# Istanbul Corporate Law Series 2025 Symposium Report

## Corporate Constitution and Private Ordering

14 November 2025
Koç University, Istanbul

**Organized by**

Koç University Dr. Nüsret-Semahat Arsel International Business Law Implementation and Research Center (NASAMER) & European Corporate Governance Institute (ECGI)


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# ABOUT THE EVENT

The Corporate Constitution and Private Ordering symposium, held on 14 November 2025 at Koç University's ANAMED Building in Beyoğlu, Istanbul, convened leading scholars and practitioners to examine one of corporate law's most enduring and evolving themes: the legal architecture of the corporate constitution and the limits of private ordering in joint stock company law. Hosted jointly by NASAMER and Koç University Law School, and organised in partnership with the European Corporate Governance Institute (ECGI), the event marked a significant milestone as the first ECGI-affiliated conference ever held in Türkiye. It also inaugurated the Istanbul Corporate Law Series (ICLS), a new annual platform dedicated to advancing comparative corporate-law scholarship.

Drawing on perspectives from the United Kingdom, Germany, Italy, Switzerland, and Türkiye, the symposium explored how corporate constitutions function as hybrid governance instruments and how mandatory norms, contractual autonomy, and market practice interact within contemporary corporate structures. As emphasised in the event description, the symposium's central focus lay in analysing (i) the role and enforceability of the articles of association, (ii) the distinction between internal and outsider rights, and (iii) the interface between statutory mandates and private regulatory mechanisms.

# ABOUT THE EVENT

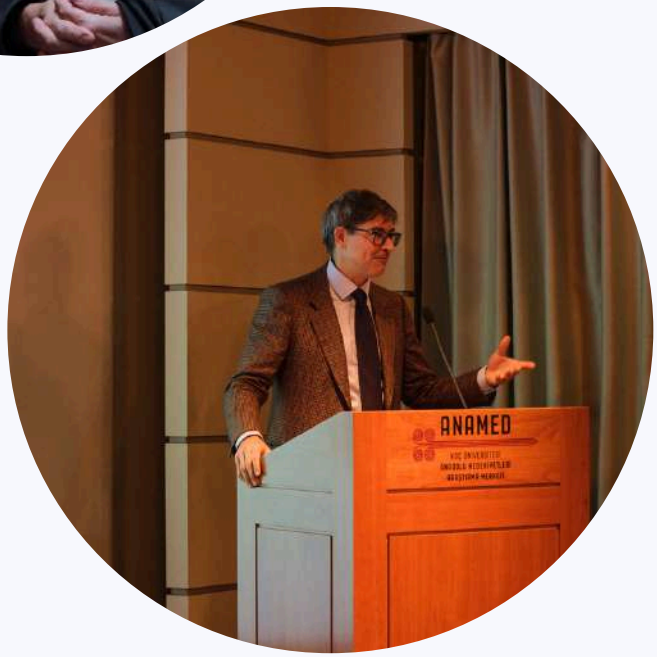
Designed as a high-level academic–practitioner forum, the symposium combined doctrinal debate with insights from real-world transactional practice. The programme consisted of two thematic sessions. Session I examined the legal nature of the corporate constitution. Eva Micheler (LSE and ECGI) opened with an English law perspective on the constitution as a statutory governance instrument rather than a private contract. Cem Veziroğlu (Koç University) followed by reframing the long-standing debate through his “Schrödinger’s Constitution” metaphor, highlighting the duality and uncertainty surrounding formal and real clauses. Kerem Çelikboya (Istanbul Bilgi Universty) concluded the session with an analysis of legal remedies for breaches of corporate constitutions under Turkish law, focusing on the divergence between doctrine and case law regarding board resolutions and shareholder protection mechanisms.

Session II turned to the boundaries of private ordering. Luca Enriques (Bocconi University and ECGI) presented empirical findings from the CANaLETTo Project, demonstrating how mandatory corporate law in Italy and Germany constrains the transplantation of U.S.-style venture capital contracting. Anlam Altay (Galatasaray University) explored the blurry lines between share-based privileges and purely contractual rights in Turkish joint-stock companies. The final speaker, Sinan Yüksel (Galatasaray University), drawing on Turkish practice and trade registry experience, examined the legality and enforceability of references to shareholders’ agreements within the articles of association, emphasising tensions between publicity requirements, transparency concerns, and private economic arrangements.

Participation was free and open to academics, practitioners, postgraduate researchers, and government-affiliated experts.

The symposium not only fostered rigorous comparative dialogue but also set the foundation for an enduring research platform. With its launch, ICLS positions Istanbul as a new regional hub for global corporate-law scholarship, creating an institutional bridge between Turkish academia and the international corporate governance community.

This report has been prepared by Cem Veziroğlu, the organizer, and the session rapporteurs,  Esra Hamamcıoğlu and Abdurrahman Kayıklık.

# FOREWORD

It is with great honour that I present this report from the inaugural Istanbul Corporate Law Series symposium. On behalf of Koç University and NASAMER, I am delighted to share what was a special milestone for us: the first ECGI-affiliated event ever held in Türkiye.

This symposium also marked the launch of the Istanbul Corporate Law Series (ICLS)—our new annual platform for high-level, comparative discussion on the most pressing themes in corporate law. The creation of ICLS reflects our commitment to positioning Istanbul as a hub for international corporate law scholarship, bridging Continental European traditions with common law perspectives and addressing the unique challenges faced by emerging markets.

This year's theme, "Corporate Constitution and Private Ordering," brought together leading scholars to examine the foundations of corporate law and the evolving boundaries of contractual freedom. As outlined in the symposium description, we explored the corporate constitution and its enforceability, the distinction between internal and outsider rights, and the interface between mandatory rules and private ordering in joint stock company law. These are both timeless doctrinal questions and highly relevant practical issues in modern governance and transactional practice.

Our terminology was deliberate: "corporate constitution" is not only an established concept in English law but also rooted in Continental European tradition, reflecting the hybrid character of the Articles of Association. This framing allowed us to transcend jurisdictional boundaries and engage in truly comparative analysis.

# FOREWORD

The two sessions of the symposium addressed complementary dimensions of our theme. The first session delved into the theoretical foundations of the corporate constitution, examining whether articles of association are better understood as contracts, norms, or hybrid instruments. The second session turned to practical implications, exploring how mandatory corporate law constrains private ordering in contexts ranging from venture capital financing to preferential shareholder rights. The discussions summarized in this report span jurisdictions from the UK and Germany to Italy and Türkiye/Switzerland. They tackle timeless questions: Is the company a nexus of contracts or a real entity? Can shareholders "constitutionalize" their private agreements? What are the remedies when this constitution is breached?

I extend my sincere thanks to all speakers, moderators, and rapporteurs for their invaluable contributions. The presentations sparked rich discussions that continued well beyond the formal sessions. I am also grateful to the ECGI for their partnership in making this event possible, and to all participants for their engagement and insights.

This report captures the key insights from our discussions, which we hope will serve as a resource for scholars, practitioners, and policymakers alike. We look forward to continuing this tradition with future ICLS symposia, each addressing new frontiers in comparative corporate law.

Dr. Cem Veziroğlu (Oxon)
Assistant Professor of Commercial Law, Koç University
Director of NASAMER
Affiliated Scholar at UNESCO Chair on Gender Equality and Sustainable Development

# PROGRAMME

## Friday, 14 November 2025

**1:00 pm – 1:30 pm** Registration & Refreshments

**1:00 pm – 1:30 pm** Opening remarks — Dr. Cem Veziroğlu (Director of NASAMER)

**1:30 pm – 3:00 pm** **Session I: The Legal Nature of Corporate Constitution**

Chair: Dr. Emek Toraman Çolgar (Koç University)

Speakers:

**Prof. Dr. Eva Micheler (LSE and ECGI)**
*"The Legal Nature of the Corporate Constitution: A Perspective from the Common Law"*

**Dr. Cem Veziroğlu (Koç University)**
*"Schrödinger's Constitution: Revisiting the Legal Nature Debate and the Duality of Real and Formal Statutory Clauses"*

**Dr. Kerem Çelikboya (Istanbul Bilgi University)**
*"Remedies for Breach of Corporate Constitution"*

Rapporteur: Dr. Esra Hamamcıoğlu (Kadir Has University)

# PROGRAMME

## Friday, 14 November 2025

**3:00 pm – 3:20 pm** Coffee Break

**3:20 pm – 4:45 pm** **Session II: The Limits of Private Ordering in Corporate Law**

Chair: Prof. Dr. Gül Okutan Nilsson (Istanbul Bilgi University)

Speakers:

**Prof. Dr. Luca Enriques (Bocconi University and ECGI)**
*"Corporate Law's Impact on Venture Capital Contracting: Evidence from Germany and Italy"*

**Prof. Dr. S. Anlam Altay (Galatasaray University)** *"Articles of Association as a Source of Preferential and Contractual Rights: Blurry Lines Between Mandatory Norms and Private Autonomy"*

**Dr. Sinan Yüksel (Galatasaray University)**
*"Shaping the Corporate Constitution: References to Shareholders' Agreements and External Commitments in the Articles of Association"*

Rapporteur: Dr. Abdurrahman Kayıklık (Bilkent University)

*Chair: Dr. Emek Toraman Çolgar (Koç University)*

***Prof. Dr. Eva Micheler (LSE and ECGI)***
***The Legal Nature of the Corporate Constitution:***
***A Perspective from English Law***

Prof. Dr. Eva Micheler opened the symposium with a rigorous examination of the corporate constitution from the perspective of English law. Her central thesis challenged the prevailing tendency in law-and-economics scholarship to characterize the constitution as a contract. Drawing on both doctrinal analysis and institutional theory, she argued that the constitution is not a contract in the legal sense, but rather a statutory instrument—adopted and modified by shareholders who act in a private capacity but exercise powers conferred by the Companies Act.

Prof. Micheler began by carefully distinguishing between economic and legal conceptions of the term "contract." While economists may legitimately view the constitution as contractual because shareholders adopt and modify it with some freedom to determine its content, this characterization becomes problematic when applied in a legal context. She emphasized that the degree to which corporate law is mandatory or enabling is independent of whether the constitution itself is characterized as contractual. German law, she noted, is mandatory by default—provisions apply as mandatory rules unless explicitly designated otherwise. UK law operates conversely: the Companies Act applies on a default basis unless provisions specifically identify themselves as mandatory. This distinction, while significant for regulatory purposes, does not resolve the question of the constitution's legal nature.

The core of her presentation drew a fundamental distinction between contracts and what she termed "regulations for the company." Classical contract law presupposes bilateral or multilateral consent: two or more parties are bound, each can enforce the agreement, and any party can block an amendment. Courts may imply terms to fill gaps, and contracts can be rescinded on grounds of misrepresentation, mistake, undue influence, or duress. The corporate constitution deviates from these foundational principles in virtually every respect. A single person can form a company; shareholders can only enforce personal membership rights such as the right to receive a declared dividend, to veto specified transactions, or to exercise pre-emption rights; amendments require only a qualified majority rather than unanimous consent; courts do not imply terms into the constitution; and the classical formation remedies are entirely inapplicable.

Prof. Micheler illustrated these distinctions with a classic English case involving a solicitor who, while assisting in a company's formation, inserted a provision appointing himself as the company's lawyer for life. Although such a clause would be enforceable in an ordinary contract, it is unenforceable under company law because it does not confer a personal membership right. This example underscores the limited enforceability of non-membership provisions within the constitutional framework. Furthermore, she observed, even an illegal company—one established for unlawful purposes such as operating an unlicensed casino—exists validly until it is formally wound up. Fraud and illegality do not vitiate the constitution's legal force in the way they would nullify a contract.

The binding force of the constitution, Prof. Micheler explained, derives not from the shareholders' agreement but from statutory mandate. Section 33 of the Companies Act 2006 binds the company and its members to the constitution, and Section 171 imposes on directors a duty to act in accordance with the constitution. The source of obligation is thus legislative, not consensual. In this sense, the constitution provides "regulations for the company", a regulatory framework enabling corporate decision-making and execution.

Building upon this analysis, Prof. Micheler situated the corporate constitution within a broader framework of layered governance, drawing on institutional theory developed in collaboration with David Gindis. This model posits multiple governance layers, each with distinct functions. At the meta-constitutional level sits the Companies Act, which establishes the conditions under which companies may be formed and operated. The constitutional level comprises the company's own regulations (its articles of association) which govern the policy level, where directors make strategic decisions. The policy level, in turn, directs the operational level, where day-to-day activities occur. Importantly, execution is not automatic: individuals at each level interpret instructions according to their understanding, values, and circumstances. The model thus captures the reality that corporate governance involves human judgment at every stage, not mechanical implementation of rules.

Prof. Micheler concluded by contrasting this layered approach with the "nexus of contracts" model prevalent in law-and-economics literature. While she acknowledged that, at the highest level of abstraction, the nexus model correctly identifies that the company stands at the centre of multiple voluntary relationships—with shareholders, directors, employees, creditors, and others—she argued that this abstraction is too general to be analytically useful. It obscures the distinctive characteristics of the constitution and fails to justify the specific rules that govern it. By reconceptualizing the constitution as a statutory instrument within a system of layered governance, corporate law scholarship can develop a more precise vocabulary and a more accurate understanding of how companies actually function.

During the Q&A session, Prof. Micheler addressed questions concerning the historical origins of mandatory versus default corporate law and the relationship between real entity theory and her analysis. She explained that the divergence between UK and German approaches reflects deeper historical trajectories: UK company law evolved from partnerships and trust arrangements, which were inherently contractual, with mandatory rules accumulating incrementally through judicial decisions protecting creditors. German law, by contrast, evolved from chartered corporations requiring state approval, beginning with a more regulatory framework. When asked whether UK investors complain about excessive contractual freedom, she observed that they do not—partly because liquid markets allow easy exit, and partly because the UK Corporate Governance Code, while operating on a comply-or-explain basis, functions as de facto mandatory law. She noted that the preference for commercial parties regulating their own affairs is deeply held in the UK. Responding to a question about real entity theory, Prof. Micheler explained that her work on this topic emerged from teaching: she found that standard theoretical frameworks collapsed when applied systematically, except in the context of directors' duties owed to the company. This observation led her to organizational scholarship and institutional theory as more productive analytical frameworks.

***Dr. Cem Veziroğlu (Koç University)***
***Schrödinger's Constitution: Revisiting the Legal Nature Debate and the Duality of Real and Formal Statutory Clauses***

Dr. Cem Veziroğlu's presentation introduced a compelling conceptual framework to illuminate one of the most persistent problems in corporate law doctrine: the uncertainty surrounding provisions in the articles of association. Through the metaphor of "Schrödinger's Constitution," he demonstrated how clauses in the articles may appear valid, registered, and published, yet their legal effect—their "corporative life"—remains fundamentally unknowable until a court renders judgment.

Dr. Veziroğlu opened with a striking real-world example. In 2017, a shareholder transferred shares subject to a right of first refusal clause contained in the company's articles of association. Only in 2024 did the Turkish Court of Cassation confirm whether that clause was actually binding as a matter of corporate law. For seven years, the legal status of the provision remained in suspension—like Schrödinger's cat, simultaneously alive and dead until observed. The provision read: "A shareholder wishing to transfer its shares must first offer them to the other shareholders pro rata to their capital participation. The offer shall remain open for seven days. If not exercised within this period, the shares may be transferred to a third party on terms no more favorable than those offered to the existing shareholders." This apparently straightforward clause exemplifies the fundamental uncertainty that pervades Turkish corporate law.

The presentation surveyed the doctrinal landscape across Turkish, Swiss, and German law, identifying three main theoretical approaches to the legal nature of the articles of association. Contract theory views the articles as a multi-party contract that remains contractual even after registration, with its binding force grounded in the founders' private autonomy. Norm theory, by contrast, treats the articles as a bundle of objective legal norms that derive their authority not from individual consent but from the corporation's norm-creating power (Verbandsautonomie). The modified norm theory, adopted by the German Federal Court and prevalent in Swiss and Turkish doctrine, posits a sequential transformation: the articles function as a contract until registration, whereupon they convert into objective norms. Other hybrid models attempt to capture both contractual and normative features simultaneously, while some scholars argue the articles constitute a sui generis corporate institution irreducible to either category.

Dr. Veziroğlu emphasized that the conclusion one reaches depends heavily on one's starting point. Focus on the formation phase, and the articles appear naturally contractual, grounded in founder autonomy. Focus on post-registration effects—the extended binding force on future shareholders, the majority amendment procedure, the corporate law remedies—and the articles assume a normative character. Neither perspective alone captures the full picture. The articles exhibit distinctive features that set them apart from ordinary contracts: they bind not only founders but also future shareholders, corporate organs, board members, and in certain cases third parties; they are interpreted objectively rather than subjectively; they are amended by qualified majority rather than unanimous consent; and their breach triggers corporate law sanctions rather than contractual remedies.

The central analytical contribution of the presentation was the distinction between "real" (corporative) clauses and "formal" clauses. Real clauses produce genuine corporate effects: they bind the company, all shareholders, and successors, and their violation gives rise to corporate law remedies such as annulment of resolutions. Formal clauses, by contrast, merely occupy space in the registered articles without generating corporate effects; at most, they bind their original parties under the law of obligations. A third category comprises invalid clauses—provisions that have no legal effect whatsoever. The problem is that ex ante, observers cannot reliably determine which category a given clause belongs to. It remains in a state of "doctrinal superposition" until litigation compels judicial determination.

This uncertainty arises from the tension between shareholders' desire to customize corporate arrangements and the limited scope of contractual freedom under mandatory corporate law. Many provisions that exceed permissible boundaries nevertheless survive ministry review and trade registry scrutiny. They are registered, published, and appear formally valid. But registration does not cure substantive invalidity. The consequence is a structural pathology: parties cannot predict whether a clause will produce corporative effects, which in turn affects investment decisions, ex ante behaviour, and transaction costs. If the enforceability of key provisions remains uncertain, parties either avoid entering relationships altogether or surround deals with multiple layers of contractual safeguards.

To address this pathology, Dr. Veziroğlu proposed a two-step functional methodology. First, interpretation: determine whether the founders or shareholders intended the clause to have corporative effect. Placement in the articles, absent explicit opt-out language, creates a presumption of corporative intent. Second, validity control: assess whether the clause is compatible with mandatory corporate law. If incompatible, the clause cannot produce corporate effects, even if registered. This approach aims to bring clarity and ex ante predictability, reducing reliance on costly and uncertain judicial intervention. Dr. Veziroğlu concluded that the legal-nature debate is not merely historical—it frames the limits of what corporate law allows shareholders to constitutionalize. The Schrödinger metaphor captures the core pathology: a clause may look valid yet its corporative life remains unknowable until courts open the box.

The Q&A session provided Dr. Veziroğlu with opportunities to elaborate on key aspects of his framework. In response to a question about whether an invalid corporative clause might survive as a contractual provision between shareholders, he confirmed that this is precisely the significance of the duality between corporative and formal clauses. If a provision cannot survive as a corporative clause, one must analyse whether it can survive within the law of obligations. Where founders remain shareholders, one may argue that the provision is valid inter se —though only within the contractual domain, meaning that violation triggers contract law remedies rather than corporate law sanctions.

When asked to apply his two-step test to the right of first refusal clause from his opening slide, Dr. Veziroğlu explained that the first step (interpretation) would presumptively favour corporative intent, since placing a clause in the articles signals that intention unless explicitly disclaimed. The second step (validity control) requires assessment against mandatory norms, including the principle of free transferability of shares under TCC Article 493. The provision at issue creates a horizontal obligation among shareholders and restricts share transfer in ways that, in his view, violate both free transferability and the principle of shareholders' sole liability. He concluded that the clause would be invalid unless drafted to complement—rather than circumvent—the statutory escape clause. Dr. Veziroğlu also addressed a question on arbitration, noting that while the validity of arbitration clauses in the articles is a separate matter, clauses cannot be enforced for disputes deemed non-arbitrable by the Court of Cassation; in his view, all corporate law disputes should be arbitrable.

***Dr. Kerem Çelikboya (Istanbul Bilgi University)***
***Remedies for Breach of Corporate Constitution***

Dr. Kerem Çelikboya examined the remedial landscape available under Turkish law when corporate organs violate the articles of association. His analysis connected practical enforcement questions to the broader theoretical debate on the legal nature of corporate constitutions, demonstrating how doctrinal characterization shapes—and sometimes constrains—the remedies available to aggrieved shareholders.

Dr. Çelikboya began from a foundational premise: the corporate constitution is binding. Corporate organs—both the board of directors and the general assembly—must respect the articles of association. He categorized constitutional obligations into two types: negative obligations, requiring organs to refrain from decisions that contradict the articles, and positive obligations, requiring organs to take actions mandated by the articles. A breach occurs when an organ either takes a prohibited action or fails to take a required one. The central question is: what remedies does Turkish law provide when such breaches occur?

For board resolutions, Turkish law does not provide a general annulment action. Board decisions cannot be challenged through annulment lawsuits as a matter of principle, with narrow exceptions for restructuring processes (TCC Art. 192) and registered capital systems (TCC Art. 460). The primary avenue is a declaration of nullity under Article 391 of the Turkish Commercial Code, which lists exemplary grounds including violations of equal treatment, contradictions with the fundamental structure of joint stock companies, disregard of capital maintenance principles, and infringement of inalienable shareholder rights. Crucially, these grounds are illustrative, not exhaustive—the statute uses "particularly," signifying other grounds may exist.

Yet doctrine generally holds that breach of the articles does not automatically constitute a ground for nullity. Since Article 391 does not expressly list "breach of corporate constitution" among its examples, and since nullity is an exceptional remedy requiring restrictive interpretation, scholars have been reluctant to treat constitutional violations as sufficient for nullity unless they implicate one of the enumerated grounds. This creates a gap: the articles are binding, but breach alone does not trigger the strongest corporate law sanction.

Dr. Çelikboya highlighted a significant divergence between doctrine and jurisprudence. In a 2022 decision involving pre-emptive purchase rights, the Court of Cassation held that a board resolution approving a share transfer in violation of the articles was "not valid"—effectively declaring it null without examining whether the breach fell within Article 391's enumerated grounds. A 2024 decision of the Kayseri Regional Court of Appeal similarly invalidated a board resolution calling for capital contributions after four months when the articles specified a twenty-four-month payment period. These decisions suggest courts may be more willing than doctrine to treat constitutional breaches as grounds for nullity.

For general assembly resolutions, Article 445 of the Turkish Commercial Code expressly provides that breach of the articles constitutes a ground for annulment. However, procedural constraints—including short filing periods (three months under Turkish law, compared to one month in Germany and two months in Switzerland) and participation requirements—limit this protection in practice.

Dr. Çelikboya traced this limitation to the modified norm theory. If the articles are objective norms after registration, then the relationship between higher norms (the constitution) and lower norms (resolutions) follows a Kelsenian hierarchy: the higher norm can invalidate but not replace the lower norm. Courts exercise review functions, not legislative ones. This interpretation, while coherent, produces suboptimal outcomes: even clear constitutional mandates cannot be enforced if the corporation refuses to comply.

To address this enforcement gap, Dr. Çelikboya proposed reconsidering the contractual dimension of the articles. If the constitution retains contractual characteristics—particularly provisions resembling exchange promises between investors and the company—shareholders might seek specific performance under contract law rather than mere annulment. Specific performance is the default remedy in Turkish contract law, and reframing constitutional claims in contractual terms could enable courts to order compliance with positive obligations, removing the categorical objection rooted in corporate autonomy while preserving incidental defences such as uncertainty of terms.

Dr. Çelikboya concluded that the current framework creates an asymmetry between natural and legal persons: courts will order specific performance against individuals who breach similar promises which are of contractual nature, but refuse authority to substitute a resolution on the grounds of corporate autonomy. This privileged position undermines investor confidence. Recognizing the contractual aspects of the constitution—particularly where provisions reflect bargained-for exchanges in venture capital contexts—could enhance shareholder protection without fundamentally disrupting corporate governance.

During the Q&A session, Dr. Çelikboya addressed a question concerning SAFE agreements concluded with employees that contain provisions inconsistent with the articles of association. He noted that arbitration clauses in employment contracts raise preliminary validity concerns—particularly whether the agreement reflects the unaffected will of the parties—but set these aside to focus on the constitutional dimension. The core problem, he explained, lies in an inherent organ-competence mismatch: SAFE agreements are concluded by the board of directors or representatives acting in the company's name, yet decisions concerning the articles of association fall within the exclusive authority of the general assembly.

The board cannot create a binding legal obligation on behalf of the general assembly. If the SAFE agreement promises future changes to the articles, that promise is ultra vires. If interpreted instead as an undertaking regarding future appointments or share allocations, the articles will prevail over the contractual arrangement where the two conflict. Dr. Çelikboya concluded that in such cases, the aggrieved party's remedies would lie within contract law rather than corporate law —echoing the broader theme of his presentation regarding the limitations of corporate remedies and the potential utility of recognizing the contractual dimension of constitutional provisions.

*Rapporteur: Assoc. Prof. Dr. Esra Hamamcıoğlu (Kadir Has University)*

*Chair: Prof. Dr. Gül Okutan Nilsson (Istanbul Bilgi University)*

The second session, moderated by Prof. Dr. Gül Okutan Nilsson, centred on the legal, cultural, and practical limits of private ordering in corporate law. The three presentations examined how mandatory corporate law constrains venture capital contracting, how Turkish law navigates the tension between preferential rights and the principle of mandatory provisions, and how references to shareholders' agreements within the articles of association create doctrinal and practical difficulties.

***Prof. Dr. Luca Enriques (Bocconi University and ECGI) Corporate Law's Impact on Venture Capital Contracting: Evidence from Germany and Italy***

Prof. Dr. Luca Enriques presented findings from his project with Casimiro A. Nigro and Tobias Tröger, an investigation into how corporate law affects venture capital contracting in Continental Europe. The CANaLETTo project has produced four papers examining whether US-style venture capital contracts can be transplanted into jurisdictions characterized by predominantly mandatory corporate law regimes, using Germany and Italy as case studies.

Prof. Enriques began by situating the research within the broader law and finance literature on venture capital. Scholars have long debated which institutional variables, including insolvency law, securities regulation, and judicial infrastructure, affect venture capital activity. The CANaLETTo project asks a specific question: does corporate law matter for venture capital investment? The hypothesis is that corporate law can affect venture capital activity at the margin by creating transaction costs and decreasing the functionality of the elaborate contracts that govern relationships between venture capitalists and entrepreneurs. The answer is yes, depending on whether it allows contractual freedom to address the unique challenges of VC relationships.

He explained why contractual freedom is particularly important in the venture capital context. Venture capital transactions confront acute market frictions: severe information asymmetries regarding young, unproven entrepreneurs; uncertainty about whether innovative ideas will find markets; and the liquidity constraints of venture capital funds, which must liquidate portfolios within defined time horizons to satisfy institutional investors. The standard US venture capital contract addresses these frictions through information-sharing devices, incentivizing arrangements (carrots such as stock options alongside sticks such as bad-leaver provisions), and exit-related control rights. The result is a complex private ordering exercise that deviates from almost every aspect of the standard corporate contract, reallocating cash-flow and control rights in industry-idiosyncratic ways.

The project found that US-style VC contracts cannot be frictionlessly transplanted into Germany or Italy. The authors systematically examine whether the contractual provisions found in US venture capital practice are consistent with German and Italian law

The results are largely negative. Some arrangements are outright prohibited: automatic cumulative dividends to venture capitalists, for example, are considered inconsistent with the nature of shares and contrary to distribution rules in both jurisdictions. Redemption rights face similar obstacles due to restrictions on share buybacks. Even where prohibitions are not absolute, obstacles remain substantial. Some solutions can only be implemented by adding requirements not found in the US model; others must migrate from corporate charters to shareholder agreements, which lack erga omnes effect and are therefore less effective. Self-enforcing mechanisms are ruled out, forcing parties into costly litigation. When certain arrangements, such as those that provide self-enforcement, are unavailable, other arrangements that would otherwise be functionally equivalent become less so, because they can no longer rely on those unavailable mechanisms. Fairness review applies to assess the validity of certain clauses or whether the resulting rights are lawfully exercised.

Hence, for example, bad-leaver provisions, which punish misbehaving entrepreneurs by requiring them to sell shares at punitive prices, cannot be structured like in the US: German and Italian law require fair value and treat forfeiture as an ultima ratio remedy.

Prof. Enriques emphasized that many of these constraints derive not from blackletter law but from scholars' and judges' interpretations. This observation carries significant policy implications. Legislative reform alone amending the civil code or the *Aktiengesetz* may be insufficient if legal scholars and courts continue to apply restrictive interpretive traditions. A more effective approach might involve creating model corporate charters and shareholder agreements with statutory force, as is traditional in UK company law.

He concluded with observations specific to Italy, drawing on a separate paper examining why Italian corporate law is particularly hostile to private ordering. The reasons include internal legal culture, e.g. the absence of a general rule distinguishing mandatory from default provisions, anti-elusion doctrines that expand mandatory law's scope, and analogia legis and iuris that allow interpreters to derive implicit prohibitions. External factors compound these tendencies: path dependence from a creditor-protection-oriented corporate law tradition; self-interest among legal service providers (lawyers, notaries, professors, judges) in preserving interpretive authority; and ideological hostility to markets deeply rooted in tradition and culture. Prof. Enriques posed a provocative closing question to the audience: "de te fabula narrator", inviting reflection on whether these observations resonated with local experience.

During the Q&A session, Prof. Enriques addressed questions concerning workaround solutions and regulatory arbitrage. Asked by Prof. Micheler whether practitioners simply use inferior alternative arrangements despite the constraints, he confirmed that such arrangements are indeed used but cautioned against inferring that this demonstrates the irrelevance of mandatory law. The fact that deals are done despite obstacles does not mean those obstacles have no marginal impact on venture capital activity; it merely shows that money could still be made despite the friction. The project cannot prove causation but provides the intuition that mandatory law is detrimental at the margin. Responding to a question from Dr. Kayıklık about whether the possibility of reincorporation in more market-friendly jurisdictions pressures lawmakers to reform, Prof. Enriques noted several limiting factors: incorporation abroad is costlier, which may be a problem at least for early-stage startups; mandatory rules of the place of main operations may still apply; and state-owned venture capital funds often require local incorporation. These factors may explain why reincorporation has not generated significant pressure for legislative change.

***Prof. Dr. S. Anlam Altay (Galatasaray University)***
***Articles of Association as a Source of Preferential and Contractual Rights: Blurry Lines Between Mandatory Norms and Private Autonomy***

Prof. Dr. S. Anlam Altay examined how Turkish law navigates the tension between entrepreneurs' desire to personalize joint-stock companies and the constraints imposed by the principle of mandatory provisions. Drawing on extensive practical experience, he outlined the legal and administrative obstacles that practitioners face when attempting to incorporate bespoke arrangements into articles of association, and distinguished between share-based privileges which produce corporate effects and personal rights, which remain contractual in character.


Prof. Altay began by explaining why joint-stock companies are the preferred vehicle for significant ventures and investments in Turkey. Although Turkish limited liability company (limited sirket, i.e., the Turkish equivalent of the private limited company in England and German GmbH) offers some advantages, tax considerations and registration requirements for share transfers for the limited liability company push the overwhelming majority of mergers and acquisitions toward the joint-stock form. Behind every attempt to personalize these companies lies a conflict of interest among founders, shareholders, and sometimes between shareholders and third parties that the corporate structure must accommodate.

He outlined a three-step framework that practitioners use when advising on articles of association provisions. The first step asks whether the proposed provision is legally compliant, given the strict approach of Turkish Commercial Code Article 340, which provides that articles may deviate from the Code's provisions only where expressly permitted. The second step is practical: will the Trade Registry register the provision? Registration is necessary for corporate effect, yet registry practice varies significantly between regions and even within the same office, one company may succeed in registering a formulation that another company is denied. The third step concerns effectiveness: even if registered, can the mechanism actually be enforced? Prof. Altay emphasized that these practical barriers, particularly the opacity and inconsistency of Trade Registry practice, undermine the utility of private ordering mechanisms even where they are doctrinally valid.

The presentation drew a fundamental distinction between personal rights and share privileges. Personal rights are rights granted to a specific shareholder by name in the articles of association. For example, the right to be elected as a director until age 70, or to exercise a veto over certain matters. Such provisions are not invalid per se, but they are regarded as contractual rather than corporate in character. This characterization has significant remedial consequences: if a general assembly resolution violates a personal right, that resolution cannot be annulled under corporate law. The aggrieved shareholder's remedy lies in breach of contract, potentially against the other shareholders but not against the company. The result is an efficiency gap: personal rights are formally valid but practically difficult to enforce through corporate mechanisms.

Share privileges, by contrast, are attached to shares rather than to named shareholders and produce genuine corporate effects. Turkish Commercial Code Article 478 defines a privilege as a superior right granted to a share whether relating to dividends, liquidation proceeds, pre-emptive rights, voting rights, or management participation or a new shareholding right not provided for by law. Unlike German law, which is skeptical of privileges that grant shareholders control, Turkish law, following Swiss doctrinal influences but departing from Swiss law on group-acquired rights, permits a wide range of management-related privileges. While privileges can be granted at incorporation or by subsequent amendment, and modification to an existing and validly granted privilege requires approval by the special council of privileged shareholders, thereby bestowing special protection upon that class.

Prof. Altay addressed several refinements to the privilege framework. Superiority is measured against ordinary shares, not against other privileged groups, a clarification introduced by the current Commercial Code that resolved prior doctrinal disputes. Privileges may be subject to conditions: for example, a provision granting Group A shares the right to nominate a board member if they reach 25% of capital, or terminating Group B's nomination right if they fall below 20%. Such conditions are generally valid because they further limit what is already an exception to shareholder equality. The principle that privileges must be clear and unambiguous prevents implied or ambiguous preferential treatment.

He concluded by noting that while Turkish law offers multiple avenues for personalization (e.g., share transfer restrictions, privileges, high quorums, participation certificates) the effectiveness of these mechanisms is undermined by the Trade Registry's inconsistent practice and lack of transparency. The absence of a predictable administrative process forces practitioners to design articles defensively, seeking formulations that registrars will accept rather than those that best serve the parties' commercial objectives.

The Q&A session explored the boundaries of conditional privileges. Dr. Veziroğlu asked whether a privilege conditioned upon the death of a shareholder would be valid. Prof. Altay responded that such a condition would likely conflict with the principle against attaching personal rights to the corporate sphere, death is "too personal" and would transform the arrangement into a personal right rather than a share privilege. Prof. Okutan Nilsson engaged with the examples of threshold-based conditions, agreeing that privileges contingent on reaching or falling below a capital percentage are valid, at least for board nomination rights under Article 360, which expressly contemplates group privileges defined by percentage shareholding. She cautioned, however, against generalizing: whether the same construction could apply to dividend privileges or voting multipliers remains uncertain.

***Dr. Sinan H. Yüksel (Galatasaray University)***
***Shaping the Corporate Constitution: References to Shareholders' Agreements and External Commitments in the Articles of Association***

Dr. Sinan H. Yüksel examined the doctrinal and practical difficulties that arise when articles of association reference shareholders' agreements or other external commitments. His presentation addressed a fundamental tension: the joint-stock company is simultaneously a vehicle for private ventures governed by confidential shareholders' agreements, joint venture contracts, and financing arrangements and a public legal form whose constitution must be transparent, self-standing, and intelligible to third parties. This tension generates recurring conflicts when parties attempt to bridge the corporate and contractual orders.

Dr. Yüksel observed that the coexistence of corporate and contractual governance creates pressure to reference shareholders' agreements within the articles of association. The motivation is straightforward: shareholders' agreements are not self-enforcing. A typical SHA provision stating that in case of discrepancy between the agreement and the articles, the agreement shall prevail, cannot be judicially implemented without the shareholders actually voting to amend the articles. Courts cannot substitute their judgment for the general assembly's constitutional authority. Because specific performance of shareholders' agreements is both legally and practically challenging in Turkish law, parties have strong incentives to incorporate contractual arrangements into the corporate constitution even though doing so creates doctrinal difficulties.

He distinguished three types of references, each with different implications for validity. The first and most problematic is incorporation by reference, where the articles import the normative content of an external agreement. Examples include: "Transfer of shares shall be governed by the provisions of the SHA"; "Reserved matters are those listed in Schedule 3 of the Shareholders' Agreement"; or dividend provisions conditioned on fulfilling terms set out in a facility agreement. Such provisions violate the self-standing principle: to understand the articles, one must consult external documents whose amendment could alter corporate governance without following statutory procedures. This form of reference is unacceptable under Turkish and Swiss law.

The second type is hypothesis-based reference, where the articles remain self-standing but make a reference to an external agreement to define a factual hypothesis. Dr. Yüksel offered a real example from practice: "Board resolutions concerning termination of the Hotel Management Agreement require unanimity." The Hotel Management Agreement is not incorporated; it merely identifies the factual circumstance triggering the unanimity requirement. Conceptually, this should be permissible, the reference functions as a fact reference rather than a source reference. Yet the Istanbul Trade Registry refused to register this provision, forcing the parties to modify the articles. The refusal illustrates the gap between doctrinal analysis and administrative practice.

The third type, adherence to the shareholders' agreement as a condition for share acquisition, is both common in practice and contested in doctrine. Under this mechanism, the articles require any transferee to sign (adhere to) the shareholders' agreement before being approved and registered as a shareholder. Dr. Yüksel defended the validity of such provisions, aligning with the minority view in Swiss doctrine.

The provision does not incorporate the SHA into the articles; it merely requires adherence as a precondition for share acquisition. The articles retain constitutional autonomy. No potential acquirer would attempt to purchase shares without first examining the SHA, so transparency concerns are theoretical. The mechanism protects the compositions of shareholders, and thus serves a legitimate objective under the good cause standard of Turkish Commercial Code Article 493.

Dr. Yüksel also addressed the practical impossibility of challenging Trade Registry decisions in Turkey. Unlike Switzerland, where rejected applicants can obtain quick judicial review, Turkish courts operate slowly and procedural obstacles including narrow standing requirements effectively insulate registry practice from correction. This creates a feedback loop: because registry decisions are rarely challenged, no case law develops to discipline administrative discretion. Practitioners must adapt to registry preferences rather than litigate, which in turn allows inconsistent and sometimes legally questionable practices to persist.

He concluded with a reflection on legal culture. Echoing Prof. Enriques's observations about Italy, Dr. Yüksel suggested that Turkish corporate law sometimes operates "for corporate law" rather than "for people", privileging doctrinal purity over the functional needs of investors. The challenge is to maintain the integrity of corporate law's public dimension while accommodating the legitimate private ordering demands of sophisticated commercial parties.

During the Q&A session, Prof. Micheler asked why parties could not simply trust the Trade Registry as a form of regulatory validation, whatever passes through should be deemed valid. Dr. Yüksel and Prof. Altay explained several obstacles. First, secondary legislation sometimes contradicts the Commercial Code, creating uncertainty even after registration. Second, unlike Switzerland, Turkish court proceedings take a very long times and procedurally restrictive regarding challenges to registry decisions; the "interested party" definition is so narrow that few can bring claims. Third, because registry decisions are rarely challenged, no jurisprudence develops to guide consistent practice. Dr. Yüksel lamented that practitioners cannot rely on registration as validation and must instead navigate an opaque system through negotiation rather than legal right. Prof. Altay agreed, noting that if the registry functioned as a true regulator, engaging with market participants and developing transparent policies, practitioners could respect its authority; as it stands, inconsistent practice without transparency undermines the legitimacy of administrative gatekeeping.

*Rapporteur: Dr. Abdurrahman Kayıklık (Bilkent University)*

The inaugural ICLS 2025 Symposium on "Corporate Constitution and Private Ordering" brought together scholars from common law and civil law traditions to examine a deceptively simple question: what is the legal nature of the corporate constitution, and what are the limits of shareholders' freedom to shape it? The six presentations, spanning English, German, Italian, Swiss, and Turkish law, revealed both striking convergences and instructive divergences. This synthesis note identifies the principal themes that emerged and offers comparative observations on their implications.

**The Legal Nature Debate: Beyond Historical Curiosity**

A central insight from the symposium is that the debate over the legal nature of articles of association is far more than an academic exercise. Whether we characterize the corporate constitution as a contract, a normative instrument, or a hybrid has a critical role in shaping practical outcomes regarding interpretation, validity, remedies, and the treatment of provisions that exceed the boundaries of contractual freedom. Prof. Micheler's analysis from English law and Dr. Veziroğlu's examination of Continental traditions both demonstrate that no single characterization fully captures the complex reality of corporate constitutions, which exhibit features of both private agreements and public regulatory instruments.

**The Uncertainty Problem: Schrödinger's Clause**

Dr. Veziroğlu's Schrödinger metaphor resonated throughout the symposium as speakers from multiple jurisdictions identified similar uncertainty problems. The duality of real and formal clauses, where a provision may be registered and published yet its corporative effect remains unknown until judicial determination, creates substantial transaction costs and distorts investment decisions. This uncertainty is not unique to Turkish law; Prof. Enriques documented similar challenges in Germany and Italy, where the validity of VC contract terms often remains unclear until litigation. The common pathology across jurisdictions is that parties cannot predict with confidence whether contractual arrangements will produce their intended effects within the corporate structure.

**Mandatory Law and the Limits of Private Ordering**

One of the symposium's major themes concerned the boundary between mandatory corporate law and contractual freedom. Prof. Micheler's comparison of English and German approaches highlighted divergent historical trajectories: English company law evolved from partnerships toward accumulated mandatory rules, while German law began with chartered corporations and retained a more regulatory orientation.

Prof. Enriques's CANaLETTo project provided systematic empirical evidence: Continental European corporate law significantly constrains venture capital contracting, not primarily through explicit prohibitions but through scholarly and judicial interpretation. His observation that constraints often derive from legal culture rather than black-letter law resonated with Turkish participants. Prof. Altay's framework, i.e., legal compliance, registration with trade registry, effective enforcement concerning provisions of the corporate constitution and Dr. Yüksel's account of Trade Registry gatekeeping illustrated how mandatory law operates through administrative practice as much as statutory text.

**The Enforcement Gap**

A third theme concerned the gap between statutory rights and available remedies. Dr. Çelikboya demonstrated that Turkish law provides no mechanism to compel corporate organs to comply with positive statutory obligations in terms of dividend distribution. Courts can annul non-compliant resolutions but cannot order the company to distribute dividend. This limitation traces to the modified norm theory's Kelsenian logic: higher norms invalidate but do not replace lower norms.

Dr. Yüksel extended this analysis to the interface between corporate and contractual ordering. Because shareholders' agreements are not self-enforcing, parties have strong incentives to incorporate contractual arrangements into the constitution. Yet incorporation faces doctrinal obstacles, particularly the self-standing principle requiring constitutional provisions to be intelligible without external documents. The enforcement gap thus operates in both directions: constitutional provisions lack effective remedies, while contractual provisions lack corporate effect.

**The Role of Legal Culture**

Several speakers identified legal culture as a crucial determinant of how corporate law operates in practice. Prof. Enriques's analysis of Italian legal culture proved particularly generative: the absence of a general mandatory/default distinction, anti-elusion doctrines, analogia legis and iuris, and academic incentives favouring the "discovery" of mandatory rules all contribute to an environment hostile to private ordering. His closing question, "de te fabula narratur?" invited Turkish colleagues to recognize parallel dynamics.

The invitation was accepted. Prof. Altay described Trade Registry practice that varies between regions and even within the same office, forcing practitioners to design articles defensively. Dr. Yüksel observed that Turkish corporate law sometimes operates "for corporate law" rather than "for people." Both noted the absence of meaningful judicial review of registry decisions, which insulates administrative discretion and prevents corrective jurisprudence from developing. The comparative lesson: legislative reform may be necessary but insufficient if legal culture continues to generate restrictive interpretations.

**Toward a Functional Methodology**

Despite these challenges, the symposium offered constructive pathways forward. Dr. Veziroğlu proposed a two-step functional methodology to determine whether a statutory clause produces corporate law effects: first, interpret whether parties intended corporative effect; second, assess compatibility with mandatory law. Dr. Çelikboya suggested recognizing the contractual dimension of constitutional provisions to enable specific performance remedies. Prof. Altay noted emerging liberal interpretations of Article 340 of the Turkish Commercial Code, which provides that all provisions of the Code are mandatory unless the opposite is explicitly stated. The recent approaches he highlighted, however, soften this paternalistic rule by treating freedom of contract as residually applicable where the Commercial Code neither regulates nor prohibits the matter.

Prof. Enriques offered the most ambitious reform proposal: model corporate charters and shareholder agreements with statutory force, analogous to certain UK precedents. Such instruments could bypass restrictive interpretive traditions while providing certainty for sophisticated parties.

***Concluding Observations***

The ICLS 2025 Symposium revealed that the corporate constitution occupies an unstable position in every legal system examined simultaneously private and public, contractual and normative, enabling and constraining. The common law's enabling orientation and the civil law's inclination towards mandatory norms mark two points on a spectrum, with both systems striving to balance shareholder autonomy with creditor protection, minority rights, and institutional integrity. The symposium's enduring contribution may be its demonstration that these tensions are features to be managed rather than defects to be eliminated, and that comparative dialogue is essential to managing them well.

**Assoc. Prof. Esra Hamamcıoğlu (Kadir Has University)**

**Assist. Prof. Cem Veziroğlu (Koç University)**

**Assist. Prof. Abdurrahman Kayıklık (Bilkent University)**

# EXECUTIVE SUMMARY

The ICLS 2025 Symposium on Corporate Constitution and Private Ordering, held on 14 November 2025 at Koç University's ANAMED Building, brought together leading scholars and practitioners to examine how corporate constitutions operate within, and are constrained by, the architecture of modern corporate law. As the first ECGI-affiliated event ever organised in Türkiye and the inaugural conference of the Istanbul Corporate Law Series (ICLS), the symposium established Istanbul as a new hub for high-level, comparative corporate-law dialogue.

The discussions across both sessions revealed a shared theme: while corporate actors increasingly seek to personalise governance structures through private ordering via venture capital contracting, shareholder agreements, preferential rights, and tailored constitutional clauses the scope of permissible autonomy is structurally limited by mandatory norms.

***Session I examined the legal nature of the corporate constitution.***

- Eva Micheler (LSE and ECGI) argued that the constitution is not a contract but a statutory governance instrument situated within a layered hierarchy of norms.

- Cem Veziroğlu (Koç University) presented the metaphor of "Schrödinger's Constitution", highlighting the duality and uncertainty of constitutional clauses whose legal effect remains indeterminate until judicially tested.

- Kerem Çelikboya (Istanbul Bilgi University) demonstrated how enforcement mechanisms remain incomplete under Turkish law, in particular for positive obligations, creating substantial gaps between binding norms and practical remedies.

***Session II focused on the limits of private ordering in comparative perspective.***

- Luca Enriques (Bocconi University and ECGI) presented evidence showing that U.S.-style venture capital clauses cannot be transplanted into Germany or Italy due to structural incompatibilities and interpretive constraints.
- S. Anlam Altay (Galatasaray University) analysed the distinction between share-based privileges and contractual rights in Turkish law, emphasising the restrictive role of 'the principle of mandatory norms' (TCC art. 340 and AktG 23/5).
- Sinan H. Yüksel (Galatasaray University) explored the tension between publicity requirements and the incorporation of shareholders' agreements into the articles of association, highlighting recurrent inconsistencies in trade registry practice.

Across all contributions, a unifying conclusion emerged: private ordering in corporate law remains viable but structurally bounded. The constitution's mixed public–private character, coupled with mandatory frameworks and enforcement limitations, defines a global pattern of cautious autonomy rather than unrestricted contractual freedom.

The organizers extend their gratitude to all speakers, moderators, rapporteurs, and participants for their contributions to this inaugural Istanbul Corporate Law Series symposium. Special thanks to the European Corporate Governance Institute (ECGI) for their partnership, and to Koç University and NASAMER for their generous support.

For more information about the Istanbul Corporate Law Series and future events, please visit the ECGI events page or contact NASAMER at Koç University.

**https://www.ecgi.global/events/corporate-constitution-and-private-ordering**

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