

M&A Practices in Turkey

1. Scope

Share Purchase of Private Companies

2. Legal Perspective

There is no specific law regulating the mergers and acquisitions in Turkey. When it comes to mergers and acquisitions, many different regulations are involved in the process, mainly Turkish Commercial Code, Turkish Code of Obligations, Law on Protection of Competition, Labour Law.

3. The Procedure

a. Letter of intent

It is common in practice that the parties sign a letter of intent or a similar pre-agreement (Letter of understanding, term sheet,...) in which they state their will and intention with regard to the prospective transaction. The letter of intent may be “binding” or “non-binding” according to the conditions set forth in the letter however even a “non-binding” letter of intent shall be a strong source when it comes to resolving the disputes and/or misunderstandings that may appear during the negotiations.

b. Due Diligence

The purchaser conducts the legal, financial and if appropriate the environmental due diligence. During the due diligence phase team of experts of the purchaser not only examines the documents that are provided in the data room but also makes searches in the trade and land registry and visits the site.

c. Negotiations

Since the process is mainly regulated by Contracts Law within the Code of Obligations, the parties may freely determine the structure in the contract. Generally it is the Share Purchase Agreement and the Shareholders Agreement signed between the parties.

d. Conditions Precedent

Some approvals and/or licenses may needed to be obtained prior to closing. For example according to the Communiqué on Mergers and Acquisitions “As a result of the merger or acquisition if, regarding the relevant product market in all parts or a part of the country, the total market shares of the merging or acquiring undertakings exceed 25% of the market, or their total turnover exceeds twenty-five million Turkish Liras (approximately 20 million USD) , even though the total market shares do not exceed this rate, it is compulsory for them to receive the authorization of the Competition Board.” In addition to the Competition Board, the approval of some other governmental authorities (Such as Banking Regulatory and Supervisory Authority, Telecommunications Authority, Energy Market Regulatory, Undersecretariat of Treasury) may also be required within specific sectors.

In addition to the regulatory pre-approval consents parties may set forth other special conditions to be met prior to closing.

e. Closing

Once all the regulatory and contractual condition precedents are fulfilled the transfer of the ownership of the shares take place on the closing date.

4. Culture Difference

As seen above the procedure is very much similar to the Continental European system however there appear some differences in practice. M&A Started booming with foreigners’ mergers and acquisitions in Banking, Telecommunications and Energy sectors in 2005. Since 2007 the movement is continuing with the foreigners’ mergers and acquisitions of middle sized corporations especially in the retail sector. Great deal of the medium and small sized corporations are family owned businesses and they are not familiar with such complex legal procedures and some are even not familiar with working with specialized law firms. They very often feel “offended” when asked to negotiate the terms and conditions of a 50 page SPA or when they are asked to sign a Shareholders Agreement. Very often the negotiations are blocked only because of the approach of the

purchaser. Therefore it is strongly recommended to the foreign investors to cooperate with local law firms at the very beginning even before signing the letter of intend. Because although the local firm is representing and acting on behalf of the foreign purchaser they may be the one building a communication bridge and helping to overcome the misunderstandings between the parties.

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