



SCREENING CHAPTER 6 COMPANY LAW

AGENDA ITEM : TAKE-OVER BIDS

**Country Session: The Republic of TURKEY
20 July 2006**



RELEVANT LEGISLATION

➤ Capital Market Law

- Arts. 16/A and 22/i authorise the CMB to issue secondary legislation on takeover bids

➤ CMB Communiqués

- The Communiqué on Principles regarding Proxy Voting at Shareholders' Meetings of Publicly Held Companies, Proxy Solicitation and Take-over Bids (Serial IV, No 8- published in OG No:21872, 9 March 1994) (ProTO Communiqué)

- The Communiqué on Principles regarding Public Disclosure of Material events (Serial:VIII, No:39- published OG No:25174, 20 July 2003) (Disclosure Communiqué)



THE PURPOSE OF TAKE-OVER BID LEGISLATION

- **Protection of minority shareholders (equal treatment of shareholders)**
- **Dissemination of adequate, meaningful information about the offeror and the bid.**



SCOPE of ProTO COMMUNIQUE

- ProTO Communiqué shall apply to take-over bids where the target company is a publicly held company.
- ProTO Communiqué recognizes and sets forth the principles relating to two types of take-over bids.
 - Voluntary take-over bids
 - Mandatory take-over bids



VOLUNTARY TAKE-OVER BIDS

- Offer to purchase shares with the intent to acquire control of the target company,
- Made by a person to the shareholders of a publicly held company,
- Communicated to such shareholders by newspaper advertisements and other means.



PROCEDURE REGARDING VOLUNTARY TAKE-OVER BIDS

- Offeror shall submit the “Information Form” to the CMB at least 30 days before the offer. The CMB may request additional information.
- The information forms shall be published in at least two country-wide journals, and also sent to shareholders to whom written offers have been made.
- The purchasing period is maximum 30 days. Offerors may withdraw their offer until the beginning of the purchasing period.



DISCLOSURE REQUIREMENTS (Serial VIII No:39)

Disclosure is required for the following:

- Decisions about making a take-over bid by the company for the shares of another company.**
- Decisions taken by shareholders or third persons regarding a take-over bid for the shares of the company.**
- Existence of a mandatory take-over bid in accordance with the regulations of the CMB.**
- Application to the CMB for the grant of an exemption to make a mandatory take-over bid.**
- Application to the CMB to make a take-over bid.**
- Result of such applications.**



MANDATORY TAKE-OVER BIDS

- If a person or persons acting in concert acquire -directly or indirectly, through take-over bid, block or individual purchase, or any other method- 25% or more of the capital and voting rights or management control of a publicly held company, such person or persons are required to make an offer to the remaining shareholders of the target company.
- If a person or persons acting in concert, owning between 25% and 50% of the capital and voting rights of a publicly held company, increases this stake by 10% or more in any given 12-month period, such person or persons are also required to make an offer to the remaining shareholders of such company.



EVENTS TRIGGERING MANDATORY TAKE-OVER BIDS

- **Mandatory take-over bids can be triggered either by an acquisition of control or 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 company.**
- **Acquisition of shares is possible either directly or indirectly.**
- **There is also offer requirement if control is acquired through a voluntary take-over bid.**



MANDATORY TAKE-OVER BID PRICE

- **Rule 1**: The bid price offered to shareholders shall not be below the highest price paid to the targeted shares.
- **Rule 2**: Under normal circumstances, the price to be offered in the mandatory bid should be equal for all holders of securities of the same class.
- **Rule 3**: Other criteria are also applicable.



(cont.)

- **Where the purchase is made through a block sale, the highest price paid per share must be offered.**
- **In cases where the purchase is made by any other means, then the price cannot be less than the highest price paid during the last three months before the bid.**
- **CMB may seek a third party appraisal report from authorised appraisal companies, where the bid price cannot be determined according to the provisions of the ProTO Communiqué.**
- **If the take-over bid is delayed by the offeror, CMB may impose a default interest on the bid price.**
- **The bid price shall only be paid in cash.**



EXEMPTIONS

If the acquisition of shares and voting rights of the company that triggered mandatory take-over bids:

- is necessary for the strengthening of the financial structure of the company,
- is approved at a general assembly of the company in accordance with Article 388 of Turkish Commercial Code (66,6% of the all outstanding shares),
- would not cause any change in the control of management,
- arises from a legal requirement or is realised unintentionally which resulted in the exceeding of the thresholds,
- is realised as a result of a privatisation process.

CMB may grant exemption from mandatory take-over bids.



(cont.)

CMB may grant exemption from the mandatory take-over bids only in the foregoing cases.

The applications for exemptions shall be made by persons required to make take-over bid within 5 days following the emergence of mandatory take-over bid requirement.



SANCTIONS

- **CMB is entitled to impose fine on those who fail to comply with certain rules laid down in the Communiqué.**
- **A party, who suffers as a result of violation of the mandatory bid rules, may bring an action for damages or to obtain an order of specific performance under civil law against the party in default.**



DATA ON MANDATORY TAKE-OVER BIDS AND EXEMPTIONS GRANTED IN THE PAST 3 YEARS

1. Number of events that triggered mandatory take-over bids in the past 3 years

		2003	2004	2005	Total
1	Number of take-over bid exemption applications to the CMB	16	16	22	54
2	Number of mandatory take-over bid applications to the CMB	7	6	15	28
	TOTAL	23	22	37	82



2. Number of exemptions granted by categories in the past 3 years

REASON FOR THE EXEMPTION GRANTED	2003	2004	2005	TOTAL
Approval by 66,6 % majority of the general assembly	1	1	0	2
Share acquisition is done to improve the financial structure of the company	3	0	0	3
Privatisation	0	1	2	3
Managerial control of the company is not affected	11	12	15	38
Share acquisition is done as a result of legal necessities	1	0	0	1
Total exemptions granted	16	14	17	47



THANK YOU FOR YOUR ATTENTION