

Private mergers and acquisitions in Turkey: overview

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Country Q&A | Law stated as at 01-Sep-2018 | Turkey

Q&A guide to private mergers and acquisitions law in Turkey.

The Q&A gives a high level overview of key issues including corporate entities and acquisition methods, preliminary agreements, main documents, warranties and indemnities, acquisition financing, signing and closing, tax, employees, pensions, competition and environmental issues.

To compare answers across multiple jurisdictions, visit the Private mergers and acquisitions [Country Q&A tool](#).

This Q&A is part of the global guide to private acquisitions law. For a full list of jurisdictional Q&As visit global.practicallaw.com/privateacquisitions-guide.

Corporate entities and acquisition methods

1. What are the main corporate entities commonly involved in private acquisitions?

In private acquisitions the main companies used are joint stock companies and limited liability companies.

2. Are there any restrictions under corporate law on the transfer of shares in a private company? Are there any restrictions on acquisitions by foreign buyers?

Restrictions on share transfer

Under the Turkish Commercial Code numbered 6102 there are no statutory restrictions on the transfer of shares in joint stock companies. However, the articles of association can impose such restrictions, for example limiting the transferability of the company's registered shares and requiring shareholder and/or board approval for the transfer.

The board can refuse to register a transfer of registered shares in the company's share register if the conditions in Articles 493(1), 493(3), or 493(4) of the Turkish Commercial Code are met (for example, regarding the company's shareholding structure, scope of activity or economic independence).

Joint stock companies can issue registered or bearer shares, and bearer shares are freely transferred by transferring possession of them.

Share transfers in limited liability companies are only valid if the transfer is approved by the shareholders. Additionally, the articles of association can provide meeting or decision-making quorums higher than those in the Turkish Commercial Code for shareholder approval of share transfers, or even prohibit share transfers. A right to refuse or a prohibition of share transfers can also be agreed by the shareholders in the shareholders' agreement, which binds all the shareholders.

Certain regulated sectors require regulatory authority approval for a share transfer, for example banking, energy, media and capital markets.

Foreign ownership restrictions

Generally there are no foreign ownership restrictions. However, certain restrictions apply to foreign shareholders under specific laws, in sectors such as civil aviation and media.

3. What are the most common ways to acquire a private company? What are the main advantages and disadvantages of a share purchase (as opposed to an asset purchase)?

The most common way to acquire a private company is a share purchase. An asset sale might be preferred, depending on the nature of the negotiations and the need for investment.

Share purchases: advantages/asset purchases: disadvantages

Transferring the shares is more straightforward, since asset transfers require a series of procedural steps and approval of/notifications to creditors.

In a share transfer, all the company's assets, including licences, permits, contracts and employees, are acquired without requiring third parties' consent (except for agreements with change of control clauses, which usually require third party notification or even prior consent).

Share purchases can be more beneficial from a tax perspective (*see Questions 25 to 30*).

In an asset or business acquisition, the buyer must notify creditors or announce it in the Trade Registry Gazette or a national newspaper (*Article 202, Turkish Code of Obligations numbered 6098*). For the announcement, the buyer must adopt a general assembly 'resolution and announce it in the Trade Registry Gazette. The seller is jointly and severally liable with the buyer for debts in relation to the transferred assets or business for two years from the notification/announcement date. This procedure is not required in a share sale, as the shares are transferred with all liabilities at completion.

Shareholder approval is required for an asset transfer, as the sale of a substantial part of the company's assets requires authorisation by the general assembly under the Turkish Commercial Code.

Share purchases: disadvantages/asset purchases: advantages

The primary disadvantage of a share purchase is that all the company's liabilities are acquired. An asset purchase enables the buyer to acquire only certain assets and liabilities.

In relation to limited liability companies, share purchase agreements must be executed before a Turkish notary public and share transfers must be registered and announced in the relevant Trade Registry Directorate. Therefore, there are additional notarisation and registration expenses for share transfers.

4. Are sales of companies by auction common? Briefly outline the procedure and regulations that apply.

Sales of companies by auction are not common.

Shares can be attached to debts of the company's shareholders to third parties or to the company itself. Under the Enforcement and Bankruptcy Law numbered 2004, attached shares of a company can be sold through a public auction on creditors' request. If no one buys the attached shares or 50% of the estimated value of the shares is not achieved at the first public auction, the execution office must set up a second public auction with the same conditions. If the stated conditions are not met at the second public auction, this will result in foreclosure of the request of sale. Further details are regulated under the Enforcement and Bankruptcy Law.

Preliminary agreements

5. What preliminary agreements are commonly made between the buyer and the seller before contract?

Letters of intent

The letter of intent (otherwise referred to as a term sheet or memorandum of understanding) is not specifically regulated by Turkish legislation. It outlines in writing the contract that the parties plan to formalise in future, with a non-binding statement of intention.

Exclusivity agreements

Separate exclusivity agreements are not common in Turkey. Instead, parties tend to insert exclusivity provisions in the letter of intent/term sheet/memorandum of understanding. An exclusivity agreement imposes some obligations arising from good faith on the parties. If a party negotiates with a third person in breach of its exclusivity obligation, that party must compensate any damage incurred by the other party. It is common to set out a penalty for infringement of the exclusivity agreement. There is no requirement under Turkish law on the enforceability of exclusivity agreements.

Non-disclosure agreements

Turkish law does not explicitly regulate non-disclosure agreements. They can be defined as contracts entered into by two or more parties, in which some or all of them agree that certain types of information passing from one party to the other will remain confidential.

If the confidential information is revealed or disclosed to another individual or entity, the injured party can claim breach of contract and seek injunctive relief and monetary damages. Along with compensation of losses, it is common to set out a penalty for infringement of confidentiality.

Asset sales

6. Are any assets or liabilities automatically transferred in an asset sale that cannot be excluded from the purchase?

Under the Turkish Commercial Code, on the transfer of a commercial enterprise, employment contracts automatically pass to the transferee employer (*see Question 32*). Article 11 of the Turkish Commercial Code defines a commercial enterprise as an enterprise aiming to reach an income exceeding that of a craftsman, with activities run in a constant and independent way. A commercial enterprise is subject to the Turkish Commercial Code. The independence and consistency factors play a significant role in qualifying a business as a commercial enterprise. A transfer of commercial enterprise agreement is subject to certain requirements, for example it must:

- Comply with certain validity requirements.
- Be in a written form.
- Be registered with the Trade Registry.
- Be announced in the Trade Registry Gazette.

The commercial enterprise's assets (including real property) are transferred on the signing and registration of the transfer agreement. Therefore, it is not necessary to perform the legal transactions that are commonly required for the transfer of particular assets under the general law. However, Article 11(3) of the Turkish Commercial Code states that the parties can determine otherwise, so an asset or liability can be excluded from the purchase.

7. Do creditors have to be notified or their consent obtained to the transfer in an asset sale?

Creditors' consent is not required but an asset sale must be announced in the Trade Registry Gazette and notified to creditors (see [Question 3](#)).

Depending on the contracts subject to the asset transfer, the contractual parties' approval or consents may be needed. Therefore, relevant due diligence reviews are carried out on all contracts subject to the asset transfer.

Share sales

8. What common conditions precedent are typically included in a share sale agreement?

Conditions precedent in a share purchase agreement commonly include:

- No material adverse change or material adverse deterioration in the position or prospects of the company.
- The warranties are true and accurate and not misleading at closing.
- Clearance from the Turkish Competition Board or other regulatory and governmental consents, if necessary.
- A document evidencing that necessary consents have been obtained or necessary notifications made between signing and closing for completion (for example, in relation to the target's contracts that have change of control clauses).
- Performance of actions between signing and closing (for example, obtaining a certificate to open and operate business premises, renewal of expired agreements and provision or discharge of guarantees).
- A disclosure letter with matters that are exceptions to the warranties, if any.

Seller's title and liability

9. Are there any terms implied by law as to the seller's title to the shares in a share sale? Is any specific wording necessary and do buyers normally impose a higher standard than is implied by law?

In a share purchase agreement, the seller generally warrants that it will sell the full legal and beneficial ownership of the shares free from encumbrances, and with all the rights attaching to the shares (including to rights to unpaid or undeclared dividends and distributions). The seller also usually undertakes to waive (and procure the waiver by any other person) all pre-emption rights over the shares.

10. Can a seller and its advisers be liable for pre-contractual misrepresentation, misleading statements or similar matters?

Seller

Sellers are normally liable for pre-contractual misrepresentation, misleading statements or similar matters if the agreement is made by deceiving the buyer and/or committing a tortious act.

Advisers

Advisers cannot normally be liable under the share transfer agreement, but they can be liable to the buyer due to a tortious act or material fault.

Main documents

11. What are the main documents in an acquisition and who generally prepares the first draft?

The buyer normally prepares the first draft in an acquisition.

In a share sale, the main document is the share purchase agreement.

If the target is a limited liability company, a shorter and less detailed version of the share purchase agreement is also usually prepared, to be notarised, registered and announced.

In an asset sale, an asset sale agreement is prepared. Closing an asset sale transaction is usually more complex, since the assets must be transferred individually. Separate procedural steps and additional transfer agreements may be needed based on the asset being transferred. For example:

- A transfer agreement for vehicles must be signed before a notary public.
- A transfer agreement for immovable property must be signed before the competent title deed registry.
- A trade mark transfer agreement must be signed before a notary public, and the agreement must be registered with the Turkish Patent Institute.

Acquisition agreements

12. What are the main substantive clauses in an acquisition agreement?

The main clauses in a share purchase agreement are:

- Parties.
- Introduction.
- Definitions.
- Interpretation.
- Conditions precedent.
- Sale of the shares.
- Sale price, consideration and payments.
- Representations, warranties and indemnities of the seller and the buyer.
- Indemnification clauses for breach of representations.
- Limitation of liability.
- Confidentiality and non-solicitation/non-compete undertakings by the seller, if applicable.
- Standard contractual clauses relating to non-assignment, waiver, costs, stamp duty, notices and so on.
- Choice of law and dispute resolution/arbitration.
- Exhibits, schedules and disclosures.

Provisions in an asset purchase agreement are similar. In addition, the following may be included:

- Provisions in relation to third party consents.
- Identification of the assets and provisions regarding their transfer.

13. Can a share purchase agreement provide for a foreign governing law? If so, are there any provisions of national law that would still automatically apply?

In principle, Turkish law allows agreements with a foreign element (for example, a foreign party) to include a choice of foreign law. However, under the International Private and Civil Procedure Law numbered 5718, directly applicable rules of Turkish law will still apply in relation to:

- Public order and public interest.
- The social, political or economic structure of Turkey, for example competition law, intellectual property law or employment law.

Warranties and indemnities

14. Are seller warranties/indemnities typically included in acquisition agreements and what main areas do they cover?

Warranties and indemnities are typically included in a share purchase agreement and an asset transfer agreement, and usually relate to:

- The seller being the full legal and beneficial owner of the shares/assets.
- Particulars of the company (for example, the share capital and group structure).
- Assets or property, such as unencumbered title, condition and the company's current business.
- The seller's authority to enter into the transactions.
- Tax, accounts and financial records.
- Litigation.
- Intellectual property and IT systems.
- Employees.
- Agreements, including suppliers and customers.
- Compliance with applicable laws and insolvency.

15. What are the main limitations on warranties?

Limitations on warranties

The parties can agree a monetary cap on liability, depending on the negotiations between them. The monetary cap is generally determined as the aggregate amount of the sale price payable by the buyer.

There are usually no *de minimis* levels before claims can be made.

Qualifying warranties by disclosure

The parties can also limit their liabilities with disclosures included/attached to the acquisition agreement. If a matter is disclosed to the buyer and the buyer is aware of the disclosure during the transfer of the shares/assets, it is not possible to claim in relation to the warranties to the extent of the disclosure.

16. What are the remedies for breach of a warranty? What are the time limits for bringing claims under warranties?

Remedies

The parties usually agree that the seller will indemnify/compensate the buyer for damage or loss the buyer has incurred due to the seller breaching the warranties.

Time limits for claims under warranties

Tax warranties are mostly limited by the statute of limitations, which is five years. Claims under other warranties are usually limited to one to two years.

Consideration and acquisition financing

17. What forms of consideration are commonly offered in a share sale?

Forms of consideration

In a share sale, the most common type of consideration is cash. Non-cash consideration (for example, other securities and loan notes) can also be used.

Factors in choice of consideration

Factors such as liquidity, retaining a continuing interest in the target business or assets and tax are factors in the choice of consideration.

18. If a buyer listed in your jurisdiction raises cash to fund an acquisition by an issue of shares, how is the issue typically structured? What consents and regulatory approvals are likely to be required?

Structure

The most straightforward way to fund an acquisition by issuing new shares is to increase the company's capital. Under the Commercial Code, the capital increase can be made in cash or as a conditional capital increase.

Consents and approvals

For a capital increase in cash, a resolution must be obtained from the general assembly to amend the articles of association and increase the share capital. In a joint stock company, unless a higher quorum is required by the articles of association, at least 50% of the company's share capital must be represented at the meeting. Decisions must be passed by the majority of those who attend the meeting. In a limited liability company, unless a higher quorum is required by the articles of association, the majority of the company's share capital must be represented at the meeting and an affirmative vote of shareholders representing at least two thirds of the shares is required to pass a capital increase resolution. The resolution must be registered in the relevant Trade Registry with the accompanying documents. The previous capital must be fully paid.

In a conditional capital increase, the company grants a right to acquire its shares to its creditors and employees, provided that both:

- The increased capital does not exceed one-half of the company's existing contingent capital.
- The price paid for the shares must be at least equal to the nominal value of the shares.

Capital can also be increased from internal sources. Funds reserved under the articles of association or a general assembly of shareholders resolution that have not been allocated, and reserve funds that can be legally added to the balance sheet and the capital under the Turkish Commercial Code, can also be converted into capital.

In a public offering scenario through a capital increase, private companies can choose to restrict the pre-emptive rights of current shareholders fully or partially. In any event, the entirety of the issued capital must first be paid.

Depending on the nature and sector of the company, approval from the Capital Markets Board (www.cmb.gov.tr) and relevant regulatory authorities may be required.

Requirements for a prospectus

Before submitting an application to the Capital Markets Boards for a public offering, the following procedures must be completed:

- The board of directors must prepare an amendment to the articles of association regarding the company's capital, and the Capital Markets Boards must approve the amendment request proposed by the company.
- The general assembly must approve the decision regarding the capital increase and the restrictions to pre-emptive rights of current shareholders.

19. Can a company give financial assistance to a potential buyer of shares in that company?

Restrictions

All transactions relating to granting an advance, loan or security entered into by a company with a third person who wishes to purchase that company's shares are invalid (*Article 380, Turkish Commercial Code*).

Further, a company cannot acquire or give assistance to a potential buyer for transactions that would result in the company acquiring more than 10% of its shares.

Exemptions

The restrictions do not apply if the transaction either:

- Is a regulated transaction conducted by credit or finance institutions.
- Enables the employees of the company or its subsidiaries to purchase the company's shares, through the company granting an advance, loan or security to the employees.

However, these exemptions are not available if they reduce or adversely affect the company's capital reserves, as defined under Articles 519 and 520 of the Turkish Commercial Code.

Additionally, a company can acquire its own shares regardless of the restrictions in Article 379 of the Turkish Commercial Code in the following circumstances (*Article 382, Turkish Commercial Code*):

- The capital is decreased in accordance with Articles 473 to 475 of the Turkish Commercial Code.
- The acquisition is realised due to the principle of universal succession.
- The acquisition is realised due to a statutory purchase obligation.
- The acquisition aims to collect the company's receivables through compulsory enforcement, provided that all the relevant shares are fully paid.
- The company is active in the field of securities and capital markets.
- The company acquires its own shares free of charge.

Signing and closing

20. What documents are commonly produced and executed at signing and closing meetings in a private company share sale?

Signing

The primary document executed on signing is the share purchase agreement and its annexures (including the closing documents in agreed form).

Closing

In a share transfer, the following are usually executed on closing:

- Letter stating that the representations and warranties are true, accurate, complete and not misleading, on or as of the closing date.
- Disclosure letter, if necessary.
- Letters from the tax authorities and the social security authorities stating that the company has no outstanding debt to these authorities.
- If the parties are represented by other persons, powers of attorney.
- Resignation letters of current board members and acceptance letters and signature specimens for new board members.
- General assembly meeting minute regarding resignations and appointments of board members or the target's managers and amendment of the articles of association, if necessary.
- Any written waivers or consent obtained from third parties or government authorities, if required.
- Company resolution to approve and register the share transfer in the share register, in the buyer's name.
- Registration of the shares in the company's share register in the buyer's name.
- Transfer endorsements on the share certificates and delivery of them.

In an asset sale, separate procedural steps and additional transfer agreements may be needed based on the asset being transferred (see [Question 11](#)).

21. Do different types of document have different legal formalities? What are the formalities for the execution of documents by companies incorporated in your jurisdiction?

A share purchase agreement to transfer limited liability company shares must be signed before a Turkish notary public, registered by the competent Trade Registry, and announced in the Trade Registry Gazette. The company seal must usually be included on written agreements, which must be signed by the company's duly authorised signatories.

22. What are the formalities for the execution of documents by foreign companies?

There are no additional legal formalities for the signature of share or asset purchase agreements by foreign companies.

For the signature of a share transfer agreement in a limited liability company (see [Question 21](#)), if the authorised signatory of a foreign company is not in Turkey to sign the agreement before a Turkish notary public, the foreign company must grant a notarised and apostilled power of attorney (if the power of attorney is issued abroad) to a person who can sign the agreement in Turkey on the foreign company's behalf.

23. Are digital signatures binding and enforceable as evidence of execution?

Under Law No. 5070 on Electronic Signatures, e-signatures are recognised, binding and enforceable as evidence of execution under Turkish law, with the same effect as a handwritten signature. E-signatures can be used in electronic contracts, which allow the parties to sign the contract with their secure e-signatures or mobile e-signatures. However, e-signatures cannot be used for transactions that by law must be concluded in a mandatory or official form or other special proceeding, such as the purchase and sale of real estate or bail contracts.

24. What formalities are required to transfer title to shares in a private limited company?

A share transfer in a joint stock company is usually made through a share purchase agreement between the seller and buyer and registration of the transfer in the company's share register. If the shares are issued as registered

share certificates, the certificates must be endorsed in the buyer's name. If the shares are issued as bearer share certificates, title passes with possession of the certificates.

A transfer of a joint stock company's shares does not require notarisation or registration with the relevant Trade Registry, unless the company has become a sole shareholding, in which case registration is needed. Although not required by law, buyers also tend to request a board of directors decision approving the share transfer.

Share transfers in a limited liability company are made through both:

- A share purchase agreement, which must be signed before a notary public.
- A general assembly resolution approving the share transfer, which must be registered with the competent Trade Registry with the other relevant share transfer documents (for example, a copy of the share purchase agreement) and announced in the Trade Registry Gazette. Affirmative votes of the shareholders holding more than 50% of the share capital are required to pass the resolution approving the share transfer, unless a higher majority is required by the articles of association.

The transfer must also be registered in the share ledger. The effective date of the transfer is approval of the transfer by the shareholders.

Tax

25. What transfer taxes are payable on a share sale and an asset sale? What are the applicable rates?

Share sale

Share sales are exempt from stamp tax.

Asset sale

Stamp tax must be paid on asset sale agreements that include a monetary amount. The current stamp tax rate is 0.948%, calculated on the highest amount of all undertakings in the agreement.

26. What are the main transfer tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate tax liability?

Share sale

Share sales are exempt from stamp tax.

Asset sale

There are no stamp tax exemptions in an asset transfer.

27. What corporate taxes are payable on a share sale and an asset sale? What are the applicable rates?

Share sale

Taxable gains on the sale of Turkish company shares are subject to capital gains tax at 20%.

Asset sale

Taxable gains on asset sales are subject to corporate tax at 20%. The corporate tax rate can be reduced to 5% on the sale of immovable assets (such as real estate property, factory buildings and land) if certain conditions are met.

28. What are the main corporate tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate tax liability?

Share sale

75% of taxable gains from the sale of shares held by a tax resident legal entity for at least the two years before the sale are exempt from corporate tax.

Income obtained from the sale of share certificates by a joint stock company is not subject to income tax, provided that the bearer sells the share certificates after two years from acquiring them. Since limited liability companies cannot issue share certificates and interim certificates, their shareholders do not benefit from this exemption and must pay income tax on each share transfer transaction. If a joint stock company has not issued any share certificates, the share transfer transaction will be subject to income tax.

Companies that are not tax resident in Turkey can also benefit from double tax treaties.

The Corporate Tax Law numbered 5520 sets out certain tax exemptions for mergers, subject to certain conditions. If these conditions are met, merger profits are not subject to corporate tax.

Share swaps are also exempt from corporate tax.

Asset sale

The sale of immovable assets (for example, a factory building and land) can be exempt from VAT, if the transferred assets are held for more than two years.

29. Are other taxes potentially payable on a share sale and an asset sale?

The sale of shares in Turkey is subject to VAT at 18%.

Asset transfers are mainly subject to VAT at 18%, including goodwill. The VAT is paid by the buyer to the target company, is input VAT for the buyer and carried forward until it is offset against output VAT. The seller pays the VAT to the tax authority with its monthly VAT return.

A full VAT exemption applies if the shares have been held for more than two years at the time of the sale (for both joint stock companies and limited liability companies) or share certificates have been issued before the share sale (joint stock companies only). However, there is an opinion that if the transfer is between two non-residents and does not take place in Turkey, the transfer should not be subject to VAT (even though there is no specific exemption).

30. Are companies in the same group able to surrender losses to each other for tax purposes? For example, can interest expenses incurred by a bid vehicle incorporated in your country be set off against profits of the target before tax?

Under Turkish law, all entities are liable for their own taxes, even if they are in the same group of companies. Therefore, Turkish law does not allow group companies to surrender losses between them.

Employees

31. Are there obligations to inform or consult employees or their representatives or obtain employee consent to a share sale or asset sale?

Asset sale

Parties are not obliged to inform or consult employees or their representatives or obtain employee consent to an asset sale. However under Article 178 of the Turkish Commercial Code, in a spin-off transaction, employees transferred to the buyer can object to the transfer. In this case, the employment agreement with the employees objecting to the spin-off will terminate at the end of the time period determined under the Labour Law numbered 4857.

Share sale

Employment contracts are made between the employee and the target company employer, so a share sale does not change the employer and employment contracts remain in force.

32. What protection do employees have against dismissal in the context of a share or asset sale? Are employees automatically transferred to the buyer in a business sale?

Asset sale

Under Article 6 of the Labour Law numbered 4857, in a transfer of a commercial enterprise (see [Question 6](#)) or one of its divisions, the employment contracts automatically pass to the transferee employer, with all rights and obligations of the transferring employees. The transferor and transferee are jointly and severally liable to the employees for all rights and claims of the employees as of the date of the transfer. This liability of the transferor is limited to two years from the date of the transfer.

When employment contracts are transferred to a new employer, the transferor employer and the transferee employer cannot terminate the employment contracts of the transferring employees, that is, the transfer is not a just cause for termination of the employment contracts. In the event of such termination, the employees can claim notice and severance payments.

Share sale

A share sale does not change the employer and employment contracts remain in force. The employer and the employees cannot terminate the employment contract due to the share sale. Any unfair dismissals are subject to general protection under the Labour Law, for example, termination must be for just cause and is subject to notice and severance payments.

Transfer on a business sale

See above, [Asset sale](#).

Pensions

33. Do employees commonly participate in private pension schemes established by their employer? If an employee is transferred as part of a business acquisition, is the transferee obliged to honour existing pension rights or provide equivalent rights?

Private pension schemes

Most employees participate in government pension schemes, although most global companies operating in Turkey offer private pension schemes to their employees.

Employees under the age of 45 are enrolled in a private pension plan, with a pension agreement between the employer and a pension company under the Private Pension Savings and Investment System Act. The employee's contribution to the plan is 3% of his or her average earnings, in addition to social security premiums, and the employer must pay this amount into the plan on the day following payment of the employee's salary (at the latest). The employee can request a higher percentage contribution to the plan from his or her employer.

Pensions on a business transfer

In a business transfer, private pension agreements automatically transfer to the transferee, with all rights and liabilities together with the employment agreements.

Competition/anti-trust issues

34. Outline the regulatory competition law framework that can apply to private acquisitions.

Triggering events/thresholds

Under the Communiqué on Mergers and Acquisitions Requiring Authorisation of the Competition Board, a transaction must be notified and cleared where either:

- The total turnover in Turkey of the parties to the transaction exceeds TRY100 million and the Turkish turnover of each of at least two of the parties exceeds TRY30 million.
- The Turkish turnover of one of the parties in a merger, and the Turkish turnover of the acquired assets or business in an acquisition, exceeds TRY30 million, and the worldwide turnover of at least one of the other parties exceeds TRY500 million.

If a transaction exceeds the thresholds, notification must be made to the Competition Board (www.rekabet.gov.tr/en) for review and clearance of the transaction. The transaction is not valid until the Competition Board gives a clearance decision.

Notification and regulatory authorities

Notification of the M&A transaction to the Competition Board must be made by one of the parties, all the parties together, or their authorised representatives.

On receipt of the notification form by the Competition Board, the file is assigned to a case handler, who must complete a preliminary examination within 15 calendar days of notification and refer it to the Competition Board for a decision. In practice, a clearance decision can take around six to eight weeks, due to additional information that may be required.

Substantive test

The Competition Authority assesses whether there is a dominant position, to clarify whether the transaction causes a significant lessening of competition in a market for goods or services in Turkey.

Environment

35. Who is liable for clean-up of contaminated land? In what circumstances can a buyer inherit and a seller retain liability in an asset sale and a share sale?

Under Turkish law, the owner of immovable property is liable for any contamination on it. Liability and risk will therefore pass to the buyer in an asset sale (and indirectly through ownership of the target in a share sale), unless a specific compensation clause is included in the transfer agreement.

Under environment law, a polluter must clean up the contamination and/or pay the costs incurred by the state for such clean-up. Additionally, an entity's representatives who caused the contamination are directly liable for the fines to be imposed on the entity, in accordance with the rules on directors' and officers' liability set out in the Turkish Commercial Code.

Online resources

Official website for Turkish legislation

W www.mevzuat.gov.tr

Description. The official website for Turkish legislation, which is updated day to day. The website is only available in Turkish.

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Professional associations/memberships

- International Insurance Law Association (AIDA).
- The Federation of Defense and Corporate Counsel (FDCC).
- Transparency International Turkey.
- International Bar Association (IBA), Secretary of Insurance Committee (2012 to 2017).

Publications

- *Obligation to Bring Export Prices to Turkey*, Gün + Partners, Co-Author, 2018.
- *Corporate Governance 2018 in Turkey*, GTDT, Co-Author, 2018.
- *Turkey Implements Further Measures to Improve the Country's Investment Environment*, MEA Markets, Co-Author, 2018

- *Choosing the 'Right' Arbitration Institution - Guidance for Businesses on Costs, LexisNexis, Co-Author, 2018.*
- *Corporate governance and directors' duties in Turkey: overview, Practical Law, Co-Author, 2017.*

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- *Corporate Governance 2018 in Turkey, GTDT, Co-Author, 2018.*
- *Turkey Implements Further Measures to Improve the Country's Investment Environment, MEA Markets, Co-Author, 2018.*
- *Investing in Turkey, the Oath-Features, Co-Author, 2017.*
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Publications

- *Obligation to Bring Export Prices to Turkey*, Gün + Partners, Co-Author, 2018.
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