

TURKISH M&A PRACTICAL GUIDE SERIES



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1. ARE THERE ANY LEGAL RESTRICTIONS ON THE SHARES?

Ownership of the company is determined according to the ownership of the company's shares so the first thing that should be checked is whether the target company shares can be freely transferred and there is no third party having a claim on these shares. Options, pledges, usufruct rights may have been established on the shares in favour of a third party (such as the non-selling shareholder of the target company or a financial institution in return for financing).

The articles of association and/or the shareholders' agreement of the target company must be reviewed in detail to understand whether an option has been granted in favour of a third party. The share ledger of the target company may show whether a pledge or an encumbrance has been established in favour of a third party.

The share certificates of the company should also be reviewed to confirm that no endorsements have been made to a third party.

2. IS THE SHARE CAPITAL FULLY PAID?

Company shares are issued to the shareholders in return for share capital. At least $\frac{1}{4}$ of the share capital has to be paid prior to registration in joint stock companies. The remaining share capital has to be paid within 24 months. If the selling shareholder has not fully paid its share capital before the closing, such commitment may pass on to the buyer together with the shares.

The buyer may ask the selling shareholder to settle its share capital commitment before the closing.

3. HAS THE COMPANY LOST ITS SHARE CAPITAL?

The Turkish Commercial Code ("TCC") requires board of directors and shareholders to take certain actions if the company has lost its share capital due to ongoing losses. The actions required by the TCC vary according to the level of the share capital lost. The loss of share capital can lead to automatic termination of the company or require the directors to request company's bankruptcy from the court.

4. ARE THERE ANY LEGAL RESTRICTIONS ON ANY MATERIAL LICENSE OR PERMITS OF THE COMPANY?

This is especially important if the target company operates in a regulated industry such as energy, mining, telecommunication, banking or insurance. The license required to continue whole or a part of the business may be restricted or may risk to be restricted. The restrictions on licenses may result from breach of regulations or encumbrances established in favour of third parties. The revocation of license by the regulatory authority is usually the last resort after previous warnings or sanctions. Whether there are any previous warnings issued or sanctions previously imposed on the target company due to violation of regulations or any ongoing investigations that could result in a heavy sanction should be reviewed to address these risks in the transaction documents or commercial negotiations.

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5. ARE THERE ANY ONGOING INVESTIGATIONS BY REGULATORY AUTHORITIES?

The ongoing investigations by regulatory authorities may result in sanctions which may have detrimental effects on the target's business such as suspension or termination of a license or heavy administrative fines which could have financial impact on the company.

The regulatory authorities may also have made certain inquiries to the target company. These inquiries and written correspondence by the regulatory authorities should be reviewed in detail to assess if they can turn into investigations which could lead to heavy sanctions.

The status of ongoing investigations, its implications and possible consequences on the business should be identified and these risks should be addressed in the transaction documents or commercial negotiations.

If the company operates in a regulated industry, the investigations or inquiries by the specific regulator will take the stage for such review. Even if the company does not operate in a regulated industry and is not subject to a specific regulator, compliance with antitrust rules set by the Competition Authority, the data privacy regulations set by the Personal Data Protection Authority or compliance with Capital Markets Board regulations (if the target company has issued any equity or debt instrument to the public) should be reviewed and any identified risks should be addressed.

6. ARE THERE ANY ONGOING LAWSUITS THAT MAY BE DETRIMENTAL FOR COMPANY BUSINESS?

Most companies are party to a lawsuit so ongoing lawsuits will not be a surprise. What should trigger attention is any lawsuits that may have material impact on the company business or financials. The materiality of the lawsuits who are based on monetary claim can be qualified by the claim amount. The amount of the claim compared to the company financials will determine whether a lawsuit is a material one. However, some lawsuits are filed in symbolic amounts compared to the actual claim to test the waters before the actual claim. If the original lawsuit – with the minor claim – is successful the actual claim follows. Therefore, the claim amount may not always shed light on the materiality of the claim.

Class actions do not have a broad application in Turkish practice but claims by employees or consumers on the same claim matter can be filed individually against the company so high number of claims on the same subject matter should also trigger attention.

Other material lawsuits are lawsuits filed against the company for cessation of an act or cancellation of an administrative action. Evacuation lawsuits for a leased real estate that is significant for company business is an example. An administrative lawsuit filed to cancel a company permit or license may also have a detrimental effect on company's business.

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7. ARE THERE ANY CHANGE OF CONTROL CLAUSES IN MATERIAL AGREEMENTS?

The agreements that are material to the company operations such as credit agreements, lease agreements, license agreements, concession agreements with the state may include change of control clauses. If the transaction introduces a change of control of the target company, the waiver of the counter parties of these agreements must be obtained before the closing to avoid any defaults or breach of agreement.

8. DOES THE COMPANY HAVE A DATA PRIVACY COMPLIANCE POLICY IN PLACE?

All companies whether small or large should have a data privacy compliance policy in place to comply with the Personal Data Protection Law. The target company should have the necessary precautions in place to protect the personal data it receives in the course of its business, including the personal data of its employees and customers. The precautions taken and whether they are sufficient should be confirmed during due diligence.

Companies above a certain size in terms of number of employees and asset size are required to be registered to the Turkish Personal Data Protection Authority registry (*VERBİS*). Whether the necessary registration has been completed and whether the registration is updated on a regular basis should be confirmed. Any identified risks should be addressed in the transaction documents.

9. IS THE COMPANY INDUSTRIAL PROPERTY REGISTERED?

The Turkish Patent and Trademark Office is the official authority which industrial property including trademarks, patents, industrial designs and utility models are registered.

Registration of the industrial property grants a superior protection to the company industrial property. The registration status can be checked in Turkish Patent and Trademark Office records.

Any industrial property significant to company business whose registration expiry date is approaching should be identified to be renewed before the closing.

10. ARE THERE ANY LEGAL RESTRICTIONS ON THE MATERIAL REAL ESTATE?

Whether there is any encumbrance such as a mortgage, option right or usufruct right in favour of a third party on the real estate that is material to the company business should be identified. The full list of encumbrances on each of the company real estate can be confirmed with an official encumbrance list obtained from the title deed registry office. These encumbrances may have been established in line with the company operations such as mortgages established in favour of financial institutions to extend company credit lines. Whether the specific encumbrance possesses any risk for company business should be reviewed during due diligence.

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Please contact us at info@consulturk.com.tr for further information.

This guide has been prepared for general information purposes. It is not meant to serve as legal advice in any manner. It is only a brief outlook of the topic. It is not and does not aim to be comprehensive. It only provides information on certain significant points of the topic and should not be used without a specific legal advice for the relevant case.

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