Global Public M&A Guide - Türkiye

Effecting a Takeover

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# 4. Effecting a Takeover

[Last updated: 1 January 2025, unless otherwise noted]

**4.1 Types of public takeover bid**

There are two main forms of tender offers in Türkiye:

a VTO, in which an offeror voluntarily makes an offer for all or part of the shares of the target; and

an MTO, which an offeror is required to make if, as a result of an acquisition of securities or otherwise, it acquires the management control of the target.

An offeror that intends to launch a tender offer must include the following documents in its application to the CMB:

share purchase agreement and other related transaction documents as well as their Turkish translations by a sworn translator;

standard form of application containing information regarding the acquirer and the tender offer, i.e., the information form;

information on the acquirer such as its scope of activities, shareholding structure and board of directors;

information on the appraisal of the tender offer price (the CMB may require a valuation report in case of an MTO);

the brokerage agreement (the offeror must sign a brokerage agreement with a brokerage firm that will carry out the takeover process with the mandatory content set out under the Tender Offer Communiqué); and

a guarantee by a company or bank in Türkiye in order to ensure the payment of the MTO price to the minority shareholders, if required by the CMB.

**4.2 Voluntary public takeover bid**

The offeror is free to make the tender offer subject to merger control clearance and approval by the CMB.

The offeror is, in principle, free to determine the price and the form of consideration offered to the minority shareholders (absent any pre-existing controlling interest in the target).

The offer price may be paid in cash, listed securities or a combination of both. However, a seller must approve the payments in securities in order for the offeror to pay the seller in listed securities either partially or fully. There is no minimum price specifically set out under the Tender Offer Communiqué. Payment for the shares acquired via a tender offer must be made by the business day following the sale of the shares.

The offeror is entitled to increase the VTO price or extend the scope of the VTO in case a partial offer is made. In this case, the difference between the newly determined VTO price and the former VTO price must be paid to investors who have already accepted the VTO, within two business days.

The minority shareholders may opt out of accepting the VTO if the offeror increases the number of the shares subject to its offer.

The offeror is entitled to withdraw the tender offer up until the offer's launch and third parties are entitled to initiate a competitive offer, i.e., a competitive bid, during a VTO.

**4.3 Mandatory public takeover bid**

The obligation to launch an MTO is triggered as soon as a person or group of persons acting in concert acquires the management control of a public company.

The obligation to launch an MTO is not triggered if:

the management control is acquired as a result of a voluntary tender offer made in respect of all shares of the target;

in case the management control is acquired through an agreement without acquiring any shares, the agreement is approved by the general assembly and the shareholders voting against the agreement are granted with a right to sell their shares to the company;

the shareholding percentage of the shareholder holding the management control falls below 50% and then exceeds 50% again before the management control is acquired by a third party;

the voting rights enabling the management control are transferred between persons acting in concert;

an acquirer acquires 50% or less of the voting rights from a controlling shareholder, and agrees to share the control with the (former) controlling shareholder by means of an agreement;

change in the management control also triggers squeeze-out and sell-out rights;

an existing shareholder acquires the management control as a result of the exercise of pre-emption right at a rights issue; or

an unintended change in the management control occurs as a result of events beyond the control of the shareholder acquiring the management control, such as the suspension of voting rights of other shareholders, share redemptions due to capital decrease, amendments to the privileges assigned to the shares and share buybacks by the public company.

The obligation to launch an MTO may be exempted by the CMB upon request by the acquirer, filed within six business days following the triggering of an MTO, in cases of:

acquisition of the shares or voting rights of a company as a change in its capital structure, required to strengthen the financial structure of such company under financial distress (in this case, the CMB shall investigate whether new funds are transferred to the company or whether the capital structure change is actually required);

selling out the part of the shares required for the mandatory tender offer or filing a written undertaking to sell out the shares within a reasonable time determined by the CMB, provided that the rights regarding the company's shares are not used in any general assembly meeting after acquiring the management control or no changes are made in the company's board of directors;

the change of control of the management in the parent company of the target, but not for the purpose of gaining control of the company's management. While identifying whether this condition exists, the CMB will assess certain conditions, including whether the target's contribution to the total assets of the parent company exceeds 10% as stated in the parent company's financial statements or whether the target is material to the operating volume of the parent company;

a sale of shares in public companies that are owned by the government (or governmental entities, bodies and agencies) under a privatization transaction; and

the change of control of the management of the company as a result of a merger where the surviving entity is a special purpose acquisition company (*birleşme amaçlı ortaklık*), provided that the shares owned by the shareholders who voted against the merger transaction in the general assembly meeting where the merger transaction is approved will be purchased in line with the principles and procedures set out in the prospectus prepared for the public offering.

facilities extended by banks:

A bank seizes the ownership of the pledged shares as part of an enforcement action upon default.

The pledged shares are acquired by a special purpose vehicle ("**SPV**") founded by a bank as part of the enforcement action upon default.

A bank or SPV, following their seizure, sells the pledged shares to a third party as part of the enforcement action upon default.

The shares are transferred to satisfy the requirements of laws or regulations that set forth certain criteria to become shareholders.

transfer of shares in order to observe a legislative provision determining the qualifications of a shareholder.

the change of management control of the public company results from inheritance or the allocation of matrimonial property or other legal obligations.

In terms of the price offered and the form of the consideration, the rules below apply in case of an MTO, where the CMB will have ultimate discretion:

The offer price may be paid in cash, listed securities or a combination of both. However, a seller must approve the payments in securities in order for the offeror to pay the seller in listed securities, partially or fully.

The MTO price calculation methods differ depending on whether the target is acquired indirectly or has different classes of shares with different shareholding rights or privileges.

The Tender Offer Communiqué provides that, in determining the minimum MTO price, price adjustment mechanisms, additional payment options and other elements that can either directly be considered a part of the purchase price or that arise as a result of fulfilling certain post-closing conditions must also be considered.

if the CMB decides that there have been extraordinary developments affecting the Turkish economy or the public company's industry during the periods used as a basis to calculate the daily adjusted average prices of the public company's shares, the time period during which such developments occurred is disregarded and the calculation period is adjusted accordingly.

If deemed necessary by the CMB, the CMB can ask for a valuation report to determine the MTO price. Furthermore, the CMB has the power to allow or require an amendment of the price, including if it appears that, apart from the consideration offered, special direct or indirect advantages are granted to certain transferors of the securities.

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