Appraisal Rights Litigation Blog

Guest Post: Reviewing Appraisal Rights in Turkey

By Görkem Bilgin, Managing Associate, Gün + Partners on October 3, 2019

Turkish Commercial Code No. 6102 (TCC), which entered into force on July 1, 2012, brought many novelties to form a modern vision of commercial law, whereas the former rules were inadequate to meet the needs of the practice. The focus was mainly on transparency, auditability, and equivalence among shareholders, and the relevant legislation has adopted new principles with respect to corporate governance and shareholders' rights.

As part of these novelties, the TCC provides categories of important reasons that allow joint stock companies to reject the transfer of registered shares under their respective articles of association (AoA), while the former code did not enable a shareholder who voted against any corporate change in the company to sell its shares to the company at a fair value.

As regulated under Article 493 of the TCC, the company may choose not to approve the share transfer by claiming an important reason stated under the AoA, or to acquire the shares to be transferred on its or a shareholders' or any third party's behalf by offering nominal value of the shares to the transferee.

If the company prefers to use an escape clause, the nominal value of the shares must be offered to the transferee. Since there is no definite basis for how the nominal value of shares will be determined, transferors generally apply to the court for a determination of the nominal value of the shares to be transferred. If the transferee is offered a nominal value and does not reject such value within one month of its acknowledgment, the acquisition offer will be deemed accepted. If the company remains silent for a period of three months from the date of the transferee's application for approval, it will be deemed that the company has approved the share transfer. As long as the company does not approve the share transfer, the ownership of shares will remain with the transferor, together with all monetary and management rights.

In addition to the above, the TCC has further regulated that an escape fund be paid to shareholders in the event of a merger or change in the type of company. In this regard, if the shareholders disagree with a merger or change in the type of company, they have the right to sell their shares to the company at a fair value.

Notwithstanding the above, the capital market legislation specifically regulates the types of significant transactions, obligatory procedures of those, concept of appraisal rights granted to the shareholders, and mandatory takeover bids in publicly held companies.

According to the Communiqué on Common Principles regarding Significant Transactions and the Appraisal Right, mergers, division transactions, change in the type of company, or termination, along with other important transactions listed in article 5, require general assembly (GA) approval. This communiqué details the provision regarding the use of appraisal right. In this context, shareholders who voted against a significant transaction at the GA meeting and had their dissenting vote recorded in the minutes of that meeting will be able to sell their shares to the subject company at a price equal to the average of the weighted average trading prices of the company's shares for the last 30 days prior to the announcement of the transaction.

Similar provisions are also recognized for mandatory tender offers arising from a significant transaction. Pursuant to the Communiqué on Squeeze Out Rights, if the voting rights held by a shareholder reach 98% through a tender offer or otherwise, or such shareholder acquires additional shares when he or she is already above this threshold, then the minority shareholders will have right to sell their shares to the controlling shareholders, and the controlling shareholders will have the right to squeeze out any remaining minority shareholders at a price equal to the 30-day average of the weighted average price of the same class of shares on the stock exchange prior to the controlling shareholders reaching 98%, or if already above 98%, prior to the public announcement of the purchase by the controlling shareholders.

As a final note, the squeeze-out rights cannot be exercised during the first two years after the initial listing of a company's shares on a stock exchange, and the timeline set out in the relevant communiqué will need to be followed for use of such right.

*Lowenstein Sandler thanks **Görkem Bilgin**, Managing Associate at Gün + Partners, for his contributions to this blog.

Appraisal Rights Litigation Blog