A BRIEF OVERVIEW OF THE EFFECTS OF THE NEW TURKISH COMMERCIAL CODE ON ACQUISITIONS AND PE INVESTMENTS IN TURKISH COMPANIES:

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- The new Turkish Commercial Code ("new TCC") constitutes a major reform of Turkish commercial law. It fundamentally changes the entire legal framework for the ways in which commerce and investment are carried out in Turkey. As it will come into force in about a year from now, you will naturally have to know all about it when making your next investment, or adapting, where applicable, your current investment.

- Overall, it's a welcome improvement and a modernisation of our commercial law. It generally introduces into our commercial law most of the key principles of good "Corporate Governance" (Kurumsal Yönetim), and I will illustrate a few of these novelties with examples. Secondly, I will briefly mention what the new Code introduces in terms of structuring novelties, focusing a bit more on "exits". And I will finish with what I think may be slight over-regulation and which may be improved/refined until the Code enters into force next year.

(1) IMPROVEMENTS IN TERMS OF A "BETTER CORPORATE GOVERNANCE ENVIRONMENT":

A. Transparency:

- The new TCC brings in a major focus on transparency. Even though in some respects it might be said that it is going almost "over-board", it is, overall, a welcome improvement that should substantially facilitate investment in non-listed Turkish companies and generally business-partnerships with such. Until today, non-listed Turkish companies were pretty much utter "closed-boxes". Now, almost everything will need to be disclosed. Companies will need to have a website which will include (disclose) extensive information; all financial statements, directors' reports, auditor reports, GM calls/agenda, and even salaries of top management! Missing or misleading information on these websites will result in serious criminal sanctions for offenders.

- We feel that the disclosure requirements go almost too far and would be more appropriate for listed companies only. Certain sensitive business information should especially be excluded from the list all together and the list should further be scaled down for smaller-sized companies. Even most EU Countries stipulate such exemptions in their legislation and do not prescribe such extensive disclosure for private companies.

- Furthermore, a very important novelty is the fact that Accounts will have to be prepared on the basis of IFRS (International Financial Reporting Standards), and will need to be audited. These are obviously very significant developments which will give a safe/trustworthy view of Turkish companies' financial position. Here again, the new TCC goes further than most EU legislation where several exemptions exist, especially for smaller-sized companies.

- Another important aspect of auditing is that the Code introduces requirements, which are very similar to the Sarbannes-Oxley Act to ensure the independence of the Auditors of the Company. And these provisions will be applicable in Turkey even to non-listed companies.

- The new TCC actually casts a large part to accounting firms. Auditors are everywhere in the new Code; furthermore 2 new categories of auditors are created in addition to the Company's Auditors i.e. the Transaction Auditor (İşlem Denetçisi) and Special Auditor. Transaction Auditors have to approve company accounts on formations, mergers, spin-offs etc. Special Auditors will come into play for certain specific situations. All have to be different (distinct) auditing companies. Again, we find this provision slightly excessive; there are no Auditing requirements (for non-listed companies) to this extent in most EU Countries, and certainly not in liberal investment environments like in the UK or the US.

- The new TCC also brings in for the first time an extensive definition of **Group Companies**, which are not defined by reference to shareholding levels but to the notion of "control", including control through contractual arrangements. The new TCC sets forth important requirements in terms of disclosing intra-group transactions and imposes a duty of compensation/adjustment" (Denkleştirme) within the same year, in case a transaction was made to the benefit of the Parent and to the detriment of the Subsidiary. These are generally welcome arrangements for minority investors in a Subsidiary part of a larger group, as it rationalises intra-group arrangements.

B. Emphasis on Professional Management and Responsibility-Accountability:

- In a nutshell, the new TCC brings appropriate new flexibility into the Company's management; both in terms of appointment and decision-making of the Board, and the ability of the Directors to delegate their powers and responsibilities to professional management (through an Internal Directive).

- In line with this novelty, the concept of "absolute responsibility" of the directors is abandoned and in its place a more modern approach of top management accountability (together with "executive directors") is introduced. These new changes are in line with the Corporate Governance principles of proper allocation of responsibility and accountability.

C. Shareholders/Minority Rights:

- A shareholder's right to information has been substantially extended. This is indeed a very welcome improvement. Even any shareholder has a right to ask for a Special Audit on a matter.

- A minority shareholder may also request the substitution of the Company's Auditors if he/she has reason to doubt the Auditors' impartiality, or request the review of certain intra-group transactions and demand compensation if there was abuse, or call for the dissolution of the company under certain circumstances. But as a countermeasure to these extensive rights, the new TCC - rightly so - gives certain rights to the dominant shareholders i.e. shareholders holding 90% of the Company's shares can buy-out a minority shareholder whose reckless attitude or bad faith blocks the operations of the company.

(2) STRUCTURING:

- There are too many novelties concerning structuring to address them all in this brief speech. So, I decided to focus especially on novelties, which may affect "Exit" opportunities for PEs. Here are a few notes:

- First of all, the new TCC introduces for the first time into Turkish commercial law concepts such as Put and Call Options, and even forced Buyout. And for the first time, these are made fully binding and enforceable albeit only for Limited Liability Companies (Ltd Sti). And these companies, even though their organs and decision-making (mechanisms) have been brought more into line with Joint-Stock Companies (A.S) in the new TCC, may still not be the preferred investment vehicles for most investments as the Tax-exposure downside remains.

- Another instrument often requested (or desired) by PE investors which to date was basically a "no-go" for Turkish companies was the Company being able to buy its own shares. This is now allowed, although only for up to 10% in A.S., and 20% in Ltd Sti. This is still an improvement for minority PE investments. Furthermore, the General Meeting (Genel Kurul) can give a 5-year authorisation to the Board to implement this instrument, and in certain situations, the Board can do it directly even without being subject to such an authorisation.

- Another important development is that, theoretically to date, the Board of a Turkish Company could reject new owners following share transfers, arguably, "at discretion". Now, the Board will need to provide an "Important Reason" deriving from the Articles of the company, or will need to ensure that the Company, majority shareholders or even a third party buys the shares proposed by the Selling Shareholder at their "True Value". This should generally reduce the risk of a Board resisting a share transfer and not offering an alternative solution to the minority shareholder wishing to Exit the company.

- Some facilitation has also been brought for being able to go to IPO immediately (within 2 months) after the formation of a company. This may not obviously address the wish to go for an IPO a few years down the road, but in any case, the large amount of IPOs in Turkey this past year as well as those planned for 2011, has shown that regardless of specific provisions on this matter, the IPO exit route is an increasingly viable exit opportunity for PE investments in Turkey.

- And as a last resort, minority shareholders have now been given the right to call for the dissolution of the company if there is a "Just Cause". Of course, dissolution is never a desired option, but the fact that it is "there" now in the law, as a last resort option may, act as a pressure tool and help a minority investor who feels abused by the majority shareholder and is incapable of exiting the company.

- The existing ("old") TCC does not contain any specific restrictions on "financial assistance" but there is a risk, even today, that any financial assistance which has an adverse effect on the relevant company may be found void based on the ultra vires principle. There has been much debate and still some uncertainty on the matter, which was raised most particularly for listed companies.

- The New TCC introduces certain restrictions on financial assistance by prohibiting advancing funds, making loans and providing security and guarantees by a target company for the acquisition of its own shares. However, the new TCC also brings two exceptions to this prohibition: (i) transactions performed by banks or financial institutions – provided that these transactions are performed pursuant to their normal course of business – and (ii) advances, loans

and security provided to the company's employees or parent or sister company's employees in order to acquire the shares of the company. However, even these exceptions are subject to certain limitations (i.e. the legal reserves of the company should be preserved). As this stage, we are continuing our effort to analyse and understand the precise effect of these new provisions on financial assistance (e.g. LBOs) for PE transactions. However, this is certainly a new legal issue that should be carefully taken into account while structuring leveraged acquisitions.

- The new TCC introduces more straightforward rules for merger transactions. Such rules should help accelerate the merger process.

- Two important novelties that have been introduced by the new TCC are the abolition (subject to certain exceptions) of the requirement for the merging companies to be of the same company type (e.g. joint stock company, limited liability company) and the possibility of a squeeze out: if it is specifically set out under the merger agreement and the 90% of the merging company's shareholders vote in that respect, it will be possible to squeeze out the minority shareholders (the remaining 10%) by paying the value of their respective shares.

- The new TCC's focus on transparency passes through to merger transactions, too. Accordingly, certain documentation will be made available by the merging companies to a broad range of interested parties (not to the shareholders of these companies only). These include the merger agreement, the merger report, the audit report and the financial tables of the company. Such information will also be disclosed on the company's official website.

- And finally, another interesting novelty is that the new TCC introduces the concept of "Conditional Capital Increase" which basically sets forth the possibility of Equity Kickers and Debt to Equity Swap. This should allow some interesting new structuring possibilities for non-listed companies.

(3) THE LAW MAY NEED SOME "REFINING TOUCHES" TO AVOID OVER-REGULATION IN CERTAIN AREAS:

- We feel that the Code calls for far too many situations, which require Auditing. For example, company formations for A.S. (and in some cases for Ltd Sti), as briefly mentioned earlier in my speech, will require "certification" of conformity to the Code by a Transaction Audit firm. It is the duty of our Trade Registries to check that formation formalities have been properly complied with, and they are doing this just fine. We are nowadays able to form companies in just 5-6 days; we feel that we should avoid any back tracking on this front. We hope this matter will be re-considered.

- Secondly, we believe that the information to be disclosed on the Websites is too extensive. Commercial information, which is sensitive for the company, should only be disclosed to the Shareholders. And larger exemptions on disclosure should be arranged for small-size companies, in line with, say, the UK or US examples.

- There is, of course, still so much more to say; we are talking of revolutionary changes framed in more than 1,500 articles! I cannot address them all in one speech. Most importantly, please make sure that you are well aware of what the new Code will bring in for your existing and future investments. Make also sure that the Articles and the Shareholders Agreement in your next deal are very carefully tailored to ensure that you have addressed all potential effects of the new Code's mandatory provisions, and that there is no overlap (or ensure a "controlled overlap") between what will be in the Articles and may fall within Turkish jurisdiction and what you may wish to have fallen under a different settlement of disputes forum.