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THE GROWING IMPORTANCE OF SIMPLIFIED MERGERS IN CAPITAL MARKETS LEGISLATION

Company mergers have emerged as a significant tool in companies' growth, restructuring, and competitiveness enhancement strategies, particularly during periods of accelerated economic fluctuations and sectoral transformations. The simplified merger procedure envisaged under the Turkish Commercial Code ("**TCC**") and capital markets legislation stands out with its structure that expedites transaction processes and eliminates certain legal obligations. This merger model has been more widely preferred in recent years and provides significant advantages for publicly traded joint-stock companies.

1. Legal Basis and Conditions of Simplified Mergers Procedures

1.1. TCC Regulations

A simplified merger is a special type of merger regulated in the TCC. This procedure allows for the simplification of the merger process and the non-application of certain procedures under specific conditions. The most important facilitation granted is eliminating the requirement to submit merger-related transactions for general assembly approval. The fundamental regulations regarding simplified merger procedures are set forth in Article 155 of the TCC and subsequent provisions.

Simplified mergers are envisaged only between capital companies and cannot be applied to partnerships by analogy. They are particularly used to expedite structural changes between group companies. In practice, they most commonly appear in the form of acquisition mergers between the controlling company and its subsidiaries within a group of companies.

The type of companies participating in the merger and the control relationship between them are decisive to benefit from simplified merger procedures. In cases of full control, namely where the acquiring company owns all voting shares of the acquired company, and in sister company mergers where the same controlling person or company owns all shares in both subsidiaries, the merger report, obtaining general assembly approval, and granting shareholders the right to review documents are not mandatory. Furthermore, no capital increase is made. In situations with 90% control, the merger report and general assembly approval are again not required; however, information regarding the share exchange ratio, the amount of compensation payment, and new shares to be received by the shareholders must

be included in the agreement. In this case, minority shareholders must be offered an optional compensation payment equivalent to the real share value; otherwise, minority shareholders may file annulment or equalization lawsuits. Through these provisions, the TCC ensures the simplification of the merger process whilst also safeguarding minority shareholders' rights.

1.2. Capital Markets Legislation

Specific provisions regarding simplified mergers also exist in capital markets legislation, and these regulations determine the rules to which publicly traded joint-stock companies are subject. Generally, the provisions of the TCC and the Communiqué on Merger and Demerger No. II-23.2 ("**Communiqué**") issued by the Capital Markets Board ("**Board**") are harmonious with each other; however, there are some differences. Article 13 of the Communiqué regulates simplified merger procedures for publicly traded joint stock companies. According to this article, a merger may be carried out under simplified procedures in three cases: (i) where the acquiring publicly traded joint stock company directly or indirectly holds at least 95% of the voting shares of the acquired company, (ii) situations that do not require the issuance of shares of the publicly traded joint-stock company to the shareholders of the acquired companies, and (iii) where shares of the publicly traded joint-stock company must be issued to the shareholders of the acquired companies, but the cash equivalent of the publicly traded joint-stock company shares is offered to the shareholders of the acquired companies as an optional right.

Under the Communiqué, the acquiring company must declare that the conditions enabling the merger to be carried out under simplified procedures have been satisfied. Furthermore, under this procedure, preparing documents such as merger reports, independent audit reports, and expert opinions required for other merger transactions of publicly traded joint-stock companies is not mandatory. In other words, the merger can be carried out without calculating a fair and reasonable exchange ratio. Similarly, in parallel with the TCC, this procedure will not require general assembly approval. Nevertheless, preparing an "announcement text" to be submitted to the Board and published on the Public Disclosure Platform is mandatory. This announcement must transparently explain the merger's purpose, structure, ratios, and other matters that may be important for investors.

Article 15 of the Communiqué on Significant Transactions and Retirement Rights No. II-23.3 stipulates that withdrawal rights will not arise in simplified merger transactions; however, the protection intended to be provided through withdrawal rights is fulfilled, in parallel with TCC provisions, by offering the cash equivalent of the acquired shares to the shareholders of the acquired company as an optional right.

In a simplified merger between a publicly traded joint stock company and a privately held company, a merger where the privately held company is the acquiring entity is theoretically possible, although not explicitly regulated in the TCC or the Communiqué. However, such a structure is rarely seen in practice, because following the merger, the privately held company will not directly acquire publicly traded joint stock company status. This situation may lead to various technical and administrative complexities from a capital markets legislation perspective. Therefore, preferring a merger structure in which the publicly traded company acts as the acquirer and thus ensuring the continuation of public status is considered the most appropriate and practical solution.

In conclusion, the simplified merger procedure in the capital markets legislation allows publicly traded joint-stock companies to conduct a more straightforward merger process within the framework of the control relationships in their capital structure. However, this process is subject to the supervision and control of the Board, and investor protection is adopted as a fundamental principle. Therefore, the provisions of the TCC should be applied in conjunction with the provisions of the Communiqué.

2. General Assessment

The simplified merger procedures under both the TCC and the capital markets legislation significantly simplify the merger process from both legal and administrative perspectives, thereby directly contributing to shorter transaction times and lower costs.

In this framework, simplified mergers offer significant practical advantages to companies, allowing them to complete merger processes faster, at lower costs, and with less administrative burden by relieving them from specific document and approval obligations. Therefore, this method offers an important opportunity for companies not only from a legal perspective, but also from a strategic and economic perspective. In particular, it plays a vital role in operational and structural transformations such as simplifying intra-group structures, consolidating similar activities under a single roof, restructuring companies experiencing capital losses without entering liquidation, and removing minority shareholders. This merger model, which is preferred for numerous objectives such as reducing competition, increasing market share, benefiting from tax advantages, reducing input costs, and increasing overall efficiency, stands out as an effective restructuring tool within the scope of companies' external growth strategies and supports sustainability for companies as a growth strategy that maintains competitiveness.

CONTACT

Hasan H. Yaşar
hyasar@kolcuoglu.av.tr

Sinem Nilsu Bayazıt
snbayazit@kolcuoglu.av.tr