

Buy-back of shares introduced to the Turkish capital markets

The limits the Turkish Commercial Code imposes on the buy-back of shares by Turkish companies have been criticised for some time now as being unresponsive towards the current needs of the Turkish market. Taking this criticism into account, the current Draft Turkish Commercial Code (**DTCC**) contains several rules enabling Turkish companies to repurchase their own shares if they satisfy certain conditions.

While discussions on the DTCC continue at the Turkish parliament, the Capital Markets Board of Turkey (**CMB**) has taken an anticipatory step in this direction by enabling listed brokerage companies and investment trusts to buy-back their own shares. The CMB announced this in its Weekly Bulletin numbered 2009/39 and this announcement describes in detail the procedures and principles which apply to such buy-back transactions.

The announcement only currently allows listed brokerage companies and investment trusts (each a **Relevant Company**) to buy-back their shares. However, any buy-backs by a Relevant Company may inform future buy-backs by unlisted Turkish companies (once the DTCC is in force) and any future extension of the announcement by the CMB to other listed Turkish companies.

We summarise below the key rules and conditions that a Relevant Company must follow if it wishes to buy-back its shares:

1. "Buy-back Program" and its authorisation.

- A Relevant Company must buy-back its shares through "Buy-back Program" that its Board of Directors prepares and its General Assembly of Shareholders approves.
- The "Buy-back Program" must clearly identify:
 - (i) the purpose of and the funds granted for the proposed buy-back;
 - (ii) minimum and maximum purchase price limits;
 - (iii) the person(s) allowed to carry out the buy-back;
 - (iv) the buy-back period that will be sought from the General Assembly (the maximum allowed period being 18 months); and
 - (v) the outcome of any previous buy-back.
- The Board of Directors must publish the proposed "Buy-back Program" on the relevant Relevant Company's web site at least 15 days before the date of the General Assembly which will discuss that program.
- If there are immediate needs, a Relevant Company may carry out a buy-back transaction without the consent of the General Assembly. However, in this case the Relevant Company must comply with certain other public disclosure rules and tell the General Assembly about the buy-back at the next General Assembly.

2. Relevant Companies may only buy-back listed shares.

- Turkish public companies may have certain portions of their shares which are privately held and other portions which are listed on the Istanbul Stock Exchange (**ISE**). The CMB announcement provides that a Relevant Company may only buy-back their shares traded on the ISE.

3. Buy-back limits.

- An Relevant Company may not buy-back shares:
 - If the cumulative maximum portion of shares bought back has a total nominal value that exceeds 20% of the value of that company's entire issued share capital. And in this case the company must dispose of any excess within 6 months.
 - If this would prejudice the "net active capital" mentioned in the latest financial statements of the Companies.
 - If that company has postponed disclosure of any insider information as allowed under the relevant communiqués of the CMB.
 - Between the resolution and completion dates of a capital increase.

4. Buy-backs must comply with other specific rules.

- Besides applicable ISE exchange rules, a Relevant Company must also comply with other specific rules during buy-back transactions. For example the rules about transaction period, placement of purchase orders, daily purchase limits, and working with a single brokerage company on each transaction day.

5. Cannot use voting rights.

- A Relevant Company cannot use the voting rights associated with the bought-back shares.

6. Reflection of buy-back in financial statements.

- The financial statements of a Relevant Company shall reflect the bought-back shares as a deduction item under equity according to the Turkish Accounting Standard numbered 32. The income statement of the Relevant Company cannot reflect revenues and losses arising from disposal of these shares.

7. Disposal of bought-back shares.

- *When?* A Relevant Company may freely decide on the period in which it will hold the bought-back shares but this period shall not exceed 3 years. If a Relevant Company does not dispose all its bought-back shares during such period, it must cancel such shares by a capital decrease.
- *How?* A Relevant company must dispose its bought back shares by sale on the ISE.

8. Public disclosure of a buy-back

- *Disclosures before buy-back.* An Relevant Company must make a public disclosure 2 business days before starting a buy-back transaction which states:
 - (i) the start date of the transaction; and
 - (ii) the appointed brokerage company (and commissions payable to it).
- *Disclosure on day 1 following buy-back.* An Relevant Company must make a disclosure on the first business day following the date of each buy-back transaction which identifies:
 - (i) the nominal value and purchase price of the bought back shares;
 - (ii) the ratio of the total nominal value of bought back shares to the value of that company's entire issued share capital; and
 - (iii) the privileges associated with the bought-back shares (if any).
- *Disclosure on day 5 following completion of the "Buy-back Program".* A Relevant Company must make a disclosure within 5 business days after completing a "Buy-back Program", This disclosure must detail of the individual buy-back transactions carried out during the term of that program. The Board of Directors shall also present this information to the General Assembly at the first General Assembly Meeting following completion of the "Buy-back Program".
- A Relevant Company must also make a public disclosure if its General Assembly amends:
 - (i) the first "Buy-back Program" proposed by the Board of Directors; or
 - (ii) a "Buy-back Program" which it has previously approved.