, 'Sermaye Şirketlerinde Tek Borç İlkesi ve Kapsamının İstisnalar Bağlamında Belirlenmesi' in Ömer Korkut, M. Fatih Cengil, Seda Baş, İdil Nur Gürbüz Gökberk and M. Zahid Doğanay (eds), *Prof. Dr. Hasan Pulaşlı'ya Armağan* (Adalet 2023) vol 1 675, 689. For the view that the mandatory takeover bid requirement constitutes an 'exception' to the sole-obligation principle, see Mustafa Çeker, 'Halka Açık Anonim Ortaklıklarda Pay Sahiplerinin Şirketten Çıkma Hakkı (Yargıtay 11. Hukuk Dairesinin Bir Kararı Münasebetiyle)' (2005) 23 (1) BATİDER 61, 64 fn 10; İlhan Dinç, *Sermaye Piyasası Hukukunda Çağrı Yoluyla Hisse Senedi Toplanması* (Legal 2006) 235; İbrahim Bektaş, 'Halka Açık Anonim Ortaklıkların Önemli Nitelikteki İşlemleri Nedeniyle Doğan Ayrılma Hakkı ve Pay Alım Teklifi Zorunluluğu' in *Banka ve Ticaret Hukuku Araştırma Enstitüsü 60. Yıl Armağanı* (Banka ve Ticaret Hukuku Araştırma Enstitüsü 2015) 749, 791-792; Hasan Pulaşlı, *Şirketler Hukuku Genel Esaslar* (rev 9th edn, Adalet 2024) §14, para 1a (the author states that CML 25 and CML 26 soften the sole-obligation principle and render it relative, but that no incompatibility with the principle arises because this additional requirement is grounded in public law rather than in company law. Since, in my view, the only way a rule capable of rendering the principle relative could fail to be incompatible with it is by constituting an exception to it, I count this author among those who hold that view). For the view that the mandatory takeover bid requirement is in essence 'contrary' to the sole-obligation principle, see Ali Paslı, 'Anonim Ortaklıkta Kontrol Sahibinin Özel Durumu' (2008) 66 (2) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası 345, 347 (the author further states that the mandatory takeover bid requirement is also incompatible with the principle of the free transferability of shares); Ali Paslı, 'Pay Alım Teklifi Zorunluluğu' in Mehmet Helvacı, Necdet Uzel, Numan Sabit Sönmez and Ahmet Özsoy (eds), *Türk Ticaret Kanunu Ekseninde Sermaye Piyasası Hukuku Toplantı Serisi (Tebliğler ve Tartışmalar)* (On İki Levha 2019) 289 and 292. For the view that the mandatory takeover bid requirement should not be regarded as an exception to the sole-obligation principle, on the ground that it attaches to the shareholder rather than to the share and is owed to the other shareholders rather than to the company, see Umut Kolcuoğlu, *Sermaye Piyasası Hukukunda Zorunlu Çağrı* (Vedat 2009) 18-20; Güzin Üçışık and Aydın Çelik, *Anonim Ortaklıklar Hukuku*, vol 1 (Adalet 2013) 52 (the authors take the same view, on the same ground, in respect of the shareholders' disclosure requirements); İsmail Türkyılmaz, *Sermaye Piyasası Hukukunda Pay Alım Teklifi Zorunluluğu* (On İki Levha, 2015) 33-35 [endorsing this view, the author adds that the purpose of the mandatory takeover bid requirement (the protection of small investors) differs from that of the sole-obligation principle]; Esra Erişir Karacan and Ali İhsan Karacan, *Pay Alım Teklifi: Finans Hukuku Açısından Bir İnceleme* (Legal 2018) 233-234 (the authors rely, in support of their view, on the fact that the making of a takeover bid does not of itself give rise to an obligation to pay a sum of money, and on the possibility that the requirement may also serve the interests of the shareholder making the bid); Firdevs Arslan, *Pay Alım Teklifine Dayalı Çıkarma ve Satma Hakkı* (Adalet 2024) 150-151.

[5] Date of adoption: 6.12.2012, Official Gazette 30.12.2012/28513

[6] For a general assessment to this effect in relation to capital markets legislation, see Reha Poroy, Ünal Tekinalp and Ersin Çamoğlu, *Ortaklıklar Hukuku II* (rev 15th edn, Vedat 2023) para 1019, 1093a (the author takes the view that the sole-obligation principle is no longer applicable to publicly held joint stock companies); Okutan Nilsson (n 5) 37 (the author states that certain rules found in capital markets legislation strain the limits of the sole-obligation principle); Ferhat Kayış, 'Anonim Ortaklıkta Tek Borç İlkesi Çerçevesinde TTK 421/2-a Bendinin Değerlendirilmesi' (2022) 30 (3) Selçuk Üniversitesi Hukuk Fakültesi Dergisi 1211, 1216; Ebru Tüzemen Atik, *Anonim Şirket Payları Üzerinde Kurulan Önalım Hakkı* (Yetkin 2023) 236.

Swiss law contains a comparable[7] provision on the sole-obligation principle. Article 680(1) of the Swiss Code of Obligations ['CO/OR 680(1)'] is as follows: *'A shareholder may not be required, even under the articles of association, to contribute more than the amount fixed for subscription of a share on issue'*[8].

Swiss scholarship likewise expresses various doubts as to how certain capital markets rules stand in relation to the sole-obligation principle, and some authors argue that a number of these rules, particularly the obligations laid down in Articles 120 and 135 of the Financial Market Infrastructure Act [Loi sur l'infrastructure des marchés financiers/Finanzmarktinfrastrukturgesetz ('LIMF/FinfraG 120, 135') create exceptions to it[9,10].

An examination confined to the *ratio legis* of the sole-obligation principle casts doubt on these conclusions as to their incompatibility with capital markets regulation. In a joint stock company, an investor becomes party to the articles of association upon acquiring a share and is deemed to have accepted its provisions. The mere possibility that the articles might impose an obligation on the shareholder would require the investor to proceed with caution when acquiring shares and to examine the articles of association of the company in which the investment is to be made. This, in turn, undermines the speed at which

[7] The provision in CO/OR 680(1) was in fact reproduced almost verbatim in Turkish law. Article 405(1) of the Turkish Commercial Code No. 6762 ('fTCC') (Date of adoption: 29 June 1956, Official Gazette 9 July 1956/9353), repealed upon the entry into force of the TCC, was the twin of CO/OR 680(1). During the preparation of the TCC, which was adopted in 2011, fTCC 405(1) was amended with a view to modernising its language, and the provision took its present form as a result; the changes were not specified in the explanatory note to the article. For a comparison of the provisions, see heading III.

[8] https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en accessed 10 July 2026. The French and German texts of the provision read as follows: '*Les actionnaires ne peuvent être tenus, même par les statuts, à des prestations excédant le montant fixé, lors de l'émission, pour l'acquisition de leurs titres.*' https://www.fedlex.admin.ch/eli/cc/27/317_321_377/fr accessed 10 July 2026. '*Der Aktionär kann auch durch die Statuten nicht verpflichtet werden, mehr zu leisten als den für den Bezug einer Aktie bei ihrer Ausgabe festgesetzten Betrag.*' https://www.fedlex.admin.ch/eli/cc/27/317_321_377/de accessed 10 July 2026.

[9] Jean-Luc Chenaux and Alexandre Gachet, 'Art. 680' in Pierre Tercier, Marc Amstutz and Rita Trigo Trindade (eds), *Commentaire Romand Code des Obligations II Art. 530-1186 CO; Art. 120-141 LIMF; ORAb; Avec des introductions à la LFus, et à la LTI* (2nd edn, Helbing Lichtenhahn 2017) para 26-27. See also the following author, who, as I read them, treats the rules of capital markets law as exceptions: Markus D. Vischer, 'Art. 680' in Jolanta Kren Kostkiewicz, Stephan Wolf, Marc Amstutz and Roland Fankhauser (eds), *OR Kommentar: Kommentar zum Schweizerischen Obligationenrecht* (4th edn, Orell Füssli 2023) para 5. For the view that the sole-obligation principle is rendered relative by the shareholders' disclosure requirements and by the requirement to make a takeover bid, see Peter V. Kunz, *Wirtschaftsrecht Grundlagen und Beobachtungen* (Stämpfli 2019) 129-130 para 382. For the view that the mandatory takeover bid requirement sets aside the sole-obligation principle, see Hans Caspar von der Crone, 'Angebotspflicht' (1997) SZW/RSDA 44, 45-46 (although the author advanced this view in relation to the repealed Stock Exchange Act (LBVM/BEHG) 32, I cite the author here because there has been no change as regards the imposition of requirements on shareholders); Stephan Dekker, 'Art. 680 F. Leistungspflicht des Aktionärs' in Jeannette K. Wibmer (ed), *Aktienrecht Kommentar Aktiengesellschaft, Rechnungslegungsrecht, VegüV, GeBüV, VASR* (Orell Füssli 2016) para 2 (the author advanced this view in relation to the repealed LBVM/BEHG 32 and characterised the provision as an exception to the sole-obligation principle); Matthias P. A. Müller, *Opting-out: Theorie und Praxis im schweizerischen Übernahmerecht* (Peter Forstmoser ed, Dike 2025) 71 para 119 fn 379. See also Valentin Jentsch, *Grossaktionäre im schweizerischen Gesellschafts- und Finanzmarktrecht* (Stämpfli 2026) 225 (the author does not treat the rules of capital markets law which impose obligations on shareholders as exceptions to the sole-obligation principle but does draw on them in elucidating the meaning of the principle. The author thus argues that these capital markets requirements demonstrate that in modern law that shareholders bear obligations beyond the obligation to contribute capital. The disclosure and bid requirements of capital markets law, together with the anti-money laundering reporting requirements, are relied on in support of the view that the sole-obligation principle prohibits only monetary obligations); Valentin Jentsch, 'Finanzierungsverantwortung von Grossaktionären für unterkapitalisierte AGs' in Peter R. Isler and Rolf Sethe (eds), *Verantwortlichkeitsrecht im Wandel* (EIZ 2025) 35, 44 (the author denies any connection between the rules referred to and the sole-obligation principle by construing the principle narrowly, reducing it to the obligation to contribute capital); Valentin Jentsch, *Macht und Verantwortung von Grossaktionären* (Schulthess 2026) 101-102 (the author uses these requirements of capital markets legislation in determining the meaning of the sole-obligation principle and relies on their existence in support of the view that the principle does not cover obligations of every kind. Yet since the principle existed in these legal systems long before the requirements laid down in capital markets legislation, it is problematic to interpret it by reference to those subsequent rules, and in particular to have recourse to them in determining its purpose). For the view that LIMF/FinfraG 120, which requires persons acquiring or disposing of shares at specified thresholds to give notification, stretches the sole-obligation principle or creates an exception to it, see Xavier Oulevey and Jérôme Levrat, *La Société Anonyme* (Schulthess 2022) para 959; Peter Böckli, *Schweizer Aktienrecht* (rev 5th edn, Schulthess 2022) 1573, para 773 fn 1777; Christoph Schmid and Marc Walter, 'Art. 680' in Vito Roberto and Hans Rudolf Trüeb (eds), *Handkommentar zum Schweizer Privatrecht: Personengesellschaften und Aktiengesellschaft Art. 530–771 OR* (4th edn, Schulthess 2024) para 6. For the view that the notification requirements laid down in the repealed LBVM/BEHG 51 constitute *lex specialis* in relation to the sole-obligation principle, see Peter V. Kunz, 'Die Stimmrechtssuspendierungsklage im revidierten Börsengesetz Eine neue Sanktion bei Meldepflichtverletzungen mit grossem Drohpotenzial' (2008) SZW/RSDA 280, 296 fn 238.

[10] One line of opinion in Swiss scholarship also maintains that the stock exchange requirements laid down in LIMF/FinfraG 120 and 135 are no more than capital markets rules of conduct, anchored in and enforced through public law, which are merely attached to certain events arising in company law; that they cannot therefore be regarded as company law requirements; and that they are for that reason not in conflict with CO/OR 680(1) [Rashid Bahar and Martin Peyer, 'Art. 680 (Art. 680 OR 2020)' in Lukas Handschin and Peter Jung (eds), *Zürcher Kommentar: Die Aktiengesellschaft, Rechte und Pflichten der Aktionäre, Art. 660–697m OR* (rev 2nd edn, Schulthess 2021) para 109 and the authors cited in fn 316]. On this view, significance is attached to the fact that the requirements laid down in the provisions just cited attach to those holding economic rights in the shares, that is to investors (ibid para 109).

shares change hands, and indeed their transferability. Where the shareholder is assured that no provision imposing an obligation on shareholders may be included in the articles of association, by contrast, the share comes to be regarded as an effective investment instrument[11].

As can be seen, the sole-obligation principle is directed essentially at reassuring the investors of (publicly held) joint stock companies and at serving those companies themselves. It therefore appears implausible that the principle should be subject to extensive exceptions in capital markets legislation, contrary to the very purpose it pursues.

Considering the foregoing, there is good reason to reconsider the view adopted in the literature. The position taken on this point may, in one respect, affect the manner in which those capital markets provisions that protect small investors—and that are identified as exceptions to the sole-obligation principle—are interpreted, given that a rule characterised as an exception attracts the canon that exceptions are to be construed narrowly (*singularia non sunt extendenda*)[12]. In another respect, it serves to clarify the meaning and scope of the sole-obligation principle and thus to determine its field of application.

II. The Legal Mechanisms Under Examination

Under Turkish capital markets legislation, two sets of rules require shareholders to act in a particular manner in order to protect the interests of small investors: the mandatory takeover bid regime laid down in CML 25(1) and 26, and the rule under CML 15(1) requiring that information, events, and developments capable of affecting the value or price of capital market instruments, or investors' investment decisions, be disclosed to the public by the relevant parties. These are introduced below to the extent that the research question demands; the following section then assesses these requirements in light of the sole-obligation principle.

A. The Mandatory Takeover Bid

Under CML 26(1), where shares or voting rights conferring control of the management of a publicly held joint stock company are acquired—in other words, where control of the company's management is obtained—a bid must be made to acquire the shares of the other persons who were shareholders in the company on the date on which the acquisition was disclosed to the public[13] (*pay alım teklifi zorunluluğu*)[14]. The

[11] See also, on the ratio legis of the sole-obligation principle, Bahar and Peyer (n 10) para 3; F. Pelin Tokcan, *Anonim Şirketlerde Tek Borç İlkesi* (On İki Levha 2025) 7-14, 42-50.

[12] Indeed, for the view that the mandatory takeover bid requirement is to be construed narrowly on the ground that it constitutes an exception to the sole-obligation principle, and that narrow construction is accordingly called for in determining whether the requirement has arisen in respect of a given shareholder, in the CMB's decisions granting exemption from it, and as regards the procedure to be followed in fulfilling it, see Dinç (n 5) 239-240. For the view that the exceptional character of the mandatory takeover bid requirement is to be taken into account in construing it, see Paslı 'Pay' (n 5) 293.

[13] Swiss law contains a comparable requirement. Under LIMF/FinfraG 135, headed 'duty to make an offer', a person who acquires shares which, added to those already held, exceed the threshold of 33⅓ per cent of the voting rights of the target company (whether directly, indirectly or acting in concert with third parties) must make an offer for all listed equity securities of that company. It is immaterial for this purpose whether the voting rights are exercisable. LIMF/FinfraG allows target companies to raise this threshold, in their articles of association, to up to 49 per cent of the voting rights. The price offered must be at least equal to the higher of the stock exchange price of the shares and the highest price paid by the offeror for equity securities of the target company in the preceding twelve months [LIMF/FinfraG 135(2)]. As in Turkish law, the power to regulate the mandatory takeover bid is left to FINMA, the administrative authority for the Swiss capital markets [LIMF/FinfraG 135(4)]. Paragraph 5 provides that, where there are sufficient indications that the duty to make an offer has not been complied with, FINMA may suspend the voting rights of the person subject to that duty and the rights attaching to the voting rights until the doubt is dispelled and, where necessary, until the person concerned has fulfilled the duty. FINMA may also prohibit that person from acquiring, whether directly, indirectly or acting in concert with third parties, shares in the target company or rights relating to the acquisition or disposal of such shares. Under LIMF/FinfraG 125(3), companies may opt out of the duty to make an offer arising under Articles 135 and 163 by a provision in their articles of association, adopted before their equity securities are admitted to trading on an exchange and subject to certain conditions.

[14] On the differences between the mandatory takeover bid requirement and the duty to contract, see F. Pelin Tokcan, 'The Mandatory Takeover Bid Through the Lens of the Turkish Law of Obligations: A Doctrinal Comparison with the Obligation to Contract' (2025) 83 (4) İstanbul Hukuk Mecmuası 1543, 1543-1555.

principles governing the making of a takeover bid and exemption from the takeover bid requirement are set out in the Communiqué on Takeover Bids (II-26.1)[15], issued by the regulatory authority, the Capital Markets Board ('CMB'), on the basis of CML 25(1) and the final sentence of CML 26(1).

What is meant by obtaining control of the management of a company is set out in CML 26(2) and 26(3). Accordingly, control is presumed to have been acquired where more than 50 per cent of the existing voting rights is held, directly or indirectly, either alone or together with persons acting in concert, or where a privilege conferring the right to elect or nominate the majority of the members of the board of directors is obtained. It is nevertheless possible that, notwithstanding the fulfilment of one of these conditions, control of the management is not in fact obtained because of the existence of privileged shares; such a case falls outside the scope of CML 26. It is likewise possible for control to be obtained, without any change in shareholding, under private arrangements concluded among certain shareholders otherwise than in accordance with the procedures and principles laid down by the CMB pursuant to CML 29(6) and CML 23(1); this too triggers the takeover bid requirement.

It should be noted that the takeover bid requirement does not arise only in cases involving a change of control: the CMB may also impose such a requirement of its own motion. In this frame, the CMB may require the controlling shareholders of a publicly held joint stock company to make a takeover bid for the benefit of the company's shareholders where the company's business consists in an activity subject to a concession that has been withdrawn, where its operating licence has been revoked under the Banking Law, or where its shareholding rights other than the right to dividends, together with its management and supervision, have been transferred to the Savings Deposit Insurance Fund, the requirement being imposed on those controlling shareholders who caused the withdrawal of the concession or the application of the relevant provisions of the Banking Law No 5411[16] [CML 26(4)]. The CMB may likewise make its approval of amendments to the articles of association that would alter or extinguish the status of an investment trust conditional upon a takeover bid being made [CML 26(5)]. The CMB may further impose a requirement to bid for the remaining shares on the controlling shareholders of companies to be removed from publicly held company status of the Board's own motion—that is, companies deemed publicly held by reason of the number of their shareholders which have failed to apply to the CMB, within the two-year period, for their shares to be traded on the exchange [CML 16(2)]—under CML 33(4).

The CMB sets a period within which the takeover bid requirement must be fulfilled. The consequence of failing to act within that period is set out in CML 26(6): the voting rights held by shareholders who fail to comply with the takeover bid requirement, and by persons acting in concert with them, are automatically suspended[17], and an administrative fine is imposed in addition [CML 103(3)]. The same provision states that voting rights so suspended are not taken into account in calculating meeting quorums.

B. Shareholders' Disclosure Requirements

A further set of provisions falling within the scope of this study consists of the disclosure requirements imposed on shareholders. These are laid down in CML 15[18], headed '*Material events in public disclosure*',

[15] Official Gazette 23.1.2014/28891

[16] Date of adoption: 19.10.2005, Official Gazette 01.11.2005/25983 (Mükerrer)

[17] Under LIMF/FinfraG 135(5), by contrast, the suspension of voting rights and of the rights attaching to them is effected by FINMA.

[18] This article reads as follows: '*Information, events, and developments which may affect the value and price of capital market instruments or the investment decision of investors shall be disclosed to public by issuers or related parties. Principles and procedures regarding the disclosure of information, events, and developments mentioned in the first paragraph, their notification to the related issuer, deferring or avoiding disclosure in exceptional cases shall be determined by the Board*'. https://cmb.gov.tr/data/6281521a1b41c617eced0ee8/Capital%20Markets%20Law.pdf accessed 10 July 2026.

and in the Communiqué on Material Events Disclosure (II-15.1)[19] ('Communiqué') issued on the basis of that article.

Among the disclosure requirements set out in the Communiqué, those concerning inside information and those concerning continuous information—all information, events, and developments falling outside the definition of inside information—are framed so as to affect shareholders as well. They are set out below only so far as the research question requires and are confined to the question.

Communiqué 4(1) defines inside information as any information, events, and developments which have not yet been disclosed to the public and which may affect the value or price of capital market instruments or the investment decisions of investors. Under Communiqué 5(2), where inside information comes to the knowledge of certain shareholders without the issuer's knowledge, those shareholders must themselves disclose it to the public. The provision covers persons who hold, directly or indirectly, ten per cent or more of the issuer's total voting rights or capital, and (irrespective of that proportion) persons who hold ten per cent or more of the privileged shares conferring the right to elect or nominate members of the board of directors.

Communiqué 12, for its part, lays down a disclosure requirement in respect of changes in the capital structure and in control of the management. Accordingly, where a natural or legal person, or other natural or legal persons acting in concert with that person, directly or indirectly reaches 5, 10, 15, 20, 25, 33, 50, 67 or 95 per cent of the capital or of the total voting rights[20] of an issuer whose shares are traded on the exchange, or falls below those proportions, the requirement to disclose the change in the capital structure and in control of the management is to be fulfilled by those persons[21]. Where the investment funds of a single founder directly or indirectly reach, or fall below, the same proportions of the issuer's capital or total voting rights, the disclosure requirement is to be fulfilled by the founder[22].

In both cases, all voting rights attaching to the shares (including those in respect of which the voting right is suspended) are taken into account in calculating the proportions referred to above. That calculation is made separately, so as to cover shares in different groups and the voting rights attaching to them.

As can be seen, these provisions expect a shareholder of a joint stock company to act in a particular manner. If that conduct is characterised in law as an obligation to perform a positive act, it follows that an obligation is imposed on the shareholder, and there is accordingly good reason to examine the position of these rules in relation to the sole-obligation principle (in other words, whether they constitute exceptions to it).

[19] Official Gazette 23.01.2014/28891

[20] In the case of companies which are not publicly held but whose capital market instruments are traded on the exchange following a public offering, only the proportions of 25, 50 and 67 per cent among those listed in the text are taken into account for disclosures concerning the capital structure and control of the management.

[21] Where a natural or legal person directly reaches 5, 10, 15, 20, 25, 33, 50, 67 or 95 per cent of the capital of an issuer whose shares are traded on the exchange, or falls below those proportions, the disclosure to be made by such persons is made by the Central Securities Depository ('CSD'). Where those proportions are reached or fallen below by acting in concert, indirectly, or by reason of voting rights, the disclosure requirement rests with the natural or legal person concerned or with the other natural or legal person acting in concert with that person [Communiqué 12(4)].

[22] Although this rule cannot be said to correspond exactly, as regards its conditions, to the Turkish provision, Swiss law likewise imposes a requirement to give notification of changes in the capital structure. Under LIMF/FinfraG 120, the notification requirement applies in respect of companies with their registered office in Switzerland, at least part of whose equity securities are listed in Switzerland, and companies with their registered office abroad, at least part of whose equity securities have their main listing in Switzerland. Any person who, directly or indirectly or acting in concert with third parties, acquires or disposes of shares in such a company, or rights relating to the acquisition or disposal of such shares, and who thereby reaches, exceeds, or falls below one of the thresholds of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66⅔ per cent of the voting rights (whether exercisable or not) must notify the company and the exchanges on which the equity securities are listed. This requirement extends to persons who may freely exercise the voting rights attaching to equity securities. The first listing of equity securities; the conversion of participation certificates or profit-sharing certificates into shares; the exercise of conversion or acquisition rights; changes in the share capital; and the exercise of rights of disposal are likewise treated as equivalent to an acquisition or disposal. Finally, any transaction or arrangement capable of conferring the voting rights attaching to the equity securities in question also constitutes an indirect acquisition, except for proxies granted for the purpose of representation at the general meeting.

III. Assessment in Light of the Sole-Obligation Principle

It has already been noted that the sole-obligation principle is enshrined in TCC 480(1) and that the provision has its source in Swiss law. Article 405(1) of the former Turkish Commercial Code ['fTCC 405(1)'], the predecessor of TCC 480(1), is an almost verbatim reproduction of CO/OR 680(1). The difference is that fTCC 405(1) provided that a shareholder could not, even under the articles of association, be compelled to "pay" more than the issue price of the shares determined upon their issue, which was either equal to or higher than their nominal value. Although the wording of CO/OR 680(1) appears in this respect to be broader than 'payment', under the former Code, the prevailing view in Turkish scholarship regarded the provision as applying not only to monetary obligations but equally to obligations to give, to do and to refrain from doing[23].

fTCC 405(1) was revised (its language was modernised and a minor addition was made) and gave way to TCC 480(1). CO/OR 680(1), by contrast, has remained unchanged since its enactment; once the prohibition on imposing on shareholders any obligation beyond the payment of the issue price had been expressly stated at statutory level in the 1936 revision of the CO/OR, the matter was not reopened for discussion in any subsequent revision[24].

TCC 480(1) nevertheless differs to some extent from CO/OR 680(1). The first difference is that TCC 480(1) indicates that 'exceptions may be laid down by law'. This indication does not, however, interfere with the substance of the principle. It may therefore be said that this addition to the provision does not distinguish TCC 480(1) from CO/OR 680(1).

A further difference is that the emphasis conveyed by the word 'even' in CO/OR 680(1) and in fTCC 405(1) ('*A shareholder may not be required, **even under the articles of association**, to contribute more than the amount fixed for subscription of a share on issue*') has been removed from TCC 480(1), which simply provides that no obligation may be imposed on a shareholder 'by the articles of association'. In my view, however, this has not resulted in any disadvantage; on the contrary, it has helped to clarify the meaning of the provision[25].

This is because, in view of the emphasis contained in fTCC 405(1), general assembly resolutions, which do not amend the articles of association, and therefore rank below them in the hierarchy of norms, were likewise taken to fall within the scope of the provision, and no argument to the contrary was pursued. The phrase 'even under the articles of association' was readily read as establishing an *a fortiori* relationship. This approach continues to be adopted in Turkish scholarship notwithstanding the absence of that emphasis from TCC 480(1), and the principle is given a broad reading by the majority of authors, so as to cover general assembly resolutions as well[26].

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[23] The explanatory note to TCC 480 [Kaya (n 3) 580-581]; Esra Hamamcıoğlu, 'Anonim Ortaklıklarda Tek Borç İlkesine İlişkin Gelişmeler' (2018) 6 (1) Kadir Has Üniversitesi Hukuk Fakültesi Dergisi 125, 127.

[24] For this assessment prior to the 2020 revision of Swiss company law, see Peter Forstmoser, Arthur Meier-Hayoz and Peter Nobel, *Schweizerisches Aktienrecht* (Stämpfli 1996) § 42 para 9; Vischer (n 9) para 1. Cf Jentsch 'Grossaktionäre' (n 9) 222 (the author states that the only change made to the provision was the replacement of the verb *beitragen* by l*eisten*, and that this was probably done in order to bring the text into line with its heading). For criticism of the wording of the provision, see Jentsch 'Macht' (n 9) 100-101, 103.

[25] For the contrary view, regarding the absence of that emphasis from TCC 480(1) as a shortcoming, see İbrahim Çağrı Zengin, *Türk Ticaret Kanunu'na Göre Anonim Ortaklık Genel Kurulunda Yeter Sayılar* (On İki Levha 2020) 127-128.

[26] As regards the fTCC, see Reha Poroy, Ünal Tekinalp and Ersin Çamoğlu, *Ortaklıklar ve Kooperatif Hukuku* (rev 12th edn, Vedat 2010) para 1019 and 1019a; Sıtkı Anlam Altay, *Anonim Ortaklıklar Hukuku'nda Sermayeye Katılmalı Ortak Girişimler [Equity Joint Ventures]* (Vedat 2009) 176; Berk Demirkol, 'Paysahipleri Sözleşmesiyle Getirilen Pay Devir Kısıtlamaları' (2012) 9 (2) Yeditepe Üniversitesi Hukuk Fakültesi Dergisi 851, 856 fn 12. Compare Okutan Nilsson (n 5) 41-42. As regards to TCC, see Üçışık and Çelik (n 6) 50; Hamamcıoğlu (n 23) 128; Zengin (n 25) 128-129; Aybüke Naz Durmuş, *Türk Ticaret Kanunu Kapsamında Anonim Şirketlerde Sermayenin Kaybı ve Borca Batıklık* (Adalet 2021) 120; Kayış (n 6) 1218 (the author refers to resolutions of the board of directors as well, alongside provisions of the articles of association and general assembly resolutions); Raziye Aksu, *Anonim Şirketlerde Yönetim Kurulu Kararlarının Butlanı* (On İki Levha 2022) 182 (the author refers to resolutions of the board of directors as well, alongside provisions of the articles of association and general assembly resolutions); Yaşar Can Göksoy, 'Pay Bedelini İfa Borcu ve İfa Etmemenin Sonuçları' in Kemal Şenocak (ed), *Şirketler Hukuku Şerhi Türk Ticaret Kanunu m. 452-563* (Seçkin 2023) vol 3 2967, 2971; Tüzemen

It is true that no obligation may be imposed on shareholders against their will by ordinary resolutions of the general assembly which do not amend the articles of association. The basis for this, however, is not the sole-obligation principle but the principle of private autonomy (a general principle of the law of obligations) and the corollary that no obligation may be created against a person's will[27].

Indeed, where a shareholder has not attended the general assembly meeting, or has attended and voted against, no obligation binding on that shareholder can be created by a resolution adopted at that meeting. Such a resolution can amount at most to an offer addressed to the shareholder[28]. Even if no provision on the sole-obligation principle appeared in the Code at all, no obligation could be created against a shareholder by an ordinary general assembly resolution for which that shareholder had not voted, and no such obligation could bind the shareholder.

Where, however, the shareholder concerned has attended the general assembly meeting and voted in favour of the resolution, it may at that point be said that an obligation has been imposed on that shareholder. In such a case, any contrary view is precluded by the prohibition of inconsistent behavior (*venire contra factum proprium*). As can be seen, the sole-obligation principle has no bearing on this situation[29]. In any event, there is no reason to suppose that a rule already secured by the principles of the law of obligations has been repeated in the TCC (*lex nihil frustra facit*)[30].

In my view, the sole-obligation principle is a prohibitive principle, and it covers the articles of association alone. No obligation consisting in a performance of giving, doing, or refraining from doing[31] may be imposed on a shareholder by the articles of association of a joint stock company[32]. This is also a coherent position, for the articles of association (commonly likened to the constitution of the company) constitute a contract of adhesion[33], open to accession. Were the general rules of the law of obligations to be applied to them, the

Atik (n 6) 238 (compare 238-239); Arslan (n 5) 150; Esra Kaşak, *Pay Sahipleri Sözleşmelerinin Aynen İfası* (Adalet 2025) 46. In Swiss scholarship, see Chenaux and Gachet (n 9) para 5 and para 9; Christian Kurer and Peter Kurer, 'Art. 680' in Heinrich Honsell, Nedim Peter Vogt and Rolf Watter (eds), *Basler Kommentar Obligationenrecht II Art. 530–964 OR Art. 1-6 SchlT AG Art. 1-11 ÜBest GmbH*, (4th edn, Helbing Lichtenhahn 2012) para 8; Vischer (n 9) para 6; Bahar and Peyer (n 10) para 9; Christoph Burckhardt, *Loyalitätsaktien im schweizerischen Recht de lege lata und de lege ferenda* (Peter Forstmoser ed, Dike 2023) para 885 fn 1740 and para 172; Pascal Favrod-Caune, *Crowdfunding* (CEDIDAC 2018) para 652. See also Guy Mustaki and Alain Alberini, 'La Participation de la Société Anonyme à une Convention entre Ses Actionnaires' (2013) 2 (4) Semaine Judiciaire Suisse 91, 93 fn 7. By contrast, some authors who address the question refer only to the articles of association and make no mention of general assembly or board resolutions: Oulevey and Levrat (n 9) para 10-14; Dekker (n 9) para 1-3; Nedim Peter Vogt, 'Art. 680' in Heinrich Honsell, Nedim Peter Vogt and Rolf Watter (eds), *Basler Kommentar Obligationenrecht II Art. 530-964 OR inkl. Schlussbestimmungen* (5th edn, Helbing & Lichtenhahn 2016) para 5 and para 8.

[27] At this point, the majority principle applicable in joint stock companies (TCC 418, 421 and 423; CO/OR 703 and 704) may bring about the formal adoption of the resolution, but cannot render the obligation it contains binding.

[28] Cf Böckli (n 9) 23 para 21.

[29] See Tokcan (n 11) 64-82.

[30] TCC 1 and Article 646 of the Turkish Code of Obligations No. 6098 ('TCO') link the two Codes to each other and state that they form inseparable parts of one another.

[31] One line of opinion in Swiss and Turkish law reads the sole-obligation principle as concerned only with monetary obligations imposing an economic burden. On this view, pre-emption rights laid down in the articles of association are not regarded as contrary to the principle, provided that they impose no economic disadvantage (that is, that the contractual transfer price is not below the market or real value) and do not render the transfer more difficult within the meaning of CO/OR 685b(7) [TCC 493(7)] [Vogt (n 26) para 10; Burckhardt (n 26) para 168, 887; Tüzemen Atik (n 6) 239-241]. In my view, this position cannot be sustained, since every kind of obligation, including obligations to do and to refrain from doing, may be said to have an economic value to a greater or lesser degree. Neither the purpose of the sole-obligation principle nor the wording of CO/OR 680(1) and TCC 480(1) lends itself to such a reading [see Tokcan (n 11) 365-367and also 52 fn 29].

[32] Forstmoser, Meier-Hayoz and Nobel (n 24) § 42 para 8-9, 17; Böckli (n 9) 22-23 para 20; Chenaux and Gachet (n 9) para 10; Mustaki and Alberini (n 26) 96; Roxane Allot, *L'actionnaire minoritaire et l'arbitrage en droit suisse de la société anonyme Etude de l'article 697n CO* (Helbing Lichtenhahn 2025) 205, para 567. Compare Jentsch, 'Grossaktionäre' (n 9) 222, 225; Jentsch, 'unterkapitalisierte AGs' (n 9) 43-44, treating the sole-obligation principle as confined to the obligation to contribute capital and as serving the maintenance of capital. It may be briefly noted that, although it is true that the sole-obligation principle also serves the maintenance of capital, in my view this is not its purpose but a consequence of it; for a detailed discussion, see Tokcan (n 11) 34-38.

[33] Erdoğan Moroğlu, 'Anonim Ortaklık Anasözleşmesi ve Hukuki Niteliği' in *Prof Dr M Kemal Oğuzman'ın Anısına Armağan* (Beta 2000) 515; Mehmet Bahtiyar, *Anonim Ortaklık Anasözleşmesi* (Beta 2001) 11; Mehmet Bahtiyar, '6102 Sayılı TTK'da Anonim Şirketin Kuruluşu' (2014) 9 (117-118) Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi 9, 16; İsmail Kırca, Feyzan Hayal Şehirali Çelik and Çağlar Manavgat, *Anonim Şirketler Hukuku: Cilt 1: Temel Kavram ve İlkeler, Kuruluş, Yönetim Kurulu* (Banka ve Ticaret Hukuku Araştırma Enstitüsü 2013) 298. For the view that the articles of association do not constitute a contract of adhesion, see Sinan Yüksel, 'Paysahipleri Sözleşmeleri' (Master thesis, Galatasaray University 2003)

conclusion would have to be that subsequent parties to the contract accept all of its provisions. In other words, the articles of association, being a contract of adhesion, would have to attach all the obligations they contain to the share, just as they do with rights, so that those rights and obligations would pass to the transferee upon the transfer of the share. Had the sole-obligation principle not existed, a provision in the articles of association imposing obligations on existing or future shareholders would not be void, and the new shareholder would be bound by those obligations.

However, as indicated above, to enhance the free transferability of shares in a joint stock company and to make the joint stock company an attractive investment instrument, the articles of association must be prevented from containing unexpected obligations of this kind. Provisions of that kind must therefore be prohibited. This is precisely what the sole-obligation principle achieves, departing from the general principles of the law of obligations[34,35]. It is because the principle departs from those general principles that a provision to this effect was needed in TCC 480(1).

For these reasons, there is no difference as regards their effect between the wording of CO/OR 680(1), under which 'no obligation may be imposed on a shareholder even under the articles of association', and that of TCC 480(1), under which 'no obligation may be imposed on a shareholder by the articles of association'. Under both legal systems, just as no obligation may be imposed by ordinary general assembly resolutions on a shareholder who has not voted in favour of the resolution, so no obligation may be imposed on shareholders by the articles of association either. What CO/OR 680(1) and fTCC 405(1) sought particularly to emphasise, however, is that not even the articles of association may contain an obligation (a document which, by reason of its adhesive character, could under the ordinary rules of the law of obligations contain obligations and attach them to the share)[36,37].

In my view, TCC 480(1) was not conceived as a principle prohibiting the imposition of any obligation whatsoever on a shareholder by any authority whatsoever. Even if the sole-obligation principle were thought to cover ordinary general assembly resolutions, or indeed resolutions of the board of directors, that conclusion should not be doubted, for the wording of the Code precludes any such doubt. Even if one were to persist in the view that the emphasis on 'even under the articles of association' in fTCC 405(1) and CO/OR 680(1) requires general assembly and board resolutions to be brought within the scope of the principle, those provisions refer to the articles of association as the highest instrument by which an obligation may (not) be imposed on a shareholder. Accordingly, the direct imposition of an obligation on a shareholder by legislation cannot be characterised as an exception to the sole-obligation principle. What TCC 480(1), fTCC 405(1), and CO/OR 680(1) prohibit is not the imposition of any obligation on a shareholder as such, but its

155 [the author states (at 27–29) that upon registration, the articles of association lose the character of a partnership contract which they had at the formation stage and, becoming the constitution of the company, acquire the character of an objective norm; and that they cannot therefore be assigned to any of the existing categories of contract but are to be characterised as a *sui generis* concept. Even if this approach is adopted, no different conclusions need follow for the understanding of the sole-obligation principle advanced here].

[34] The sole-obligation principle achieves this as follows. A provision placing a shareholder under an obligation is void since it is contrary to TCC 480(1), which is mandatory. The position is the same where contracts governed by the law of obligations binding future shareholders are inserted into the articles of association [compare Mustaki and Alberini (n 26) 94–95]; such a provision of the articles is void. Yet the nullity of the provision in the articles does not entail the nullity of the contract between the parties. Unless it is subject to a formal requirement, the contract remains binding between them.

[35] For a detailed discussion of this point, see Tokcan (n 11) 78-80.

[36] This inference can in fact be drawn more readily in Swiss law, where the rules on joint stock companies are not contained in a separate code. It is more plausible that a provision in another division (*partie*/*Abteilung*) of the same code, one addressing a more specific subject matter, should depart from a general principle than that it should merely repeat one. The same reasoning holds in Turkish law, where TCC 1 and TCO 646 establish the same link between the two Codes (see n 30).

[37] Compare Zengin (n 25) 127-128 (although the author maintains that resolutions of the board of directors also fall within the scope of the sole-obligation principle, the view taken here in relation to ordinary general assembly resolutions applies to such resolutions as well.); Kayış (n 6) 1218. For the view interpreting the phrase 'even under the articles of association' as meaning 'by the articles of association, in addition to obligations arising by law', see Jentsch 'Macht' (n 9) 100.

imposition by the articles of association (or, on the competing view, by the articles of association together with general assembly and board resolutions).

At this point it might be thought that the qualifying phrase 'save for the exceptions provided for by law' in TCC 480(1) refers to requirements imposed directly on shareholders by legislation. On such a reading, the requirements imposed on shareholders under capital markets legislation would find a basis within the wording of the provision itself and could be regarded as exceptions to the sole-obligation principle.

In my view, however, that reading cannot be sustained. Above all, it deprives the qualifying phrase ('save for the exceptions provided for by law') of any function. What TCC 480(1) prohibits is the imposition of an obligation on a shareholder by the articles of association (or, if the competing view is adopted, by other internal corporate decisions). The direct imposition of an obligation on a shareholder by legislation in no way conflicts with that prohibition. Where there is no conflict, nothing needs to be excepted. On the competing reading, the provision would come to mean something like: 'save for obligations imposed directly on the shareholder by law, no obligation may be imposed by the articles of association'. There is no logical connection between the premise and the conclusion of such a statement. In the light of the canon that the legislature does not use superfluous words (*lex nihil frustra facit*), preference must be given to the reading that accords the qualifying phrase a meaningful function: no obligation may be imposed by the articles of association save for the exceptions which the law provides in respect of the imposition of obligations on shareholders by the articles of association.

The provisions to which the qualifying phrase actually refers are indeed to be found in the legislation, and they are all of the same structure. TCC 480(4) permits ancillary obligations (*Nebenleistungspflichten*) to be imposed on shareholders by the articles of association where the transfer of shares is subject to the company's approval, while TCC 482(3) allows a contractual penalty payable in the event of default to be stipulated in the articles of association[38]. Both provisions are instances in which the law permits a matter to be regulated in the articles of association. The phrase 'the exceptions provided for by law' is therefore not left hanging. The provisions to which it refers are identifiable, and they show that the exception operates on the same plane as the prohibition itself (that is, on the plane of the articles of association). For these reasons, it must be concluded that the exceptions referred to in TCC 480(1) are those provisions which permit an obligation to be imposed on a shareholder in the articles of association. In sum, the sole-obligation principle is a prohibitive principle which precludes an obligation from being imposed on a shareholder by the articles of association. Its exceptions must accordingly be provisions permitting an obligation to be created in the articles of association. On this basis, a legislative provision can be said to constitute an exception to the sole-obligation principle only if it permits an obligation to be laid down in the articles of association. The creation by legislation of an obligation borne directly by shareholders in specified circumstances does not affect the sole-obligation principle, whatever the field of law being regulated. A provision which permits a joint stock company to impose obligations on its shareholders by the articles of association, by contrast, does bear on the principle and may constitute an exception to it.

As for the research question, it will be apparent from the foregoing that I do not share the view of the majority of authors. I agree with the conclusion reached by the minority view in the literature, according to which the capital markets rules described under heading II, which require a shareholder to perform certain

[38] Under TCC 480(4), which draws on German law, where the transfer of shares is subject to the company's approval, the articles of association may impose on shareholders, in addition to the obligation to contribute capital, a duty to render performances which recur at particular times and whose subject matter is not money. Such ancillary obligations (*Nebenleistungspflichten*) must be provided for in the articles of association, and it is undisputed that they constitute exceptions to the sole-obligation principle. The CO/OR contains no comparable rule. TCC 482(3) [(CO/OR 681(3) likewise] permits provisions in the articles of association under which the holder of a share is to pay a contractual penalty in the event of default [for a detailed discussion, see Tokcan (n 11) 312 ff].

acts, do not constitute exceptions to the sole-obligation principle. I do not, however, share the reasons advanced by the authors who hold that view. Those reasons will be examined in turn.

The first two reasons advanced in the literature for the proposition that the mandatory takeover bid does not constitute an exception to the sole-obligation principle are that this obligation attaches to the person of the shareholder rather than to the share, and that it is owed to the other shareholders rather than to the company[39].

In the capital markets rules under examination, the fact that the obligation attaches to the shareholder rather than to the share is a necessary consequence of how those rules are formulated. In other words, it is not possible for these requirements to attach to the share. This argument therefore appears to point to a difference, but does not clearly show why that difference should matter[40].

In my view, however, the fact that the obligation arising from the mandatory takeover bid is not owed to the company should carry no weight. Neither TCC 480(1) nor CO/OR 680(1) imposes any restriction as to the person to whom the obligation is owed. Moreover, to accept that the sole-obligation principle covers only obligations of which the company is the creditor is to say that, in joint stock companies, obligations may be imposed by the articles of association on the holders of one class of shares for the benefit of the holders of another. That conclusion is tantamount to rejecting the sole-obligation principle altogether.

A further reason relied upon in the literature in support of this view concerns the fact that these requirements have their origins not in company law but in public law[41]. Yet it is immaterial, for the purposes of determining whether a provision may constitute an exception, that its roots lie outside company law or in public law.

Similarly, the fact that an obligation also serves the interests of the person bound by it does not cause the obligation to disappear. This argument, advanced in particular in relation to the mandatory takeover bid requirement[42], therefore provides no answer to the question of why that obligation does not constitute an exception to the sole-obligation principle.

The reasoning based on the fact that the mandatory takeover bid does not in every case give rise, of itself, to an obligation to pay a sum of money[43] is likewise inadequate. The requirement still involves an obligation to do, and the sole-obligation principle draws no distinction, as regards the obligation it prohibits from being imposed on shareholders, between performances of giving, doing, and refraining from doing. Neither TCC 480(1) nor CO/OR 680(1) lends itself to a narrow reading under which the obligation concerns only the payment of a sum of money, nor is there any need for such a reading. On that reading, these provisions would prohibit only the assumption of monetary obligations, leaving obligations to do outside their scope. The consequence would be that a company could obtain the financing it needs from its shareholders indirectly: not in money, but by imposing on them the performance of certain tasks as obligations to do. That conclusion too would deprive the sole-obligation principle of its meaning.

[39] Kolcuoğlu (n 7) 19-20; Üçışık and Çelik (n 6) 52; Türkyılmaz (n 5) 33-35; Karacan and Karacan (n 5) 233-234; Arslan (n 5) 150-151. For the view, expressed without taking a position on the mandatory takeover bid requirement, that the sole-obligation principle sets a limit as regards the obligations a shareholder may assume towards the company, see Levent Köse, 'Türk Anonim Ortaklıklar Hukuku'nda Sözü Edilen Tek Borç İlkesi ile Doktrin ve Tasarının İlkeye Bakışı' (2010) 84 (2) İstanbul Barosu Dergisi 883, 887; Ali Murat Sevi, *Anonim Ortaklıkta Sermayenin Oluşturulması ve Pay Sahiplerine İade Edilmesi Yasağı* (Seçkin 2013) 118 [the author takes the view that TCC 480(1) prevents a shareholder from being placed under an obligation towards the company under company law]; Sevda Bora, *Şirkete Borçlanma Yasağı* (Seçkin 2017) 79 (The author accordingly regards the borrowing of money by a shareholder from the company, that is, the shareholder's coming under an obligation towards the company, as an exception to the sole-obligation principle as well).

[40] If what these authors mean by this reasoning is that an obligation must attach to the share in order to fall within the scope of the sole-obligation principle, and that this is possible only where the obligation is inserted into the articles of association, then I share that view.

[41] Pulaşlı (n 5) §14 para 1a; Bahar and Peyer (n 10) para 109 and para 109 fn 316.

[42] Karacan and Karacan (n 5) 233-234.

[43] Karacan and Karacan (n 5) 233-234.

Nor does the argument based on the difference between the purpose of the mandatory takeover bid and that of the sole-obligation principle[44] provide an adequate basis. The purposes of the ancillary obligations (*Nebenleistungspflichten*) under TCC 480(4), which are indisputably exceptions to the sole-obligation principle in Turkish law, likewise differ from those of the principle itself. Yet this has no bearing whatsoever on their characterisation as exceptions.

In my view, the reason why the mandatory takeover bid and shareholders' disclosure requirements do not constitute exceptions to the sole-obligation principle is that they are not envisaged as being laid down in the articles of association[45]. Where a requirement is imposed directly on the shareholders of a joint stock company by legislation, there is no interference with the field of application of the sole-obligation principle. For that field of application to be affected, the law would have to confer on companies the liberty to create, in the articles of association, an obligation borne by shareholders[46].

The mandatory takeover bid is as a rule connected with the concept of control[47] and arises from the holding of control. Where the holding of control coincides with the position of shareholder, an obligation comes to be attached to shareholding[48]. The requirement to make a takeover bid is imposed, without any connection to the articles of association, on the shareholder who makes the acquisitions that trigger the specified thresholds, and it applies to all shareholders of all publicly held joint stock companies. This obligation is not created by the articles of association. The sole-obligation principle, by contrast, is one which precludes the creation of obligations by the articles of association. An obligation created by legislation is therefore not contrary to the sole-obligation principle, nor can it constitute an exception to it.

The public disclosure rules likewise direct shareholders holding a given proportion of an issuer's shares, or of its privileged shares, to act in a particular manner. Yet this too is not a rule concerning the provisions of the articles of association of joint stock companies. It is a requirement imposed on the persons who make such acquisitions. It is for this reason neither an exception to the sole-obligation principle nor an infringement of it.

At this point, it may be asked whether rules of this kind are compatible with the underlying rationale (*ratio legis*) that led to the adoption of the sole-obligation principle. It was noted earlier that the principle serves the purpose of making the share in a joint stock company an attractive investment instrument. Is it consistent with that purpose to impose certain requirements on investors operating in the capital markets, even if those requirements are unconnected with the sole-obligation principle?

[44] Türkyılmaz (n 5) 33-35.

[45] One point should be emphasized as regards Swiss law. The scope for regulation by the articles of association permitted under LIMF/FinfraG 125(3) concerns the mitigation of the requirement or the exclusion of the requirement. Even in that case, the provisions of LIMF/FinfraG do not envisage the creation of an obligation by the articles of association, and they therefore come nowhere near constituting an exception to the sole-obligation principle.

[46] It should not therefore be thought that the sole-obligation principle stands in the way of the shareholder's duty of loyalty arising from the principle of good faith (*Gebot des Handelns nach Treu und Glauben*). In short, since this duty of the shareholder arises by law rather than from any provision to that effect in the articles of association, the matter has no connection with the sole-obligation principle. [Tokcan (n 11) 325; see Jentsch 'Grossaktionäre' (n 9) 218].

[47] The term 'control' in fact means the power to direct the management of a company, that is, dominance over its management [Paslı, 'Kontrol' (n 5) 345], and is thus a broader concept extending beyond the situations in which the mandatory takeover bid requirement arises. Control may be obtained not only through the acquisition of shares or voting rights conferring management power but also by means peculiar to the law of obligations, including a domination agreement, or by reason of the company's factual situation [Paslı, 'Kontrol' (n 5) 346]. A person holding control thereby acquires the ability to direct more than his own investment and comes to hold the power to determine the economic fate and the future of the company [Paslı, 'Kontrol' (n 5) 346-347]. Since the mandatory takeover bid requirement is likewise concerned with the acquisition of control and is laid down for cases in which control is obtained in a particular manner, there is no objection to using the term in this context, even though it bears a wider meaning.

[48] It should be noted, however, that this conclusion cannot always be drawn directly in relation to the holding of control: it does not hold in cases where control is not obtained through shares.

The investors made subject to requirements in the capital markets are all shareholders in the same position, without distinction as between individual joint stock companies. The requirements laid down for these shareholders are promulgated by legislation; they are uniform and knowable in advance. Ascertaining obligations created by provisions of the articles of association, by contrast, requires a company-by-company investigation. It is the latter that constitutes the 'surprise' (unexpected obligations) the principle seeks to prevent. An investor learns the law once and applies it to every publicly held company. Were the sole-obligation principle absent, and were the articles of association permitted to impose various obligations on shareholders, the investor would have to examine them separately for each company[49]. From this perspective, it can be seen that these requirements do not conflict with the thinking that led to the adoption of the sole-obligation principle.

Note that the sole-obligation principle does not claim to achieve on its own the aim of making the share in a joint stock company attractive. Accordingly, the idea of making the share an attractive investment instrument played a part in the adoption of the principle. But other legal rules may diminish that attractiveness for investors in particular situations, and this tells us nothing about the sole-obligation principle.

For these reasons, the rules in question are neither exceptions to the sole-obligation principle nor do they stretch or strain it. They are simply rules that have no connection with the principle. The same reasoning holds for comparable legislative provisions[50]. The scope and the exceptions of the sole-obligation principle are to be read from this perspective.

The concrete consequence of this conclusion for the purposes of interpretation is as follows: the view that the mandatory takeover bid requirement is to be construed narrowly rests in part on the assumption that this mechanism is an exception to the sole-obligation principle[51]. Yet the reasons set out above show that the sole-obligation principle is not the starting point for construing these rules narrowly[52].

IV. Conclusion

This study examined whether the obligation to make a takeover bid, arising where control of the management of a publicly held joint stock company is obtained, and the requirements to disclose changes in the shareholding structure and inside information, constitute exceptions to the sole-obligation principle enshrined in TCC 480(1). The question matters in two respects. On the one hand, if these rules are treated as exceptions to the principle, they will be subject to a regime of narrow construction under the canon that exceptions are to be construed narrowly. On the other hand, the answer serves to determine the meaning and the field of application of the principle itself.

[49] One line of opinion in Turkish scholarship regards as open to criticism the conclusion that the sole-obligation principle is among the most important factors securing the transferability of the share. It argues that small investors, who invest limited capital in companies whose shares are traded on the exchange, do not consider the articles of association of the companies in which they invest when acquiring shares, but take their investment decisions solely by reference to speculative movements in the market and/or to the share price; and that listed companies are subject to intensive supervision and intervention by the CMB, which prevents the inclusion of provisions that would impair the interests of small investors contrary to the statutory scheme. [Umut Özdoğan, *Anonim Ortaklık Payı Bağlamında Opsiyon Kavramı ve Pay Devrinde Özellik Arz Eden Haklar* (On İki Levha 2025) 325-327]. It should be pointed out that it is the sole-obligation principle itself which makes it unnecessary for small investors to examine the articles of association of the companies in which they invest on the exchange, and which enables them to take their investment decisions without being affected by provisions of the articles. It is likewise the sole-obligation principle that provides the statutory basis on which the CMB is able to prevent provisions of the articles of association which would impair the interests of small investors by imposing obligations on them.

[50] On this basis, the conclusion that the sole-obligation principle is stretched, or that an exception to it is created, by the notification requirements imposed on shareholders under TCC 198 and by LIMF/FinfraG 120 [Tekinalp (Poroy/Çamoğlu) (n 6) para 1020; Oulevey and Levrat (n 9) para 10 fn 1 and para 959] is likewise not well founded.

[51] See n 12.

[52] This does not mean that the rules in question can never be construed narrowly on any ground whatsoever. It may be argued that they constitute exceptions to other rules and that narrow construction can be defended on that basis. Any such claim, however, would have to be established separately and independently; it cannot of itself take the place of the argument founded on the sole-obligation principle.

In my view, the answer is negative. That conclusion is reached, however, on grounds different from those on which the minority view in the literature rests.

What TCC 480(1) prohibits is not the imposition of any obligation on a shareholder, but its imposition by the articles of association. The wording of the provision clearly shows the plane on which the prohibition operates. The omission from TCC 480(1) of the emphasis on 'even under the articles of association', found in fTCC 405(1) and in its source provision CO/OR 680(1), does not weaken that conclusion; on the contrary, it clarifies the meaning of the provision. Given the adhesive character of the articles of association and their standing as the constitution of the company, that emphasis was intended to make clear that not even a document capable of attaching obligations to shares may contain them. It was not intended to extend the prohibition to the levels of regulation above the articles of association.

It follows that the correct proposition that no obligation may be imposed on a shareholder by resolutions of the board of directors, or by ordinary general assembly resolutions, which do not amend the articles of association, rests not on the sole-obligation principle but on private autonomy and on the general principle of the law of obligations that no one may be placed under an obligation against a person's will. This position would be no different if the Code contained no provision on the sole-obligation principle at all. Where a shareholder has taken part in the adoption of the resolution by voting in favour of it, by contrast, the prohibition of inconsistent behaviour comes into play, and that shareholder may be placed under an obligation by a resolution of the general assembly or of the board. This distinction does not narrow the field of application of the sole-obligation principle; it places the principle where it belongs.

The qualifying phrase 'save for the exceptions provided for by law' in TCC 480(1) supports this reading. To read that phrase as referring to requirements imposed directly on shareholders by law turns the provision into a statement in which there is no logical connection between premises and conclusions and deprives the phrase of any function. The direct imposition of an obligation on a shareholder by law in no way conflicts with the prohibition on imposing obligations by the articles of association, and in the absence of any conflict, no exception is called for. The provisions to which the phrase actually refers are to be found in the legislation: TCC 480(4) and TCC 482(3) are instances in which the law permits an obligation to be laid down in the articles of association. As can be seen, the exception operates on the same plane as the prohibition itself.

On this basis, the criterion for treating a legal rule as an exception to the sole-obligation principle is as follows: the law must have permitted a provision imposing an obligation on a shareholder to be laid down in the articles of association. The criterion is independent of the branch of law to which the rule belongs, of the person to whom the obligation is owed, and of the type of performance forming its subject matter.

When that criterion is applied to the rules examined here, the result is clear. Under CML 25(1) and CML 26, the requirement to make a takeover bid is imposed directly by law on the person who makes the acquisitions that trigger the specified thresholds; the disclosure requirements laid down in CML 15 and in Articles 5(2) and 12 of the Communiqué have the same structure. None of these requirements is created by the articles of association, nor is it envisaged that they should be laid down there. Therefore, these rules constitute neither an exception to the sole-obligation principle nor an infringement of it: they fall outside its field of application altogether.

This conclusion is also consistent with the *ratio legis* of the principle. The risk the principle seeks to avert is the unexpected ('surprise') obligation that an investor may encounter on acquiring a share, and that risk is peculiar to the articles of association. Obligations contained in the articles require company-by-company investigation, whereas the requirements laid down in capital markets legislation are promulgated by legislation, uniform and knowable in advance; an investor learns them once and applies them to all publicly held companies. The sole-obligation principle does not, moreover, claim to achieve on its own the

aim of making the share in a joint stock company an attractive investment instrument. The possibility that this attractiveness may be diminished by other legal rules tells us nothing about the scope of the principle.

This conclusion has a concrete consequence for interpretation. The view that the mandatory takeover bid requirement is to be understood narrowly draws one of its supports directly from the assumption that this requirement is an exception to the sole-obligation principle. Once that assumption is abandoned, this limb of the argument for narrow construction falls away. That does not mean that narrow construction is in every case mistaken; but if it is to be defended, it must now rest on grounds independent of the sole-obligation principle.

Finally, the criterion arrived at here is not confined to the two requirements examined. The same reasoning holds for every requirement imposed directly on shareholders by law. From this perspective, the scope and the exceptions of the sole-obligation principle show that the widespread view that the very existence of the principle has become open to question in relation to publicly held joint stock companies is unfounded.

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