



TURKISH PRACTICES ON TAKEOVER REGULATIONS

JUNE 2008

TAKEOVER BIDS IN TURKEY

Dr. Yusuf Z. SÖNMEZ

Group Head, Enhancement Monitoring and Supervision
of Legislation

Department of Legal Affairs

June 2008

syusuf@spk.gov.tr

2

General Aspects of Regulations on Takeover Bid in Turkey

- ▶ Capital Market Law
 - Article 16/A and 22/i furnish the authority with the Board (CMB) to make necessary regulations on takeover bids
- ▶ CMB Communiqués
 - The Communiqué on Principles Regarding Proxy Voting at Shareholders' Meetings of Publicly Held Joint Stock Corporations, Prox Solicitation and Tender Offer (Serial IV, No 8- published in OG No:21872 dated 9 March 1994-P-TO Communiqué)
 - The Communiqué on Principles Regarding Public Disclosure of Material events (Serial:VIII, No:39- published OG No:25174 dated 20 July 2003- Disclosure Communiqué)

3

General Aspects of Regulations on Takeover Bid in Turkey (II)

- ▶ Scope of P-TO Communiqué
 - P-TO Communiqué recognizes and sets forth the principles relating to two types of takeover bids.
 - *Voluntary takeover bids*
 - *Mandatory takeover bids*
 - P-TO Communiqué shall apply to takeover bids where the target company is a publicly held joint stock corporation.

4

General Aspects of Shareholding Structure in Turkish Companies and It's Effects on Takeover Bid Practices

- ▶ Is there an effective market for corporate control in Turkey?
- ▶ Block holding is prevalent
- ▶ Mandatory bid rules are effectively used in takeover cases

5

Data on Takeover Bids in the Past 5 Years (I)

	2004	2005	2006	2007	June, 2008	TOTAL
Number of Mandatory Bid Applications to the CMB	6	13	16	14	5	54
Number of exemption Applications to the CMB	16	20	29	36	9	110
Number of Voluntary Bid Applications to the CMB	0	0	1	1	0	2
TOTAL	22	33	46	51	14	166

6

Data on Takeover Bids in the Past 5 Years (II)

<i>Reasons for Exemption Granted</i>	2004	2005	2006	2007	June, 2008	TOTAL
Financial Recovery	0	0	1	2	0	3
Approval by 2/3 majority of GM	1	0	1	0	0	2
Managerial Control	12	15	27	33	9	96
Legal Necessities	0	0	0	0	0	0
Privatizations	1	2	0	1	0	4
TOTAL	14	17	29	36	9	105

7

Mandatory Bids in Turkey

► Triggering events

- The mandatory takeover bids requirements can be triggered either by an acquisition of shares or voting rights that results in an offeror holding more than a specified percentage of shares or voting rights, or without being subject to this percentage by an acquisition of shares controlling the management of the corporation.
- Acquisition of shares is possible either directly or indirectly
- There is also offer requirement if control is acquired due to voluntary bid
- Control threshold : 25% or any 10% increase in the voting rights during a 12 months period when existing shareholdings between 25%-50%

8

Mandatory Bids in Turkey

► Bid Price

- Rule1: The bid price offered to shareholders shall not be below the highest price paid to the targeted shares.
- Rule2: All holders of securities of the same class requires that the price to be offered in the mandatory bid should, under normal circumstances, be equal.
- Rule3: It should be applied other criteria when the prevailing circumstances are required.

9

Mandatory Bids in Turkey

► Bid Price

- In the event that the purchase has been made through a block sale, then the highest price paid per share must be offered.
- In cases where the purchase has been made by any other means, then the price cannot be less than the highest price paid during the last three months before the purchase.
- CMB may seek a third party appraisal report from authorized appraisal companies, where the tender offer price cannot be determined under the provisions of the P-TO communiqué.
- In the event the tender offer is delayed due to the responsible party then CMB may impose a default interest on the tender offer price.
- The proposed price shall only be paid in cash.

10

Mandatory Bids in Turkey

► Exemptions

- In case the acquisition of shares and voting rights of the company that triggered mandatory takeover bids,
 - is necessary for the strengthening of the financial structure of the corporation
 - is approved at a shareholders' meeting of the corporation held by the presence of qualified quorum requirements set forth in article 388 of Turkish Commercial Code (66,33% of the all outstanding shares)
 - would not cause any change in the control of management due to the capital distribution of the corporation
 - arose from a legal requirement or are realised unintentionally which resulted the exceeding of the thresholds
 - is realised as a result of a privatization process
- The CMB may grant an exemption from mandatory takeover bids.

11

Mandatory Bids in Turkey

► Exemptions (II)

- **CMB may provide exemption from the mandatory takeover bids only under these circumstances.**
- **It is within the discretion of the CMB to grant an exemption.**
- **The applications for exemptions shall be made by parties required to make tender offer within five days following the emergence of mandatory takeover bids requirement.**

12

Mandatory Bids in Turkey

- ▶ Sanctions
 - CMB is entitled to impose administrative fines, in certain cases for failure to comply with the rules laid down in the Communiqué
 - CMB is entitled to apply criminal fine through a court decision
 - A party who suffers in particular as a result of a breach of the mandatory bid rules, may also claim damages or take a law suit action for specific performance under civil law against the party in default.
 - Suspending the voting rights emanating from acquired shares ?!

13

General Aspects of the Draft CMB Legislation

- ▶ **Purpose: to realize the harmonization of the current legislation on takeover bids with the relevant EU Law and to respond the needs of the markets**
 - ▶ General principles set out
 - ▶ General requirements regarding voluntary takeover bids has been amended
 - ▶ Detailed rules regarding fair price
 - ▶ The highest price rule is kept (reference to the last 6-months)
 - ▶ No exemption with regard to the approval of the general meeting
 - ▶ Effective and disuasive sanctions against failures to comply with mandatory bids
 - ▶ Others

14

THANK YOU FOR YOUR ATTENTION

15