Merger, Acquisition, Division and Exchange of Shares Transactions in Share Capital Companies

Okan NETEK
105664033

İstanbul Bilgi University
Institute of Social Sciences
Msc in International Finance

Prof. Dr. Oral ERDOĞAN
2009

Merger, Acquisition, Division and Exchange of Shares Transactions in Share Capital Companies

Okan NETEK
105664033

Tez Danışmanının Adı Soyadı	: Prof. Dr. Oral Erdoğan
Jüri Üyelerinin Adı Soyadı	: Prof. Dr. Ahmet Süerdem
Jüri Üyelerinin Adı Soyadı	: Doç. Dr. Doğan Cansızlar
Tezin Onaylandığı Tarih	: 29/06/2009
Toplam Sayfa Sayısı	: 206

Key Words	Anahtar Kelimeler
1) Mergers	1) Birleşme
2) Acquisitions	2) Devir
3) Division	3) Bölünme
4) Exchange of Shares	4) Hisse Değişimi

Abstract

Allocation of resources to their best use is one of the greatest concerns in finance theory. In this context; merger, acquisition, division and exchange of shares transactions are among the most frequently applied financial transactions in reaching the allocation goal of finance theory. On the other hand, the success of those transactions in reaching the goal of capital allocation depends on the existence of a convenient and reliable legal environment.

This thesis deals with merger, acquisition, division and exchange of shares transactions in share capital companies with respect to various legislation established in Turkey and tries to answer the question of whether there exists a specific harmonization between different legislations regulating those transactions for the applicability of such transactions in practice.

Following a brief introduction part, the Thesis is divided into 10 main sections. Share capital company concept is defined and its borders within the context of this Thesis work is drawn under Section 2. Section 3 answers the question of how merger, acquisition, division and exchange of shares transactions are considered in management literature. Section 4 analyzes the transactions based on Tukish Code of Trade numbered 6762, while Section 5 handles related provisions in Draft Turkish Code of Trade, which is expected to be legitimized in 2009. Section 6 and Section 7 are seperated to explanations with respect to Capital Market Law and Competition Law respectively. Section 8 and Section 9 are related to the taxation results of transactions, while Section 10 deals with the accounting applications for those tansactions. Finally, the Thesis is concluded with the evaluation of emerging picture through collective consideration of arrangements regarding transactions and suggestions about the concrete steps to be taken are put in place.

Özet

Kaynakların en iyi kullanım alanlarına aktarımı finans teorisinin en temel sorunlarından birisini oluşturmaktadır. Bu bağlamda birleşme, devir, bölünme ve hisse değişimi işlemleri kaynakların en iyi kullanım alanlarına dağılımı amacına hizmet eden finansal iş ve işlemlerin en sık başvurulanları arasında yer almaktadır. Öte yandan söz konusu işlemlerin kaynakların en iyi kullanım alanlarına aktarımı hedefini gerçekleştirmedeki başarısı uygun ve güvenilir bir yasal ortamın mevcudiyetine bağlıdır.

Bu tez sermaye şirketleri tarafından gerçekleştirilen birleşme, devir, bölünme ve hisse değişimi işlemlerinin Türkiye'de yerleşik farklı yasal düzenlemeler karşısındaki durumunu irdelemekte ve söz konusu işlemlerin uygulanabilirliğine ilişkin olarak farklı yasal düzenlemeler arasında belirli bir uyumun mevcut olup olmadığı sorusuna cevap aramaktadır.

Tez kısa bir giriş bölümünün ardından temel olarak 10 ana bölüme ayrılmaktadır. İkinci bölümde sermaye şirketinin tanımlaması yapılmakta ve sermaye şirketi kavramının çalışma kapsamındaki sınırları belli edilmektedir. Üçüncü bölümde birleşme, devir, bölünme ve hisse değişimi işlemlerinin işletmecilik literatüründe nasıl ele alındığı sorusu cevaplanmaktadır. Dördüncü bölümde işlemlerin 6762 Sayılı Türk Ticaret Kanunu açısından değerlendirmesi yapılırken, beşinci bölümde 2009 yılında yasalaşması beklenen Taslak Türk Ticaret Kanunu'ndaki düzenlemeler ele alınmaktadır. Altıncı ve yedinci bölümlerde söz konusu işlemlere ilişkin Sermaye Piyasası Kanunu ve Rekabet Kanunu açısından açıklamalar yapılmaktadır. Sekizinci ve dokuzuncu bölümde işlemlerin vergisel sonuçlarına yer verilirken, onuncu bölüm işlemlerin muhasebe uygulamaları karşısındaki durumunu irdelemektedir. Son bölümde birleşme, devir, bölünme ve hisse değişimi işlemlerine ilişkin mevcut düzenlemeler topluca dikkate alındığında ortaya çıkan tablonun genel bir değerlendirmesi yapılmakta ve bu işlemlere ilişkin olarak ilerleyen dönemde atılması beklenen somut adım önerileri ortaya konmaktadır.

Table of Contents

1. INTRODUCTION 13
2. SHARE CAPITAL COMPANIES (SCC) 16
2.1. Definition of Company 16
2.2. Company in Turkish Law System 16
2.3. Share Capital Companies in Turkish Code of Commerce................ 17
2.4. Share Capital Companies in Turkish Code of Corporate Tax 17
2.5. Comparison of Share Capital Company and Partnership Company 18
3. MERGER, ACQUISITION, DIVISION AND EXCHANGE OF SHARES TRANSACTIONS 20
3.1. Place in Management Literature... 20
3.2. Mergers and Acquisitions 20
3.2.1. Types of Mergers 20
3.2.1.1. Structural Mergers 20
3.2.1.1.a. Trust 20
3.2.1.1.b. Holding 21
3.2.1.1.c. Consortium... 21
3.2.1.1.d. Merger.. 21
3.2.1.1.e. Hostile Takeover 22
3.2.1.1.f. Joint Venture 22
3.2.1.2. Non-Structural Mergers 22
3.2.1.2.a. Gentlemen's Agreement 22
3.2.1.2.b. Cartel.. 22
3.2.1.2.c. Consern 22
3.2.1.2.d. Interest Group 23
3.2.2. Literature Review 23
3.2.2.1. Reasons for Mergers and Acquisitions.............................. 23
3.2.2.1.a. Benefiting from Economies of Scale 27
3.2.2.1.b. Having Competent Management 27
3.2.2.1.c. Mergers Being More Advantageous than Internal Growth 28
3.2.2.1.d. Reducing Borrowing Costs.. 28
3.2.2.1.e. Tax Advantages 28
3.2.2.1.f. Acquiring Intangible Assets 29
3.2.2.1.g. Reducing Competition 29
3.2.2.1.h. Pshycological Reasons... 29
3.2.2.1.i. Diversification 29
3.2.2.1.j. Increasing Sales Volume and/or Amount..................... 29
3.2.2.1.k. Increasing Share Value 30
3.2.2.2. Empirical Evidence Regarding Reasons for Mergers and Acquisitions 30
3.2.2.3. Results of Mergers and Acquisitions................................. 32
3.2.2.4. Empirical Evidence Regarding the Financial Results of Mergers and Acquisitions 32
3.2.2.4.a. Stock Price Results 32
3.2.2.4.b. Profitability Results 34
3.2.3. Evolution of Mergers and Acquisitions.................................... 35

3.2.4. Evolution of Mergers in Turkey 37
3.3. Division 38
3.3.1. Types of Division 39
3.3.1.1. Based on Division Method 39
3.3.1.2. Based on Asset Transfer Criteria....................................... 39
3.3.1.3. Based on Share Distribution Method................................. 39
3.3.2. Reasons for Division.. 40
3.3.2.1. Fiscal Reasons 40
3.3.2.2. Economic Reasons... 40
3.3.2.3. Technical Reasons 41
3.4. Exchange of Shares.. 41
3.5. Scope of Study.. 41
4. ASSESSMENT BASED ON TURKISH CODE OF COMMERCE............43
4.1. MERGER.. 43
4.1.1. Definition of Merger in TCC... 43
4.1.2. Types of Merger 43
4.1.3. Requirements for Merger.. 44
4.1.3.1. Companies' Being of Same Type...................................... 44
4.1.3.2. Resolution... 44
4.1.3.3. Balance Sheet... 44
4.1.3.4. Additional Requirements.. 45
4.1.4. Legal Consequences of Merger 45
4.1.4.1.a. The Objection Right of Creditors 45
4.1.4.1.b. Universal Succession.. 46
4.1.5. Special Merger Clauses Regarding Share Capital Companies.. 46
4.1.5.1. Special Clauses For Corporations...................................... 47
4.1.5.1.a. Mergers through Acquisition 47
4.1.5.1.b. Mergers through Establishing a New Company.......... 48
4.1.5.2. Special Clauses for Joint-Stock Comandite Companies and Limited Companies.. 51
4.2. ACQUISITION.. 51
4.2.1. Definition of Acquisition in TCC... 51
4.2.2. Acquisition Clauses for Share Capital Companies.................... 51
4.3. DIVISION.. 52
4.4. EXCHANGE OF SHARES.. 54
5. ASSESSMENT BASED ON DRAFT TURKISH CODE OF COMMERCE 55
5.1. MERGER.. 55
5.1.1. Principle.. 56
5.1.2. Validity of Mergers.. 57
5.1.3. Protection of Shares and Rights in Company............................ 58
5.1.4. Bargain Money 58
5.1.5. Other Clauses Regarding Merger Transaction 59
5.1.5.1. Capital Increase 59
5.1.5.2. New Establishment.. 60
5.1.5.3. Interim Balance Sheet.. 60
5.1.6. Merger Agreement... 60
5.1.7. Merger Report.. 61

5.1.8. The Audit of Merger Agreement and Merger Report................ 63
5.1.9. Examination Right.. 63
5.1.10. Changes in the Asset Structure of Merging Companies.......... 64
5.1.11. Merger Decision 64
5.1.12. Registry in Turkish Commercial Register and Announcement65
5.1.13. Simplified Merger.. 66
5.1.14. Protection of Creditors... 67
5.2. DIVISION.. 68
5.2.1. Principle.. 68
5.2.2. Validity of Division Transaction 68
5.2.3. Protection of Rights and Shares in Divised Company 69
5.2.4. Other Clauses Regarding Division Transactions....................... 69
5.2.4.1. Capital Decrease 69
5.2.4.2. Capital Increase 70
5.2.4.3. Establishment of New Company 70
5.2.4.4. Interim Balance Sheet.. 70
5.2.5. Division Agreement or Division Plan...................................... 71
5.2.6. Content of Division Agreement and Division Plan 71
5.2.7. Division Report... 72
5.2.8. Examination Right... 73
5.2.9. Division Decision 73
5.2.10. Protection of Creditors.. 74
5.2.11. Joint Liability.. 74
5.2.12. Transfer of Employee Relationships 75
5.2.13. Application of Clauses Regarding Merger Through Deductive Reasoning 75
5.2.14. Registry in Trade Registry and Effectiveness 75
5.3. EXCHANGE OF SHARES.. 76
6. ASSESSMENT BASED ON CAPITAL MARKET LAW 77
6.1. The Scope and Aim of Communique Serial: 1 No:31...................... 77
6.2. Legal Basis of Communiqué 77
6.3. Principles Regarding Merger... 78
6.3.1. Preliminary Resolution of the Companies' Authorized Bodies 78
6.3.2. Financial Statement Periods to Be Used As a Basis for the Merger and Special Independent Audit Report 78
6.3.3. Expert Examination 79
6.3.4. The Methods in Calculation of Merger Ratio............................ 79
6.3.5. Expert Institution Examination.. 80
6.3.6. Merger Contract.. 81
6.3.7. Board of Director's Report 81
6.3.8. The Approval of Capital Market Board (CMB) 81
6.3.9. Informing Shareholders 81
6.3.10. The Approval of Merger Agreement and Decision of Capital Decrease by Acquisition 82
6.3.11. Registration with Capital Market Board.................................. 83
6.3.12. The Delivery of Common Shares 83
6.3.13. The Capital Amount To Be Reached After Merger through Acquisition.. 84

6.3.14. The Capital Amount To Be Reached After Merger through Establishing a New Company 84
7. ASSESSMENT BASED ON TURKISH COMPETITION LAW 86
7.1. Mergers and Acquisitions in The Act on Protection of Competition 86
7.2. Cases Considered as Merger or Acquisition 87
7.3. Cases not Considered as Merger or Acquisition 88
7.4. Mergers and Acquisitions Subject to Authorization 89
7.5. Notification of Mergers or Acquisitions 89
7.6. Failure to Notify Merger and Acquisition 90
8. ASSESSMENT BASED ON TURKISH CODE OF CORPORATE TAX ... 92
8.1. MERGERS 92
8.1.1. Place in Code of Corporate Tax 92
8.1.2. Arrangements Regarding Liquidity 93
8.1.3. Merger Period 96
8.1.4. Merger Profit 97
8.1.4.1. 1st Argument on Merger Period 97
8.1.4.2. 2nd Argument on Merger Period 100
8.1.5. Payment of Corporate Tax on Merger Profit 101
8.1.6. Examples Regarding Merger Profit Calculation 102
8.1.6.1. Case 1: Acquired Company and Acquiring Company Has No Subsidiary Relationship 102
8.1.6.2. Case 2: Acquired Company Is a Subsidiary of Acquiring Company 106
8.1.6.3. Case 3: Acquiring Company Is a Subsidiary of Acquired Company 110
8.1.7. Taxation After Merger 113
8.1.7.1. Taxation for Acquired Company 114
8.1.7.2. Taxation for Acquired Company Shareholders 114
8.1.7.3. Taxation for Acquiring Company 115
8.1.8. Issues Related to After Merger Period 115
8.2. ACQUISITION 117
8.2.1. Place in Code of Corporate Tax 117
8.2.2. Examples Regarding Acquisition Transaction 120
8.2.2.1. Case 1: Acquisition Parties Have No Subsidiary Relationship 120
8.2.2.1.a. View 1: Exchange Ratio Calculated Using Current Values 121
8.2.2.1.b. View 2: Exchange Ratio Calculated Using Book Values of Equity 124
8.2.2.2. Case 2: Acquisition Transaction Is Among Parties Having Subsidiary Relationship 125
8.2.3. Capital Market Board Communique Serial:1 No:31 126
8.2.4. Corporate Tax Communique Serial No: 67 130
8.3. DIVISION 133
8.3.1. Full Division 134
8.3.1.1. Examples Regarding Full Division Transaction 136
8.3.1.2. The Results of Full Division for the Shareholders of Divised Company 142

8.3.1.2.a. For Real Person Shareholders ... 142
8.3.1.2.b. For Legal Person Shareholders ... 144
8.3.2. Partial Division ... 144
8.3.2.1. Communique About Partial Division (Propagated by Ministry of Finance and Ministry of Industry and Trade) ... 146
8.3.2.2. Cases Regarding Partial Division ... 146
8.4. EXCHANGE OF SHARES ... 150
8.4.1. Place in Code of Corporate Tax ... 150
8.4.2. Examples Regarding Exchange of Shares Transaction ... 151
9. ASSESSMENT BASED ON OTHER TAX LAWS ... 154
9.1. Code of Value Added Tax Implications ... 154
9.1.1. Value Added Tax in Merger Transaction ... 154
9.1.2. Value Added Tax in Full Division Transaction ... 155
9.1.3. Value Added Tax in Partial Division Transaction ... 156
9.1.4. Value Added Tax in Exchange of Shares Transaction ... 156
9.2. Tax Procedure Law Implications ... 157
9.3. Stamp Law and Charges Law Implications ... 157
9.4. Private Consumption Tax Implications ... 157
9.5. Other Taxation Implications ... 158
9.5.1. Loss Deduction ... 158
9.5.2. Investment Allowances, Rigths and Priveleges ... 159
10. ASSESSMENT BASED ON ACCOUNTING APPLICATIONS ... 160
10.1. General View on Accounting Applications in Turkey ... 160
10.2. Relationship Between Turkish Accounting Standards and Tax Legislation ... 161
10.2.1. Business Combinations in Turkish Financial Reporting Standard 3 ... 161
10.2.1.1. Aim of TFRS 3 ... 161
10.2.1.2. Scope of TFRS 3 ... 162
10.2.1.3. Definition of Business Combination ... 162
10.2.1.4. Accounting Methods ... 163
10.2.1.5. Purchase Method ... 163
10.2.1.6. Identifying Acquiring Company ... 164
10.2.1.7. Determining Cost for Business Combination ... 166
10.2.1.8. Allocation of “Cost for Business Combination” to Acquired Assets, Liabilities and Contingent Liabilities Assumed 169
10.2.1.9. Goodwill ... 171
10.2.1.10. A Special Case: Acquirer Company’s Share in Net Realizable Value of Acquiree Company Assets, Identifiable Assets, Liabilities and Provisional Liabilities Exceeds The Cost of Business Combination ... 172
10.2.1.11. Business Combination Achieved in Stages (Step Acquisitions) ... 172
10.2.1.12. Initial Accounting and Adjustment of Provisional Accounts ... 173
10.2.1.13. Adjusments After Initial Accounting ... 173
10.2.1.14. Recognition of Deferred Tax Assets After Initial Accounting is Complete ... 174

10.2.1.15. Issues Explained in Disclosures 175
10.2.1.16. Provisional Clauses and Effective Date........................ 177
10.2.1.17. Previously Recognised Goodwill 178
10.2.1.18. Pre-Accounted Negative Goodwill.............................. 178
10.2.1.19. Previously Recognised Intangible Assets..................... 179
10.2.1.20. Equity Accounted Investments.................................... 179
10.2.1.21. Appendix A ve Appendix B 180
10.2.2. Comparison of TFRS 3 with IFRS and US GAAP............... 183
10.2.2.1. Date of Combination.. 184
10.2.2.2. Cost of Combination.. 184
10.2.2.3. The Cost of Contingent Combinations 185
10.2.2.4. Allocation of "The Cost of Business Combination" to Acquired Assets, Liabilities and Contingent Liabilities............... 185
10.2.2.4.a. Intangible Assets.. 185
10.2.2.4.b. Reserves for Restructuring 186
10.2.2.4.c. Contingent Liabilities 186
10.2.2.4.d. Minority Shares in Business Combinations............ 187
10.2.2.4.e. Goodwill 187
10.2.2.4.f. Negative Goodwill 188
10.2.2.4.g. Adjustments in Asset and Liability Items............... 188
10.2.2.4.h. Business Combinations Among Companies Having Subsidiary Relationship.. 189
10.2.2.4.i. Business Combination Achieved in Stages 189
10.2.3. Recent Changes in IFRS 3 and FAS 141.............................. 190
10.2.4. Comparison of TFRS 3 and Tax Procedure Law Clauses..... 194
10.2.5. Comparison of TFRS 3 and TCCT Clauses 194
10.2.6. The Results of Turkish Accounting Standard No:12 for Business Combinations.. 196
11. CONCLUSION...197

List of Tables

Table 1: Comparison of Share Capital Companies and Partnership Companies 19
Table 2: The Number of M&A Transactions 38
Table 3: Types M&A Transactions Decreed by TCA between 1999-2006 38

Abbreviations

BRSA : Banking Regulation and Supervision Agency
CMB : Capital Market Board
CML : Capital Market Law
CVAT : Code of Value Added Tax
DCF : Discounted Cash Flow
EEC : European Economic Community
GAAP : Generally Accepted Accounting Principles
IAS : Intenational Accounting Standards
M&A : Mergers and Acquisitions
TAS : Turkish Accounting Standard
TASB : Turkish Accounting Standards Board
TAPC : The Act on Protection of Competition
TCA : Turkish Competition Authority
TCB : Turkish Competition Board
TCC : Turkish Code of Commerce
TCCT : Turkish Code of Corporate Tax
TCO : Turkish Code of Obligation
TCTP : Turkish Code of Tax Procedure
TFRS : Turkish Financial Reporting Standards
TTR : Tukish Trade Register
VAT : Value Added Tax

1. INTRODUCTION

Allocation of resources to their best use is one of the greatest concerns in finance theory. Finance professionals and theoreticians have developed various financial tools and transactions to serve that allocation aim. Merger, acquisition, division and exchange of shares transactions are among the most frequently applied financial transactions in reaching the allocation goal of finance theory. Some companies are engaged in M&A's in order to have more financial resources that will fund new investments, while some companies are engaged in division transactions so that they liquidate their idle assets or businesses and generate fund for new investments or existing businesses.

On the other hand, it is certain that the success of abovementioned transactions in reaching the goal of capital allocation requires a convenient and reliable legal environment. The legal arrangements surrounding those transactions must be consistent with each other so that legal gaps preventing the applicability of those transactions do not arise. Moreover, there must not be frequent modifications in the legislation so that the assumptions and forecasts behind transactions do not lose their rationality for the parties.

There is no doubt that transactions mentioned above have great effect on allocating capital to their best and efficient use. However, there will be no need to discuss the aims and results of those transactions as long as the legislation surrounding them are not carefully arranged and do not support the applicability of transactions. Thus, before discussing whether merger, acquisition, division and exchange of shares transactions can be used as an effective tool for allocating capital to its best use or not in Turkey, we have to deal with legislation surrounding those transactions at first and pinpoint legislation gaps, if exists, having potential to prevent the applicability of transactions in practice.

In Section 2, we will begin explaining what the term of “share capital company” refers to. Definitions regarding the term of “company” will be handled within the context of TCC (TCC) and Turkish Code of Corporate Tax (TCTT). The section will draw the context of this study through answering the question of what share capital company means in this study.

In Section 3, we will define merger, acquisition, division and exchange of shares transactions based on their definition in management literature. Types of transactions and the reason behind those transactions will be explained in detail. Evidences gathered from literature review will also be mentioned in that section.

In Section 4, we will examine the legal ground of merger, acquisition, division and exchange of shares transactions in Turkish Code of Commerce numbered 6762.

In Section 5, we will compare Draft Tukish Code of Commerce clauses regarding transactions with the existing Turkish Code of Commerce clauses and will see that Draft Code involves new arrangements, which are crucial for the application of transactions subject to our analysis.

Section 6 is seperated to Capital Market Board arrangements regarding the transactions subject to our analysis. CMB Communique Serial 1 No:31, which has been prepared by CMB and become effective at 14/07/2003, will be the main guide for our explanations in this section.

In Section 7, we will assess the transactions within the scope of Competition Law system. “The Act on Protection of Competition” numbered 4054 and related Communique numbered 1997/1, which was propagated by Turkish Competition Board, will be our main guidelines in this section.

In Section 8 and Section 9, taxation results of transactions will be discussed in detail. Our explanations will be mainly on Turkish Code of Corporate Tax, however, taxation results according to other tax laws will also be assessed.

In Section 10, the accounting of business combinations will be explained based on TFRSs. The section also includes the comparison of FASB 141, which is the main standard for business combinations in US GAAP system, and TFRS 3.

Finally, the Thesis is concluded with the evaluation of emerging picture through collective consideration of arrangements regarding merger, acquisition, division and exchange of shares and the concrete steps to be taken regarding those transactions are put in place.

2. SHARE CAPITAL COMPANIES (SCC)

2.1. Definition of Company

Company is defined as people's cooperation by means of economic aims and the act of bringing their labour and capital together in order to reach a common purpose. This definition is coherent with the definition made in Article 20 of Turkish Code of Obligations.

Economic aims leading people to establish a company and the means to reach those aims have varied in time proposing a more complex structure, meanwhile that variation caused different type of companies to arise.

Based on their legal form, companies can be divided into two main goups:

1. Partnership Companies
2. Share Capital Companies

In partnership companies, partners are held responsible for company liabilities against all their assets. The development of economic relations and growing business scales have prevented individuals from being liable for all of company debts, hereupon share capital companies, in which the partners are liable to the extent of equity they have brought in, have emerged in time.

2.2. Company in Turkish Law System

Turkish Law System groups companies in two groups like ordinary partnerships and commercial partnerships.

Regulations regarding ordinary partnerships are formulated between Article 520 and Article 546 of TCO, while those regarding commercial partnerships are formulated in TCC. The reason for formulating regulations in seperate Codes is mainly due to the fact that ordinary partnerships do not have legal personality, in other words they do not have a seperate

personality from their partners. On the other hand, commercial partnerships have a legal personality and are regarded seperate from their partners.

2.3. Share Capital Companies in Turkish Code of Commerce

Article 136 of TCC classifies commercial companies as: open company, commandite company, corporation, limited company and cooperative company. TCC includes special regulation for each commercial company type in its related sections.

2.4. Share Capital Companies in Turkish Code of Corporate Tax

While TCC does not define share capital companies seperately, Turkish Code of Corporate Tax numbered 5520, which is a more special act relative to TCC, does make a definition for share capital companies. Article 2/1 in TCCT numbered 5520 defines the persons obliged to Corporate Tax Law and share capital companies are listed as the first among those persons.

According to the definition made in Article 2/1 of TCCT, corporations, limited companies, joint stock commandite companies and similar foreign-based enterprises are listed as share capital companies. In other words, all commercial companies listed in TCC, excluding open company and commandite company, are defined as share capital company in TCCT numbered 5520. It should be noted that the definition in TCCT also covers the foreing-based companies with similar characteristics.

Within above framework, “share capital company” refers to corporations, limited companies and joint stock commandite companies in this study. The other two commercial company type, which are open company and commandite company, will be out of our perspective in the following sections.

2.5. Comparison of Share Capital Company and Partnership Company

According to TCCT application, commercial partnerships are grouped in two main groups, which are partnership companies (open company, commandite company) and share capital companies (limited company, corporation and joint stock commandite company), with respect to the amount of partners' liability against company debts.

Kızılot and Eyupgiller summarize the main differences between partnership companies and share capital companies as below. [1]

Share Capital Company	Partnership Company
Partners could be either natural person or legal person	Partners must be natural person
Liability of partners is limited to the equity brought in. There is no unlimited liability	Partners have unlimited responsibility for all company debts against the 3rd persons.
The minimum initial capital amount is regulated in TCC.	There is no minimum requirement for initial capital level, whereas the capital should be consistent to the field of activity.
Personal labour and commercial prestige are not brought in as capital.	Personal labour and commercial prestige can be brought in as capital.
Article of Association could be amended by the majority of votes.	Article of Association could be amended unanimously
There is governmental supervision on those companies. (TCC Article 274)	There is no governmental supervision according to TCC.
Partner's death, bankruptcy or being put under restraint do not lead to becoming extinct.	Any one of the partner's death, bankruptcy or being put under restraint cause company to become extinct. (TCC Article 521 and 185)
Established for any economic reason or matter	Established only for running commercial business
Capital is divided into joint stocks	Capital is not divided into stocks
Distribution of net income is discretionary	Partners have continous audit right even if net income or loss is not distributed to partners
Management, delegation and auditing rights belong to specific bodies of company	Each partner has the right for management, delegation and auditing.
Voting right is proportional to the partner's share in company.	Each partner has equal right for participating to company resolutions
Transfer of equity share ownership is simpler	Transfer of share ownership is difficult
They may give shares to partners or shareholders	They could not give shares to partners
They are established through registration and announcement after the approval of Ministry of Industry and Commerce	Registration and announcement is enough for establishment, there exists no need for the approval of Ministry of Industry and Commerce

---

[1] Şükrü KIZILOT-Saygın EYÜPGİLLER, "***Şirketler Muhasebesi Vergilendirilmesi Hukuku ve Mevzuatı***", Yaklaşım Yayıncılık, Ankara 1999, pp. 10-12

Share Capital Company	Partnership Company
They are obliged to Corporate Tax. Partners pay taxes on dividends received.	There is no tax obligation for the company , however partners are obliged to Income Tax.
Partners or shareholders get rid of liability when they pay for the capital engaged to provide is paid. Partners are not responsible for company debts against their estate and effects. On the other hand, limited company partners are responsible for unpaid public claims in proportion to their partnership ratio.	The partner joining the company is responsible for all company debts, including the debts before his/her entrance date, jointly and severally with his/her all estate and effects
They must reserve some portion of net earnings according to TCC regulations	They do not need to reserve some portion of net earnings according to TCC regulations
They may benefit from capital market financial instruments like bond, revenue share certificate etc.	They could not benefit from capital market financial instruments like bonds.

Table 1: Comparison of Share Capital Companies and Partnership Companies

3. MERGER, ACQUISITION, DIVISION AND EXCHANGE OF SHARES TRANSACTIONS

3.1. Place in Management Literature

Merger and acquisition transactions take up much room in management literature, while division and exchange of shares transactions are rarely mentioned.

Due to abovementioned fact, our explanations regarding mergers and acquisitons will be more detailed relative to our explanations regarding division and exchange of shares.

3.2. Mergers and Acquisitions

Merger is defined as the combination of two or more companies into one larger company. In its largest definition, merger is the transaction in which two or more companies unify or cooperate economically and legally in order to grow. [2] On the other hand, acquisition is defined as a special type of merger transaction in the management literature.

3.2.1. Types of Mergers

In its broadest classification, mergers are divided into two groups:

1. Structural mergers
2. Non-structural mergers

3.2.1.1. Structural Mergers

3.2.1.1.a. Trust

Trust is the economic consolidation formed through two or more companies coming together in order to act jointly in production and sales issues. In other words, trust is the formation in which companies combine

---

[2] Hüseyin AKAY, ***"İşletme Birleşmeleri ve Muhasebesi"***, Yaylim Matbaası, İstanbul 1997, p.2

losing their economic independence.[3] Trusts, in which management is centred in one hand, are formed aiming for market dominance.[4]

3.2.1.1.b. Holding

Holdings are business formations in which holding company owns the majority of other company's shares so as to have management and audit control.[5]

3.2.1.1.c. Consortium

Two or more companies cooperate temporarily for realizing a project but maintain their legal and economic status.[6]

3.2.1.1.d. Merger

In mergers, two or more companies come together under a newly established company or an existing company. Merger transaction could be in three different forms:

1. Takeover: Acquiring company takes over assets and liabilities of acquired company as a whole. Legal status of acquired company ceases and all estate of acquired company passes to acquired company within the meaning of universal succession.
2. Acquisition: Acquiring company purchases the assets of acquired company entirely or partially. Acquisition could be in the form of asset purchase or equity purchase. Legal status of acquired company continues after the transaction.
3. Consolidation: Two or more companies come together under a newly-established entity. Companies joining newly-established entity lose their legal status.

---

[3] Yılmaz GÜZEY, ***"Şirket Birleşmeleri Örgütsel Yapı Değişiklikleri ve Getirebileceği Sorunlar ve Önlemler"***, İstanbul Üniversitesi, Yayınlanmamış Doktora Tezi, 1998, p.17
[4] Osman Kürşat ONAT, op.cit.
[5] Oktay ALPUGAN, op.cit.
[6] Hüseyin AKAY, op.cit.

3.2.1.1.e. Hostile Takeover

Acquiring company purchases the majority of acquired company shares to obtain control and management of acquired company without the consent of acquired company shareholders or management.

3.2.1.1.f. Joint Venture

Companies, which donot have sufficient resources to implement a project, bring their resources together establishing a new entity and develop their project under that entity. [7]

3.2.1.2. Non-Structural Mergers

3.2.1.2.a. Gentlemen's Agreement

Gentlemen's agreement is a protocol signed between companies in order to cooperate, limit competition and strengthen their position against the market. The agreement is usually made verbally. [8]

3.2.1.2.b. Cartel

Two or more companies operating in the same industry act together in order to decrease or eliminate competition and increase their profit. The companies keep their legal and economic stance. [9]

3.2.1.2.c. Consern

Consern is a type of merger in which companies lose their economic independence while they keep their legal stance.[10] Member companies aim to increase their competitive advantage by being stronger both financially and technically.

---

[7] Thompson, Strickland, " Strategy and Policy, Concepts and Cases", Business Publications Inc., Dallas 1978, p.78
[8] Hüseyin AKAY, op.cit. p24
[9] Gültekin RODOPLU, Ali AKDEMİR, op.cit.
[10] Osman Kürşat ONAT, op.cit.

3.2.1.2.d. Interest Group

Family members and individuals having very close relationships collect the shares of various companies so that those companies are managed in accordance with a collective aim.[11]

3.2.2. Literature Review

Management literature focusing on mergers and acquisitions are grouped as:

1. Literature regarding the reasons for mergers and acquisitions
2. Literature regarding the results of mergers and acquisitions

3.2.2.1. Reasons for Mergers and Acquisitions

While the only aim for merger and acquisition transactions seems growth in the largest definition above, there are reasons other than growth for mergers and acquisitions.

The number and importance level of reasons varies according to socioeconomic characteristics of countries, company characteristics and time.[12] Even the functional perspective maintained in analyzing a merger transaction will affect our interpretation of reasons for merger transaction. For instance, a finance person will see the main reason as increasing share price or reducing cost of capital, while a marketing manager will see the reason as a chance for increasing penetration in existing markets or increasing market share and entering new markets.

Kurnaz, based on his experiences he had in application, lists the reasons behind mergers and acquisitions as below.

---

[11] Hüseyin AKAY, op.cit. p.24
[12] Nurhan AYDIN, ***"İşletme Birleşmesinde Finansal Analiz ve Bir Uygulama Örneği"***, TOBB Yayını, Ankara 1990, p.14

1. Anxiety about coping with the competition or desire for avoiding competition,
2. The idea of monopoly profit being greater than competitive market profit
3. Anxiety about inadequate capital for growth,
4. The idea that profit margin will not generate sufficient capital
5. The anxiety that knowledge level is behind the level in the market
6. The idea that capital will not be enough for product research and development
7. Increasing the market value of company
8. Benefiting from the economies of scale
9. Avoiding financial distress
10. Seeing the future management inadequate
11. Sharing branch network
12. Increasing company prestige
13. Adding value to company's excess funds
14. Benefiting from tax advantages
15. Saving personnel costs

Kurnaz asserts that the most important reason leading companies to merger and acquisition transactions is the desire for benefiting from scale and market economies. The fact that companies get more profitable after merger and acquisition transaction is partially due to the lack of competition, or it could be due to the organisation of management experiences on the basis of efficiency. Tax benefits, accounting rules,

employment law benefits, conveniences in capital markets and macroeconomic developments also have clear effect on merger decisions. [13]

Globalization and developing communication tools have changed the market conditions. Increasing competition forces companies to specialize and be economically strong. Many companies see mergers as a way of coping with competition so that mergers and acquisitions have been seen frequently in recent years. In fact, the disappearance of economic borders between countries and the transformation of competition for market control, from national level to international level as a result of fastly spreading technology and knowledge, have prepared the core dynamic behind mergers. There are similar reasons behind the increasing number of merger transaction both in Turkey and the World. [14]

Sherman lists 10 reasons behind merger and acquisition transactions as below:

1. Mergers can be the most effective and efficient way to enter a new market, add a new product line, or increase distribution reach.
2. One key trend in M& A is to acquire a company to access today's "knowledge worker" and to obtain the intellectual property (Many technology companies, such as Cisco, Google and Yahoo!, pursue acquisitions as a means to get the employees in addition to the products and intellectual property.
3. The number of financing sources has continued to grow giving middle market companies more access to capital than in the past.
4. Mergers and acquisitions are being driven in many cases by a key trend within a given industry, such as rapidly

[13] Hikmet KURNAZ, op.cit.
[14] Hikmet KURNAZ, op.cit.

changing technology, fierce competition, changing consumer preferences, the pressure to control costs

5. Some deals are motivated by the need to transform corporate identity. In 2003, videogame company Infogrames, for example, gained instant worldwide recognition by acquiring and adopting the old but famous Atari brand.
6. Many deals are fueled by the need to spread the risk and cost of developing new technologies (such as in the communications and aerospace industries), research into new medical discoveries (such as in the medical device and pharmaceutical industries) and gaining access to new sources of energy (such as in the oil and gas exploration and drilling industries)
7. The global village has forced many companies to explore mergers and acquisitions as a means to to develop an international presence and expanded market share. This market penetration strategy is often more cost-effective than trying to build an overseas operation from scratch.
8. Many recent mergers and acquisitions come about with the recognition that a complete product or service line may be necessary to remain competitive or to balance seasonal or cyclical market trends. Transactions in the retail, hospitality, food and beverage, entertainment, and financial services industries have been in response to consumer demand for ”one-stop shopping.”
9. Many deals are driven by the premise that it is less expensive to buy brand loyalty and customer relationships than it is to build them. Buyers are paying a premium for this intangible asset on the balance sheet, which is often referred to as goodwill. In today’s

economy, goodwill represents an asset that is very important but which is not adequately reflected on the seller's balance sheet. Veteran buyers know that long-standing customer and other strategic relationships that will be conveyed with the deal have far greater value than machinery and inventory.

10. Some acquisitions happen out of competitive necessity. If an owner of a business decides to sell a business, every potential buyer realizes that their competitors may buy the target, and in so doing, must evaluate whether they would prefer to be the owner of the business for sale.[15]

Yoruk, in his thesis work, classifies the reasons for merger transaction under the headings of synergy, diversification, economic desires, tax advantages, resource utilization and managerial aspects.

In sum, the reasons leading to merger and acquisition and the order of their importance vary widely. We can group the most common reasons for mergers and acquisitions as below:

3.2.2.1.a. Benefiting from Economies of Scale

Scale economies is the positive result gathered through increasing company size or production scale. Decreasing average fixed costs through increasing production scale or capacity utilization rate are the most common reasons for especially horizontal mergers.

3.2.2.1.b. Having Competent Management

Merger and acquisition is the only way for transfering management knowledge providing that the managers are an indivisable part of the organisation they work for. Transfer of human resources in a merger transaction and the effective management of human resource potential have been drawing attention in recent years.

---

[15] Andrew SHERMAN, *"**Mergers and Acquisitions from A to Z 2nd Edition**"*, Amacom, USA, 2005

3.2.2.1.c. Mergers Being More Advantageous than Internal Growth

"Growth through mergers and acquisitions" is an alternative to "internal growth" for companies. The advantages which mergers have relative to internal growth makes external growth desire as one of the most important merger reason. "Growth through mergers" is usually faster, less costly and easier to finance when compared to internal growth.

3.2.2.1.d. Reducing Borrowing Costs

Reducing borrowing costs is another common reason for M&A's. A company will be bigger in size after merger and acquisition transaction and that will help the company be perceived less risky by creditors. As less risky perception means lower cost of borrowing, the cost of borrowing will start a decline trend.

In some instances, like a public company merging with a private company, private company will enjoy the benefits of alternative financing instruments (bond issuing, equity issuing) through lowering the cost of capital.

3.2.2.1.e. Tax Advantages

Tax advantages, which is another common reason for merger and acquisition transactions, could be in different forms depending upon the local regulations varying for each country.

The most widely-known tax advantage is allowing tax-free transactions subject to certain conditions. That kind of advantage induces especially group companies having complex structure and aiming for reaching a more transparent and simpler structure.

Another well-known tax advantage is loss deduction. Many countries' regulation allows acquirer company to deduct the previous year losses of acquired company. That advantage induces mergers and acquisitions between the high-profit companies and the companies with previous year losses. Tax authorities put some restrictions and clauses for loss deduction in order to avoid misuse of that advantage.

3.2.2.1.f. Acquiring Intangible Assets

In some instances, companies merge in order for acquiring intangible assets. Merger or acquisition transaction becomes the only solution especially when any one company has intangible rights, the transfer of which is possible only through mergers (production licences etc.). Goodwill holds significant amount of merger cost in those instances.

3.2.2.1.g. Reducing Competition

In oligopolistic markets, market leaders, which desires for more control on the quantity and price of industry output, merge with or acquire the followers in the industry.

3.2.2.1.h. Pshycological Reasons

The managers' desire for controlling greater size organizations could rarely be the reason behind transactions. That problem is also known as "agency problem" in finance theory.

3.2.2.1.i. Diversification

Depending on "putting the eggs in diferent shelves" strategy, companies tend to invest in different industries and businesses instead of growing in the same industry. Reducing risk through diversification is a motive for especially conglomerate mergers.

3.2.2.1.j. Increasing Sales Volume and/or Amount

Some merger transactions are realized for increasing only scales. The most frequently known scale target is net sales. Companies believe that mergers enable entering new markets, increasing penetration, being price maker and all those factors help net sales scale to increase to higher levels.

3.2.2.1.k. Increasing Share Value

The share price of merged entity could be more than the sum of individual company's share prices. [16] That is mainly due to the market's positive reaction to merger transaction.

3.2.2.2. Empirical Evidence Regarding Reasons for Mergers and Acquisitions

Merger motives have triggered far less theoretical efforts than merger consequences. But still the field has brought forth a total of seven different theories: efficiency theory, monopoly theory, valuation theory, empire building theory, process theory, raider theory, disturbance theory.[17]

In essence, management literature contains three major motives for mergers and acquisitions: the synergy motive, the agency motive and the hubris motive. The synergy motive suggests that M&A's occur because of economic gains that result by merging the resources two firms. The agency motive suggests that M&A's occur they enhance the acquirer management's welfare at the expense of acquirer shareholders. The hubris motive suggests that managers make mistakes in evaluating target firms and engage in acquisitions even when there is no synergy.[18]

Bhide (1993) examined the motives behind 77 acquisitions in 1985 and 1986 and reported that operating synergy was the primary motive in one-third of those takeovers.

A number of studies examine whether synergy exists and, if it does, how much it is worth. If synergy is perceived to exist in a takeover, the

---

[16] Osman Kürşat ONAT, ***"Devralma Yoluyla Şirket Birleşmelerinde Birleşme Sonrası Mali Perfomansın Oranlar Yöntemiyle Belirlenmesi",*** Süleyman Demirel Üniversitesi Yüksek Lisans Tezi**,** 2006
[17] Narayanan-Berkovic, ***"Motives for Takeovers"***, The Journal of Financial and Quantitative Analysis, September 1993, pp.347-362.
[18] Narayanan-Berkovic, **op.cit.**

value of the combined firm should be greater than the sum of the values of the bidding and target firms, operating independently.[19]

Malatesta (1983) finds that M&A’s are value increasing transactions for target firms but value decreasing transactions for acquiring firms and concludes that takeovers are motivated by agency.

Lewellen-Loderer-Rosenfeld (1985) find that acquirer returns from acquisitions are positively related to the level of management ownership in the acquiring firm.

Morck-Schleifer-Vishny (1990) find that acquisitions driven by diversification and growth motives result in lower acquirer returns.

Firth (1978) tested synergism in mergers and used British merger data between 1972-1974. He concluded that in general there is no synergy created by combining firms. Firth (1980) also found evidence that is consistent with hubris motive.

Literature also includes works on specific merger motives like tax motive, managerial incentives, stakeholder expropriation etc.

Romano (1992) reviews literature on tax incentives for the M&A’s up to about 1990 and found little support for the hyphothesis that tax changes had a significant effect on takover activity.

Morck, Shleifer and Vishny (1990) present evidence consistent with the notion that managerial incentives may drive some mergers that ultimately reduce the long-run value of the firm.

Shleifer and Summers (1988) suggest a number of other motives for mergers and acquisitions in which the shareholders may gain at the expense of other stakeholders.

Romano (1992) evaluated the various stakeholder arguments based on the financial/economics literature. While the literature is not always conclusive, Romano generally finds the evidence to be inconsistent with the

---

[19] Aswath Damodoran, ***“Invetment Valuation”***, 2nd Edition, 2002, p.987.

theory that takeovers are motivated by a desire to expropriate gains from taxpayers, bondholders, labor, or consumers.

3.2.2.3. Results of Mergers and Acquisitions

The results of mergers and acquisitions varies for each transaction depending mainly on the reasons behind transaction. The results could be grouped as financial results, operational results and organizational results.

Financial Results: Some literature focuses on the effect of transactions to stock prices and profitability figures.

Operational Results: Some literature focuses on the effect of transactions to cost structure, business scale etc.

Organizational Results: Some literature deals with human resource strategy's effect on the success of M&A's etc.

3.2.2.4. Empirical Evidence Regarding the Financial Results of Mergers and Acquisitions

3.2.2.4.a. Stock Price Results

Many theoreticians studying financial results of mergers and acquisitions seems to focus on especially stock price results of transactions.

In literature, stock price results of transactions are considered in two dimensions: short term results (3-month or shorter period after transaction becomes valid) and long term results (3-years or longer after transaction becomes valid). However, long term results are seen to be the main determinant of successfulness of a transaction.

After studies on short- term results, it is concluded that stock price of acquired company increases and stock price of acquiring company remains almost constant after merger or acquisition announcement.[20] There exists

---

[20] Agrawal,-Jaffe, ***"The Post Merger Performance Puzzle, Advances in Mergers and Acquisitions"***, Volume 1, 2000, p.7-41.,

many works focusing on short term stock price results of mergers and acquisitions, the result varies for each work.

Jensen and Ruback (1993) measures the increase in the stock price of acquired company as 30 per cent, while it is measured as 4 per cent for acuiring company.

Asquit (1983) measures return as 20 per cent for acquired company, while it is 2 per cent for the acquiring company.

Bhagat and Hirslefer (1996) measures return as 45 per cent for acquired company and 1.3 per cent for acquiring company.

Both Schwert (1996) and Weston (1996) measures 30 per cent return for acquired company. Schwert (1996) measures 0 per cent return for acquiring company, while Weston measures it as 1 per cent.

Bradley, Desai and Kim (1988) measures return for acquired company as 19 per cent, while it is measured as 4 per cent for acquiring party.

The works focusing on the long term stock price results of mergers and acquisitions donot come to same conclusion. Asquit (1983), Rau and Vermaelen (1998), Frank-Haris-Titman (1991) and Agrawal-Jaffe-Mandelker (1992) concludes that merging or acquiring entity has lower return than indusrial average in the long term period. On the other hand, Healy-Palepu-Rubback (1991) and Weisbach (1992) concludes that merging entity has higher return than industry avarage.

Confronting conclusions regarding long term stock price results of mergers and acquisitions are most probably due to diminishing effect of transactions in the long term and factors other than transactions could be the determinant of stock prices in the long term.

Some works concantrate on succesful mergers and acquisitions and try to determine the fectors leading to success. Bieshaar- Knight- Wassenaer (2001) analyzes 740 transactions, and comes to a conclusion that stock price increases depends on three factors:

1. Type of M&A
2. The industries that transaction parties operate
3. The size of transaction parties

The investors set their assumptions based on above factors and have their position in the financial market. [21]

3.2.2.4.b. Profitability Results

Geoffrey Meeks (1977) explored the gains from merger for a sample transactions in UK between 1964 and 1971. The study draws upon a relatively large sample and tests the change in profitability following the merger. Meeks concludes that the mergers in his sample sufferred a mild decline in profitability. The results of Meeeks are summarized in below table.

Year of Transaction	**Change in Profitability versus Industry and versus Predeal Performance**	**Percentage of Observations in which Change in Profitability Is Negative**
Year of Transaction	%14,80	%33,80
Year +1	-%1,50	%53,60
Year +2	-%1	%51,70
Year +3	-%5,80	%52,70
Year +4	-%9,80	%66,0
Year +5	-%11,00	%64,20
Year +6	-%6,70	%52,30
Year +7	-%7,30	%61,90

[21] Hans Bieshaar, Jeremy Knight, Alexander Wassenaer, ***"Deals that Create Value",*** The Mckinsey Quarterly, January 2001, p.65-70.

Mueller (1980) edited a collection of studies of M&A profitability across seven nations. His research tested theories about changes in size, risk, leverage and profitability. Mueller concluded that acquirers show no significant differences after transaction.

	Change in Profitability of Acquirers Compared With a Randomly Selected Nonacquiring Firm (% Difference-% Positive)	**Change in Profitability of Acquirers Compared With a Nonacquiring Firm Matched on Size and Industry (% Difference-% Positive)**	**Change in Profitability of Acquirers Compared with What It Would Have Been If They Had Followed Industry Trends (% Difference-% Positive)**
Pretax Return on Equity	-%8,40 - %53	-%12,80 - %48	-%6,50 - %3
Pretax Return on Sales	-%2,90 - %60	-%3,40 - %48	-%3,80 - %3
Aftertax Return on Equity	%1,10 - %57	-%0,2 - %55	-%6,50 - %4
Aftertax Return on Equity	%0,30 - %70	%2 - %58	-%0,1 - %10

3.2.3. Evolution of Mergers and Acquisitions

In the light of globalization, we have been witness of an integration movement affecting industrial groups. In this context, we see an increasing trend in merger, acquisition and takeover transactions. [22]

History of World Economics indicates that mergers has started with multinational company transactions.[23] Mergers were first seen at the end of

---

[22] Abdulkadir GÖKTAŞ, ***"Dünyada ve Türkiye'de Şirket Birleşmeleri ve Hukuksal Boyutu"***, Yaklaşım, Aralık 2001

[23] Hikmet KURNAZ, op.cit.

18th century in US. The mergers in those period were aiming for company solidarity. Small and medium size companies' endeavour to compete with large companies in heavy industries caused those period mergers be in the form of horizontal mergers.[24]

As a result of declining profit margins in 19th century, multinational companies applied mergers, in which small shares were given to local companies, for making local regulations in favor of their aims. Merger wave initiated by multinational companies necessitated the preparation of legal infrstructure. [25] Large portion of mergers in 1920s were in the form vertical mergers in food, retail, mining and steel industries. Advances in communication, transportation and trade were the factors behind merger wave in those period. [26]

There were so many and striking merger transactions between 1945 and 1968. The mergers in those period were in medicine, chemicals, food, paper and electronics industries. After 1968, the merger wave cut speed due to the antitrust laws enacted in that year. [27]

While the mergers were a growth method in US in early 1900s, they had not been known or implemented in Europe until the 2nd World War. Starting from 1950s, Europe recognized that mergers could be helpful from both macroeconomic and microeconomic perspective. England has seen an intense merger movement in 1970s. [28]

1980s were the years that mergers picked up speed both in US and in Europe. High energy costs, increasing foreign competition as a result of liberalization movement and advancing technology were among the reasons behind merger wave in 1980s.

---

[24]Abdulkadir GÖKTAŞ, op.cit.
[25] Hikmet KURNAZ, op.cit.
[26] Ebru ARPACIK, *"Şirket Birleşmeleri"*, Yıldız Teknik Üniversitesi, Yüksek Lisans Tezi, 1998, pp.126-127
[27] Ali İhsan ÇETİN, *"Şirket Birleşmelerinde Örgütsel Değişim"*, Karadeniz Teknik Üniversitesi, Yüksek Lisans Tezi, 1998, p.20
[28] Hikmet KURNAZ, op.cit.

Today, merger and acquisition transactions are mostly seen in the trio involving US, Europe and Japan. [29]

3.2.4. Evolution of Mergers in Turkey

In 1933, Türk Ticaret Bankası merged with Üsküdar Bankası and that was the first merger transaction in Turkish Republic history. Mergers in Turkey were seen especially in public sector and banking industry after 1950s. There were also foreign company merger transactions in order to transfer new technology in those period.[30]

Starting from the second half of 1980s and in 1990s, Turkish companies started to merge with foreign companies. Foreign direct investment coming in Turkey in recent years have been in the form of joint venture or merger. Especially after 1986, foreign based companies concentrated on tourism, electronic, food, automotive, banking, insurance, and telecommunication industries.[31]

The most recent data regarding M&A's in Turkey is available at Turkish Competition Authority web site, www.rekabet.gov.tr. As we will mention in later sections, Competition Authority approval is a must for mergers and acquisitions over a certain size. That makes Competition Authority data an overall and updated data for merger and acquisition transactions in Turkey. Below statistics, which are obtained from Competition Authority data, gives us some idea about the trend of mergers and acquisitions in Turkey.

The number of M&A transactions investigated and decreed by Turkish Competition Authority between 1999-2006 is as below:

---

[29] Abdulkadir GÖKTAŞ, op.cit.
[30] Abdulkadir GÖKTAŞ, op.cit.
[31] M. Murat ÜNLÜ, *"Şirket Birleşmeleri ve Finansal Analizi"*, İstanbul Üniveersitesi, Yüksek Lisans Tezi, 1996, p.74

1999	2000	2001	2002	2003	2004	2005	2006
68	100	86	103	106	122	170	186

Table 2: The Number of M&A Transactions

Types of M&A transactions decreed by Turkish Competition Authority (TCA) between 1999 and 2006 are summarized below. Acquisition is higlighted as the most frequently realized transaction type.

	1999	2000	2001	2002	2003	2004	2005	2006
Merger	5	13	6	14	7	7	5	4
Acquisitions	56	70	73	83	76	88	122	138
Joint Venture	5	11	7	6	9	8	8	23
Privatization	2	6	0	0	14	19	35	21
Total	**68**	**100**	**86**	**103**	**106**	**122**	**170**	**186**

Table 3: Types M&A Transactions Decreed by TCA between 1999-2006

3.3. Division

Division is such a transaction that a company puts some part of its assets as capital in kind to another company or companies. Division, in one sense, is a type of restructuring transaction. In management theory, division transaction could take different names like split-up, spin-off or split-off.

Split-up is a corporate action in which a single company splits into two or more separately run companies. Shares of the original company are exchanged for shares in new companies. After a split-up, the original company ceases to exist.

Spin-off is the creation of an independent company through the sale or distribution of new shares of an existing business/division of a parent company. Spinoff is a type of divestiture.

Split-off is a type of corporate reorganization whereby shares of a subsidiary are exchanged for shares in parent company.

3.3.1. Types of Division

Division transaction could be categorized in three groups based on division method, asset transfer criteria and the method of share distribution.

3.3.1.1. Based on Division Method

1. **Division through Transfer:** Divised company assets subject to transaction are transferred to existing company or companies.
2. **Division through Establishing a New Company:** Divised company assets subject to transaction are transferred to newly established company or companies.
3. **Mixed Division:** Part of divised company assets subject to transaction is transferred to an existing company, while remaining part is transferred to newly established company or companies.

3.3.1.2. Based on Asset Transfer Criteria

1. **Complete Division (Split-Up):** Divised company transfers all of its assets and liabilities to two or more existing or newly established companies.
2. **Partial Division (Split-off):** Divised company transfer certain assets to one or more existing or newly established company as capital in kind. Shares in exchange for that capital in kind are either kept by the transferor company or issued to its shareholders.

3.3.1.3. Based on Share Distribution Method

1. **Symetric Division:** Transferee company distributes its own shares to the shareholders of transferor company in proportion to equity share ratio in transferor company.

2. **Asymetric Division:** Equity shares of transferee company is distributed to shareholders of transferor company using different criterias.

3.3.2. Reasons for Division

Reasons for division transaction could be grouped under three categories: fiscal reasons, economical reasons and technical reasons.

3.3.2.1. Fiscal Reasons

Fiscal reasons behind division transaction could be listed as below:

1. A company in weak financial position may want to distribute its losses
2. If a company does not have enough investment resources, it may prefer combining its existing assets with other company's assets so that they are used more efficiently
3. Company may choose to transfer some assets in order to convert net loss position to a more efficient and profitable position
4. A company may want to transfer its previous year losses to another company that needs them to benefit from tax advantages

3.3.2.2. Economic Reasons

Economic reasons behind division transaction could be listed as below.

1. The industrial need to seperate company operations
2. The need and desire for diversifying risk and responsibilities in the fields that the company operates

3. To reverse the negative effects of an unsuccessful merger transaction
4. The demand structure changes in the fields that company operates

3.3.2.3. Technical Reasons

Technical reasons behind division transaction could be listed as below:

1. Inefficiencies in production process
2. Productive assets may lose their attributes
3. Company may have complex and intransparent corporate structure due to the uncontrolled fast growth

3.4. Exchange of Shares

Exchange of shares transaction is not seperately defined in management literature.

TCCT numbered 5520 defines transaction as an operation whereby a fully liable equity company acquires a holding in the capital of another equity company such that it obtains the majority in the management and capital stock of that company, in exchange for the pro-rata issue to the shareholders of the latter company securities representing the capital of the former company.

We will mention about exchange of shares transaction in further detail in the following sections.

3.5. Scope of Study

As mentioned above, management literature contains several works on mergers and acquisitions. The depth and variety of literature is directly related to the applicability of transactions. The history of business

restructuring transactions is too old in both US and Europe and as a result of which management literature on those issues are developed in those countries.

When we consider the issue from Turkey point of view, we donot see as much depth and variety as there exists in US and Europe. That is because the history of those transactions is not too old in Turkey. The legislation covering transactions has not yet established fully in Turkey. There exists some gaps in certain legal arrangements and also some inconsistencies between existing arrangements, which prevents the application of transactions in practice.

There is no doubt that merger, acquisition, division and exchange of shares transactions are very effective tools for realizing capital re-allocation in an economy. Enjoying the benefits of those transactions more requires a carefully designed and consistent legal arrangement set. It is sure that the size and number of those transactions will increase if and only if a consistent legal arrangement set is maintained. Depending on that, the management literature on those issues will also develop in time.

Due to abovementioned fact, we will concentrate on legislation environment surrounding transactions more in later sections. We will analyze existing legislation set for transactions in Turkey, pinpoint deficiencies and put forward required steps to be taken in the future.

It is sure that the number of transactions will increase after a reliable and consistent legislation environment is set and that will give us the chance of discussing the reasons and results of transactions in the future.

4. ASSESSMENT BASED ON TURKISH CODE OF COMMERCE

4.1. MERGER

4.1.1. Definition of Merger in TCC

Article 146 of TCC defines merger transaction as *"two or more trade companies' coming together for establishing a new company or one or more trade companies' joining an existing trade company"*.

4.1.2. Types of Merger

When we assess the merger definition in Article 146 of TCC and liquidation clauses between Article 451 and Article 454 of TCC together, mergers could be in two forms according to TCC application.

1. **Merger through Acquisition:** A company transfers all of its assets and operations to another company as a whole and shareholders are given the equity shares of acquiring company in exchange. In the end, the company or companies transferring all of its/their assets is/are dissolved without liquidation and two or more companies become one company. [32]
2. **Merger through Establishing a New Company:** At least two companies transfer all of their assets and operations to a newly-established company as a whole and are dissolved without liquidation at the end. The shareholders of dissolving company receive the equity shares of newly-established company in exchange. As a result of dissolving without liquidation, two or more

[32] Hikmet Sami TÜRK, "***Ticaret Ortaklıklarının Birleşmesi***", Banka ve Ticaret Hukuku Araştırma Enstitüsü Yayın No.185, Ankara 1986, p.27

companies joining the merger transaction become one company. [33]

4.1.3. Requirements for Merger

Article 147, Article 148 and Article 149 of TCC mention about the requirements of a merger transaction.

4.1.3.1. Companies' Being of Same Type

Article 147 of TCC denotes that merger transaction must be between the companies of same type. Open companies and commandite companies are accepted as of same type in the application of merger transaction, so do corporations and joint-stock comandite companies.

Consequently, being of same type means that both parties in a transaction should be either partnership company or share capital company. According to TCC, it is not possible for a partnership company to merge with a share capital company and vice versa.

4.1.3.2. Resolution

Article 148 of TCC cites that parties of a merger transaction must resolve upon the amendment of articles of association and that resolution must be registered and announced in Trade Registry Newspaper. Parties must abide with the TCC clauses regarding the amendment of Articles of Association.

4.1.3.3. Balance Sheet

Article 149 of TCC necessitates parties of a merger transaction to announce their balance sheet. Dissolving company/companies in a merger

---

[33] Hikmet Sami TÜRK, op.cit.

transaction must add a declaration statement about the payment plan of its/their debt to its/their balance sheet as an attachment.

Balance sheet preparation based on a patterned sample and the announcement of those balance sheets protect not only the rights of shareholders but also the rights of creditors.

4.1.3.4. Additional Requirements

In addition to abovementioned requirements;

1. Companies in a merger transaction must not be in annulment or dissolution phase and also must maintain at least 1/3 of their paid-in capital,
2. Companies in a merger transaction must not be in bankruptcy stage,
3. Providing that the companies in a merger transaction are established for a certain period of time, that predetermined time must not end as of the date for merger. [34]

4.1.4. Legal Consequences of Merger

Article 150 and Article 151 of TCC explain legal consequences of a merger transaction.

4.1.4.1.a. The Objection Right of Creditors

Article 150 of TCC states that a merger decision will be effective after three months from the announcement date.

Nonetheless, a merger transaction could still be effective since the announcement date of merger decision under three circumstances.

---

[34] Şerafettin ŞİRİN, *“**Ticaret Hukukunda Şirketler ve Özel Statülü Kurumlar**”*, İstanbul 1992, p.121

1. If the merging companies fulfill their debt before the announcement date
2. If total debt amount is deposited to Central Bank or any other equivalent bank
3. And if the creditors agree with the merger transaction

If total debt amount is deposited to Central Bank or any other equivalent bank, the information regarding the usage of that facility must be announced.

Any one creditor of merging companies may object to merger decision through litigation in three months starting from the announcement date. In order for merger transaction being effective, either creditors must quit their objection or the court decision regarding the objection of creditors must have certainty. In some circumstances, merger could be effective if parties provide a colleteral in the amount appraised by Court.

4.1.4.1.b. Universal Succession

Article 151 of TCC orders universal succession principal. At the end of the 3-month period mentioned above or upon the merger's being effective, acquiring company or newly-established company replaces the company or companies dissolving without liquidation. All assets and liabilities pertaining to dissolving companies get through acquiring company or newly-established company according to the universal succession principal.

4.1.5. Special Merger Clauses Regarding Share Capital Companies

General clauses regarding mergers are set between Article 146 and Article 151 of TCC. When special clauses of TCC regarding limited companies and corporations are revised, special clauses are seen for different type companies.

4.1.5.1. Special Clauses For Corporations

TCC regulates clauses regarding corporations at 8 chapters in the 4th Section of TCC. Chapter 7 of 4th Section, which explains dissolution and liquidation of corporations, involve clauses regarding the dissolution without liquidation.

4.1.5.1.a. Mergers through Acquisition

Article 451 of TCC defines "acquisition" transaction and lists the mandatory clauses to be abided by when a corporation dissolves after being acquired with all its assets and liabilities as a whole.

1. Board of acquiring company calls dissolving company creditors according to the clauses regarding liquidation,
2. Assets and liabilities of dissolving company are managed seperately by acquiring company until the debt of dissolving company is paid or colleteralized,
3. Board members of acquiring company are jointly and severally bound for assuring to manage the assets of dissolving company seperately,
4. During the period assets are managed seperately, the authority of competent court is everlasting for the suits against dissolving company,
5. Assets acquired and managed seperately are regarded dissolving company assets for the relationships between dissolving company creditors and acquiring company creditors; in case acquiring company goes banktruptcy, dissolving company assets form a seperate group and are liquidated for paying only dissolving company debt,
6. The assets of acquiring company and acquired company are combined only if distributing dissolving company assets to shareholders is legitimate or permissible,

7. Dissolution of acquired company is registered to Turkish Trade Register. After dissolving company debt is paid or colleteralized, the record regarding the dissolution of acquired company is written off and the affair is announced.
8. After the announcement of dissolution of acquired company, equity shares of acquiring company, which will be given to shareholders of dissolving company, are delivered.

4.1.5.1.b. Mergers through Establishing a New Company

Article 452 of TCC cites that a newly-established company could take over assets and liabilities of one or more acquired company/companies in an acquisition transaction. Clauses regarding the establishment of corporations and clauses in Article 451 of TCC are exactly binding for mergers of that type. That type of mergers must also abide by the clauses in Article 452.

1. Companies must confirm the issues like merger decision, organizing newly-established company's Article of Association, pledging capital, putting dissolving company assets as capital in kind and determining required bodies of newly-established company.
2. Merger agreement must be certified in General Assembly of dissolving company.
3. Establishment of new company is finalized after the Article of Association is certified. The affair is registered in TTR and announced .
4. After registration in TTR, the equity shares of new company are given in exchange for the equity shares of dissolving company according to merger agreement signed.

According to Article 453 of TCC, Article 451 clauses will be exactly binding in case a corporation ceases through being acquired by a joint-stock comandite company. Additionally, the shareholders of joint-stock comandite company will be jointly and severally bound for the debt of acquired corporation. That is mainly due to the partnership company characteristic of joint-stock comandite company. As mentioned before, equity holders are jointly and severally liable for the debt of partnership companies.

Article 451 and Article 452 of TCC donot refer to Article 150 of TCC either directly or indirectly. Whether the objection right of acquired company creditors, the clause in Article 150, is exactly valid for mergers of corporations or not is a disputable issue in Trade Law doctrin.

Some authors assert that the clause in Article 150 of TCC should be exactly valid for mergers of corporations in order for a secure status to creditors and shareholders.[35]

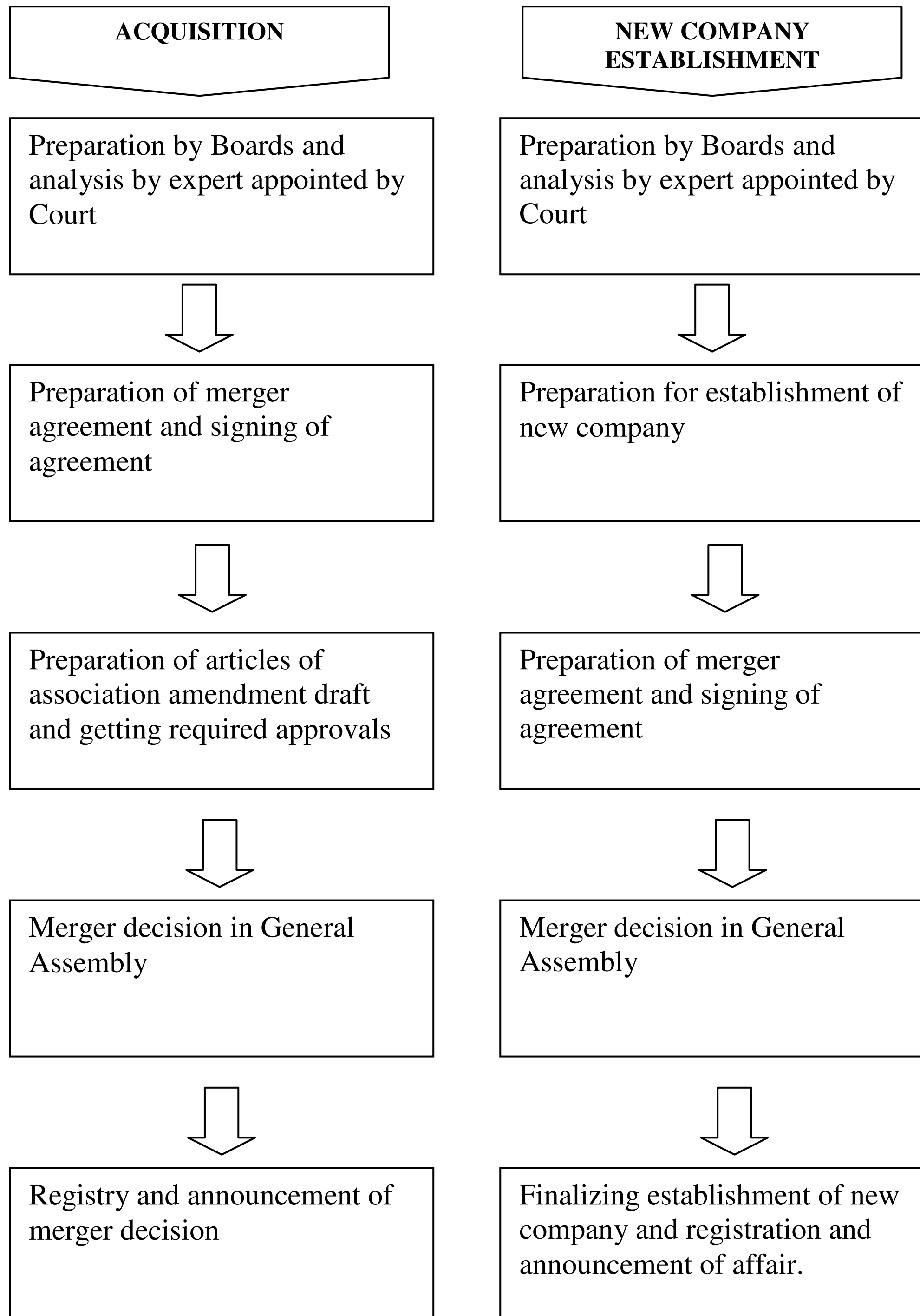
Opponents of above idea assert that general clauses between Article 146 and Article 151 of TCC come from Italian Law Regime, while special clauses regarding the merger of corporation are based on German Law Regime. German Law Regime requires seperate management of acquired company assets in order to maintain the rights of creditors. Thus, there is no need for additional support of general clause in Article 150.

Proponents, who argue for the validity of Article 150 for corporations, assert that contradiction to seperate management principle would be exposed to sanctions within the scope of management's liabilities, hence Article 452 will not provide an efficient and enough protection for creditor rights.

---

[35] TEKİNALP, op.cit.

Stages in mergers of corporations within the context of Article 451 and 452 are summarized in the schema below:



4.1.5.2. Special Clauses for Joint-Stock Comandite Companies and Limited Companies

There does not exist special clauses regarding merger transaction under sections related to joint-stock comandite companies and limited companies. That means that general clauses between Article 146 and Article 151 of TCC will be exactly valid and applied for the mergers of comandite companies and limited companies.

4.2. ACQUISITION

4.2.1. Definition of Acquisition in TCC

Acquisition is set as a special type of merger transaction in TCC such that mergers could be in two types according to the definition in Article 146 of TCC.

1. two or more companies merge through establishing a new trade company,
2. one or more companies joining an existing trade company.

Article 451 of TCC, which involves special clauses regarding the merger of corporations, defines the acquisition transaction such that a company's assets and liabilities as a whole are acquired by an existing company and the company transferring its assets and liabilities is dissolved without liquidation.

When Article 146 and Article 451 of TCC are considered together, one of the merger type definitions made in Article 146 of TCC refers to acquisition transaction and is effective for all corporations.

4.2.2. Acquisition Clauses for Share Capital Companies

Article 451 lists principal clauses to be abided by when a corporation acquires another corporation.

Article 453 states that principal clauses listed in Article 451 will be exactly binding when a corporation is acquired by a joint-stock comandite company.

As there does not exist any special clauses regarding the acquisition of limited companies, general clauses set between Article 146 and Article 151 of TCC will be exactly binding for limited company acquisitions.

4.3. DIVISION

Division transaction is not defined in TCC. Division transaction has its roots in tax laws. TCCT numbered 5422 defined division transaction for the first time in 2001. As a restructuring transaction, divisions could sometimes be a prerequisite for planned mergers. [36]

Tax legislation defines division transaction in two different forms as full division (split-up) and partial division (split-off).

Split-up or full division is a division transaction such that a full-liable equity company is dissolved without liquidation and transfers to two or more existing or new full-liable equity companies all of its assets and liabilities at book value. The shareholders of split-up company receive, in exchange, securities representing the capital of the companies receiving the assets and liabilities of split-up company. A cash payment not exceeding 10% of the nominal value of those securities will not change the characteristic of transaction being a aplit-up.

Split-off or partial division is an operation whereby a full liable equity company or a permanent establishment or permanent representative of a foreign equity company transfers its participating shares with a minimum holding of two years and fixed assets or branch of production or service activity as capital in kind at book value to another existing or new full-liable equity company.

---

[36] Adnan NAS, ***"Şirketler birleşiyor ama bölünemiyor"***, www.malihaber.com, April 10, 2007

TCC does not include any clause regarding the division transaction and that legal loophole was tried to be passed by a Communique, which has been announced jointly by Ministry of Finance and Ministry of Industry and Trade, in practice. "Comminique about Regulating Procedures and Principals regarding Split-off Transaction of Corporations and Limited Companies" has been declared in Official Gazette numbered 25231 in September 16, 2003.

However, Communique does not include any reference to full division transaction, in other words defines procedures and principals only for partial division transactions. Consequently, there is no legal ground to apply full division transaction for the time being.

On the other hand, the situation is not different for partial division transaction in essence. Article 404 of TCC preclude the implementation of partial division transaction in spite of the Communique declared in Official Gazette numbered 25231. Article 404 of TCC cites that equity shares, which are received in exchange for capital in kind, are not allowed to be transferred within a 2-year period starting from the official registration of company. TCCT numbered 5422 had bypassed Article 404 of TCC through a provisional article clause in the past. Provisional Article 30 of TCCT numbered 5422 cited that Article 404 of TCC is not applicable for division transactions within the context of Article 38 of TCCT numbered 5422.

However, TCCT numbered 5520 does not include any clause similar or parallel to Provisional Article 30 of TCCT numbered 5422. That issue of fact generates another legal loophole for partial division transactions after the effectiveness date of TCCT numbered 5520, which is January 1st, 2006.

The reason for that legal loophole is most probbaly due to the Draft TCC, which is expected to be effective in 2009. Draft TCC will probably include special clauses regarding abovementioned legal loophole in the section related to division transaction.

4.4. EXCHANGE OF SHARES

Exchange of shares is another transaction, which has its roots in TCCT but not defined in TCC. Contrary to division, there is no Communique regulation regarding the exchange of shares transaction and that makes the transaction inapplicable in practice.

On the other hand, Tarakci believes that TCC includes clauses which are applicable for the exchange of shares transaction. According to Tarakci, clauses regarding putting capital in kind could be applicable when we interprete exchange of shares transaction as putting a company's equity share to another company as capital in kind. [37] Accordingly, it is possible to consider exchange of shares transaction within the context of capital increase clauses of TCC.

---

[37] Hızır TARAKÇI, "***Kurumlarda Sona Erme***", Polaris Yayınları, İstanbul 2003, p.539

5. ASSESSMENT BASED ON DRAFT TURKISH CODE OF COMMERCE

TCC numbered 6762 was enacted in January 1st, 1957 and has become the base legal arrangement regulating all legal relations related to industrial and commercial field for more than 50 years. In this period, there has been some amendments in TCC while main principals have been maintained. However, economic globalisation and more complex economic and commercial relations have made TCC inadequate in time. As a result, some transactions frequently confronted with in economic and commercial life have had no legal ground in TCC and that brought out some legal loopholes for those transactions.

In parallel to EU nomination process, a reform in TCC, which will be within the context of harmonization of legislation between Turkish Law System and EU Regulations, has been unavoidable.[38] In this context, the act of writing Draft TCC has started and draft version has been submitted to public opinion in February 24th, 2005. Draft TCC, which is made up of 6 sections (book), is expected to bring many changes.

In this section, we will analyze draft clauses regarding mergers and acquisitions comparing with TCC numbered 6762. Detailed explanations regarding division and exchange of shares transactions, which are expected to be added to our legislation through new TCC, will also be made in the following parts.

5.1. MERGER

Merger transaction is arranged under "General Provisions" and "Commercial Company" sections. Article 134 of Draft TCC cites that merger, division and type alteration clauses are set between Article 134 and Article 194 of Draft TCC. Article 134 of TCC also states that clauses in

---

[38] Mehmek AKUGUR, *"**Türk Ticaret Kanunu Tasarısı**"*, Vedat Yayınevi, İstanbul 2005, p. VII

other codes or laws will be valid as long as they are not contrary to clauses between Article 135 and Article 194 of Draft TCC.

5.1.1. Principle

Article 136 of Draft TCC orders the main principles of merger transaction. The essence in Article 146 of TCC numbered 6762 is maintained in general, however the scope of merger definition is seen to be extended such that new definition involves all commercial companies including cooperatives and also two types of merger transaction is “explicitly” stated.

Draft Article 136/1 states that “Companies merge through

a) either one company’s acquiring another (merger through acquisition)

b) or coming together to establish a new company (merger through establishing new company)”

Draft Article 136/2 names receiving party as “acquirer” and joining party as “acquired” in the application of clauses between Article 136 and Article 158.

Draft Article 136/3 cites that merger transaction will be finalized or realized when acquired party shareholders obtain the equity shares of acquiring party in exchange for the former party’s assets transferred to latter party. This clause also refers to universal succession principle.

Draft Article 136/4 stresses the point that the principle of seperate management of assets, which is mentioned in Article 451 of TCC numbered 6762, is left. New system foresees dissolution and cancellation to occur at the same time.

5.1.2. Validity of Mergers

TCC numbered 6762 states that the companies in a merger transaction must be of same type in order for merger transaction being valid. Article 137 of Draft TCC makes a broader definition regarding the type of companies in a merger transaction. According to Draft Article 137, it is possible for cooperatives to merge with share capital companies and partnership companies. Draft Article 137 foresees share capital companies to merge with even partnership companies under certain conditions.

Article 137/1 permits share capital companies to merge with share capital companies and cooperatives under all conditions and with partnership companies like collective companies and comandite companies on condition that partnership company is the acquired party in the transaction. The condition regarding partnership companies serves the aim for inducing share capital company formations.

Draft Article 138 cites that companies in liquidation process could be a party in a merger transaction if below two conditions are met.

1. Company in liquidation must not begin to allocate its assets as of merger date,
2. Company in liquidation must be the acquired party in the transaction,

Provision of above conditions must be specified in the transaction auditor's report and must be submitted to TTR.

Draft Article 139 enables a financially distressed company or a company that has lost its paid-in capital to be involved in a merger transaction on condition that acquiring company must have enough freely disposable capital to meet the lost capital or distressed debt amount. The article defines the situation of "losing capital", however, it does not make any definition for the condition of financial distress. A company which loses half of the sum of paid-in capital and legal reserves is regarded as "a company that lost its capital". The provision of above condition's realization

must be specified in transaction auditor’s report and must be submitted to TTR.

5.1.3. Protection of Shares and Rights in Company

Article 140 of Draft TCC cites that the acquired party shareholders have a prompting right on the shares and rights of acquiring company in an amount corresponding to their existing shares and rights. That prompting right is calculated considering the asset values, distribution of voting rights and other important issues of merging companies.

In determining exchange ratio of company shares, it is possible for acquiring company to make an equalization payment in an amount equal to 10 % of its shares’ true value.

If the acquired company has shareholders with preferred shares, the owners of those shares are given the same type of acquiring party shares. Similarly, equivalent previlege rights are given to the acquired party shareholders in exchange for the existing previlage rights they have in acquired company. If equivalent previlage right does not exist in acquiring company, a proper exchange is given in return.

If there are persons having redeemed shares of acquired party, those people are given equivalent rights in the acquiring company. If equivalent rights could not be given, redeemed shares must be purchased at their value on the day, on which merger agreement has been concluded.

5.1.4. Bargain Money

Another fundemantal change that Draft TCC brings is “bargain money“ clause. Companies in a merger transaction could give acquired company shareholders an option to receive a bargain money at an amount corresponding to the true value of acquired company shares instead of receiving the shares of acquiring company in exchange.

Bargain money is an exception to the principle of continued participation of acquired company shareholders. Bargain money gives acquired company shareholders a right of choice in conformity with modern legal perspective. The shareholders, rejecting to participate merger or seeing the merger decision against his own stake, could withdraw from partnership through receiving bargain money.

Bargain money need not be in the form of cash. Bargain money may be paid with the shares of another company or with other kind of securities. If the bargain money is paid in cash, the payment is not allowed to be made from paid-in capital. The payment must be made from reserves in order not to reduce paid in capital.

When significant number of shareholders opt for quitting from partnership through receiving bargain money, merger transaction could be subject to fail as a natural result of shareholder democracy. Failure of merger transaction will be more rational if the majority of shareholders are against the merger transaction and opt for bargain money instead of the equity share of acquiring company.

5.1.5. Other Clauses Regarding Merger Transaction

5.1.5.1. Capital Increase

According to Article 142 of Draft TCC, acquiring company must increase its paid in capital in such an amount that the rights of acquired company shareholders are fully protected.

As the special rules regarding merger transaction are identified under the heading of "Merger" in Draft TCC, there is no need to apply Draft TCC's general provisions regarding putting capital in kind for a merger transaction. Similarly, clauses regarding the issuance of new shares in public companies are not applied for merger transactions.

5.1.5.2. New Establishment

Article 143 of Draft TCC asserts that Draft TCC's general clauses regarding the establishment of a new company will be exactly valid for mergers through establishing a new company. The rules about putting capital in kind and minimum number of shareholders are exception to that clause.

5.1.5.3. Interim Balance Sheet

Interim balance sheet is required in two instances. If the time period between merger agreement date and balance sheet date is longer than 6 months or any significant change occurs in the asset structure of merging companies in that period, then interim balance sheet is prepared by the merging parties. Physical stocktaking is discretionary for interim balance sheet. Depreciation, value adjustments, provisions are also considered in interim balance sheet.

5.1.6. Merger Agreement

Article 145 of Draft TCC states that the merger agreement must be made in written form. Signed by managing parties of merging companies, the agreement becomes valid after the approval in General Assembly.

Written form is a legality condition for merger agreement. It is only managing parties who are authorized to sign merger agreement, in other words, devolution of that authority is not allowed in Draft TCC. The Board approval does not make the agreement valid directly, the validity of agreement depends on the approval in General Assembly.

Draft TCC does not include legal arrangements such as compensation in case of the disapproval in General Assembly or merger agreeement's validity after Board approval. Practice is expected to settle those issues in doctrin.

Article 146 of Draft TCC lists the points to be included in a merger agreement as below.

1. Merging companies' or new company's (for merger through establishing a new company) trade name, legal status, head office info
2. Exchange ratio of company shares, equalization amount if prescribed, explanations about the rights and shares of acquired company shareholders in acquiring company
3. Rights given to preferred stock and non-voting stock owners or beneficial owners by acquiring company
4. The method for exchanging company shares
5. The date from which the shareholders of acquired company will be entitled to dividend in acquiring company
6. Bargain money in accordance with Draft Article 141, if needed
7. The date from which the acquired company operations and acts will be deemed to be realized on behalf of acquired company
8. Special benefits offered to managing parties and managing shareholders
9. Identification of associated partners, if needed.

5.1.7. Merger Report

According to Article 147 of Draft TCC, the Boards of merging companies prepare a merger report either seperately or together. The aim of merger report is to provide the shareholders of merging companies with the detailed information about merger transaction. Draft TCC lists the legal and economic issues to be included in a merger report as below.

1. The reasons and results of merger;
2. Merger agreement;
3. Exchange ratio of company shares, balancing item if prescribed, explanations about the acquired company shareholders' rights and shares in acquiring company;
4. Bargain money amount, if needed, and the reasons for giving out bargain money;
5. Valuation particulars regarding the determination of exchange ratio;
6. The amount of capital increase to be made by acquiring company, if needed.
7. If prescribed, additional payments or other personal liabilites to be fulfilled by the shareholders of acquired company;
8. The additional liabilities to be fulfilled due to the new legal status for mergers involving companies of different legal status,
9. The effect of merger transaction on employees and the content of social plan if exists;
10. The effect of merger transaction on creditors of merging parties;
11. Approvals of relevant authorities, if needed.

Draft Article 147 asserts that new company agreement is also attached to merger report, if transaction is realized through establishing a new company.

5.1.8. The Audit of Merger Agreement and Merger Report

Merging companies must get merger report, merger agreement and the balance sheet to be audited to a specialist transaction auditor. The parties must provide transaction auditors with all relevant data and document.

Transaction auditor report must include below issues:

1. Whether the capital increase prescribed by acquiring company is enough to protect the rights of acquired company shareholders or not;
2. Whether exchange ratio and bargain money is fair enough or not;
3. The method of exchange ratio calculation; and test of method's fairness after comparing the results of at least three different generally accepted method;
4. The values resulting from other generally accepted valuation methods;
5. Whether equalization is appropriate or not;
6. Valuation particulars regarding the determination of exchange ratio;

5.1.9. Examination Right

Merging companies declare merger agreement, merger report, audit report, financial tables of last 3 years, annual reports and interim balance sheets for the examination of shareholders, beneficial owners, the owners of merging company securities in their head offices and branches (public companies get the approval of Capital Market Board for the place) 30 days before the General Assmbly. Those information is also broadcasted in the web site of share capital company.

Each company involved in merger activity announces the places for the examination of documents mentioned above. The announcement is made at least three days before the places are ready for examination.

Examination right aims for disclosure not only for shareholders but also for all parties related to merger activity.

5.1.10. Changes in the Asset Structure of Merging Companies

Draft Article 150 asserts that any one of merging companies having a significant change in its assets or liabilities announces that change in a written form to General Assembly of merging companies between the signature date of merger agrrement and the approval date in General Assembly. In this case, managing bodies of merging companies review the merger agreement for modification and evaluates whether it is necessary to abandon transaction or not. If the management bodies see modification or abandonment necessary, they withdraw the proposal of merger agreement approval. The other case, management bodies explain the reasons why the merger agreement does not need any adjustment or abandonment.

5.1.11. Merger Decision

Management body having signed the merger agreement, submits merger agreement to the approval of General Assembly. Article 151 of Draft TCC makes detailed explanation regarding the number of votes required for the approval of merger decision in General Assembly. Accordingly,

1. For joint stock comandite companies and corporations, with the condition of representing the majority of issued capital or stock-capital, 2/3 of existing votes in General Assembly
2. For corporations acquired by cooperatives, with the condition of representing the majority of capital, 2/3 of existing votes in General Assembly

3. For limited companies, with the condition of representing at least 3/4 of capital, 3/4 of votes of all partners.
4. For cooperatives, 2/3 of votes; if additional payment or unlimited liability foreseen in the Article of Association 3/4 of all partners should vote for the approval

For joint stock commandite companies being the acquiring party in transaction, in addition to 2/3 of votes in General Assembly, all active partners must approve the merger in written form.

For a corporation or joint stock commandite company acquired by a limited company, if additional liabilities and personal undertakes are foreseen and present liabilities and personal undertakes are expanded through merger transaction, all partners' unanimity is required for merger decision.

If the merger agreement foresees seperation allowance, it must be approved by 90 per cent of existing voting rights for corporations.

If merger agreement foresees any change in the field of activity, the merger agreement must be approved by the quorum required for the change of Article of Association.

5.1.12. Registry in Turkish Commercial Register and Announcement

According to Article 152 of Draft TCC, managing parties of merging companies apply to TCR for the registry after the approval of merger agreement in General Assemblies. In mergers, acquiring company must usually make new issue of capital to give to the shareholders of acquired company. In this case, Article of Association change regarding the new capital issue must also be registered to TCR. Dissolution of acquired company will be at the moment that merger is registered to TCR. Merger decision is finally announced in TCR Newspaper.

According to Draft Article 153, merger will be effective with the registry in TCR. At the moment of registry, assets and liabilities of acquired

company are transferred to acquiring company and the shareholders of acquired company become the shareholders of acquiring company.

On the other hand, Article 7 clause of Competition Act regarding mergers is reserved. The detailed explanation regarding Competition Act will be made in following sections.

5.1.13. Simplified Merger

Article 155 of Draft TCC defines an arrangement called "simplified merger", which could be applied under certain conditions. Accordingly, the companies could make "simplified merger" under two circumstances.

1. If acquiring share capital company has all voting-shares of acquired company or,
2. A company or a real person or person groups connected through law/contract has all voting shares of companies participating merger

On the other hand, if acquiring company does not have all but 90 per cent voting shares of acquired company, simplified merger will be allowed under two additional conditions.

1. The acquiring company must offer seperation allowance choice to minority shareholders,
2. Merger must not result in any additional payment and personal act liability

The facilities extended for simplified mergers are explained in Article 156 of Draft TCC. Accordingly,

1. The merger agreement will be acceptable if it includes trade names, legal status and principle place of business of merging companies, new company's trade name, legal status and principle place of business (for mergers through establishing a new company), seperation

allowance (if needed) and the names of unlimited liable partners (if needed)

2. Merging parties are not allowed to prepare a merger report. There is no audit requirement for merger agreement and merger report. Merger agreement is not required to be submitted to the approval of General Assembly.

5.1.14. Protection of Creditors

Article 157 of Draft TCC asserts that acquiring company must protect the rights of creditors, who claims for protection, within the 3-month period after the merger becomes legally effective.

Protection of creditor rights used to be based on the principles of seperate management of assets and joint liability for corporations, which are explained in Article 451 of TCC numbered 6762. On the other hand, General Clauses in Article 150 of TCC foresees a 3-month period which must be passed without any consent in order for merger's being legally effective.

Draft TCC regulation brings a new approach such that the rights of creditors are protected after the merger gets legally effective. In other words, the period for the protection of creditor rights begins at the registry date when merger becomes legally effective.

Merging companies announce the rights of creditors in TCR Newspaper and three national newspapers having circulation rate of 50.000 for three times with seven day intervals. In order for the disappearance of announcement obligation, transaction auditor must verify that merging companies could meet all of their liabilities with their assets and no dead weight is expected for the coming period.

On the other hand, if the merging company proves that acquiring company liabilities are not jeopardized due to the merger transaction, the

obligation of providing security for acquired company liabilities disappear for the acquiring company. In case it is agreed that other creditors will not bear a loss, acquiring company could choose the option of paying its liability instead of providing security

5.2. DIVISION

Division transaction is regulated between Article 159 and Article 179 in “Trade Companies” book of Draft TCC. The regulations regarding division transaction fill an important legal gap, because TCC numbered 6762 does not include any legal arrangement regarding division transaction.

5.2.1. Principle

Article 159 of Draft TCC asserts that companies may divide in two ways, as full and partial division. That definition provides a monotony with TCCT numbered 5520.

In full division or split-up, all assets of the divised company are parted and transferred to other companies. The shareholders of transferor company acquire the equity shares of transferee company. Fully divised company ceases and its trade name is written off from TTR.

In partial division or split-off, certain assets of company are transferred to other companies. Either the shareholders of transferor company or transferor company itself obtain the shares of transferee companies in return.

5.2.2. Validity of Division Transaction

According to Article 160 of Draft TCC, the validity of division transaction requires share capital companies to be divised into share capital companies. Similarly, cooperatives are required to be divised into cooperatives for a valid transaction. In other words, Draft TCC does not

allow a share capital company’s division into partnership companies or a cooperative’s division into a share capital company.

5.2.3. Protection of Rights and Shares in Divised Company

Article 161 of Draft TCC cites that equity shares and rights in divised company will be protected based on the principles and arrangements set for merger transaction in Draft Article 140. The main items in Draft Article 140 has been summarized in Section 5.1.3.

Article 161/2 of Draft TCC regulates division transaction in two groups based on the shares allocated to the shareholders or partners of transferor company.

- **Share-Ratio Protected Divisions:** The shareholders of transferor company obtain the shares of transferee company or companies in proportion to their share ratio before transaction.
- **Share-Ratio Unprotected Divisions:** The shareholders of transferor company obtain the shares of transferee company or companies such that their share-ratio changes with respect to the share-ratio before transaction.

Liberating the share-ratio protection after division, draft TCC enables a wide margin for the parties participating in division transaction. That flexibility is mainly due to the aim of eliminating legal barriers towards the restructuring of companies. [39]

5.2.4. Other Clauses Regarding Division Transactions

5.2.4.1. Capital Decrease

Article 162 of Draft TCC cites that Article 473 and Article 474 of Draft TCC, which include clauses regarding capital decrease, will be by-passed in case a capital decrease is required in a division transaction.

---

[39] Mehmet AKUGUR, op.cit.

Essentially, Draft TCC eases the application of division transaction through by-passing capital decrease procedures.

5.2.4.2. Capital Increase

Draft Article 163 cites that acquiring company inreases its capital in such an amount that the rights of acquired company shareholders are protected. While Draft TCC does not include any constraint for capital decrease, protection of the rights of acquired company shareholders is predicated in case of capital increase. Draft Article also cites that clauses regarding "putting capital in kind" is not applicable for division transactions, because the protective clauses applied in case of putting capital in kind already exist in Article 166, Article 169 and Article 170. For companies subject to registered capital system, capital increase is allowed regardless of the authorized capital level in division transactions.

5.2.4.3. Establishment of New Company

According to Article 164 of Draft TCC, Cooperative Law numbered 1163 and Draft TCC provisions will be applied if establishing a new company is required in a division transaction. The clauses regarding "putting capital in kind" and "minimum number of shareholders" will not be applicable in establishing a share capital company for a division transaction.

5.2.4.4. Interim Balance Sheet

If the time period between division agreement date and balance sheet date is longer than 6 months or some significant changes occur in the asset structure of companies participating in transaction, then interim balance sheet must be prepared by the transaction parties. Physical stocktaking is discretionary for interim balance sheet. Depreciation, value adjustments, provisions are also considered in the interim balance sheet.

5.2.5. Division Agreement or Division Plan

If a company transfers all or some of its assets to other existing companies, the managing parties of companies participating in that transaction prepare a “division agreement”.

If a company will transfer all or some of its assets to newly established companies, managing body prepares a “division plan”.

Article 166 of Draft TCC asserts that both division agreement and division plan must be in written form and both must be approved by General Assembly according to the clauses in Article 172 of Draft TCC.

5.2.6. Content of Division Agreement and Division Plan

The main issues to be included in a division agreement or division plan are listed in Article 167 of Draft TCC.

1. Trade names, legal status and the principle place of business of companies participating in division transaction,
2. Sectioning of asset and liability groups and allocation of those sections for the purpose of transfer;
3. Exchange ratio of shares and balancing item if prescribed, explanations about the rigths and shares of acquired company shareholders in acquiring company;
4. Rights given to the owners or beneficial owners of preferred stock and non-voting stock by acquiring company
5. The methods for exchanging company shares
6. The date from which equity shares given to the shareholders of divised company will be entitled to balance sheet profit of transferee company and the characteristics of that right of claim;

7. The date from which the divised company operations and acts will be deemed to be realized on behalf of the transferee company;
8. Special benefits offered to managing parties, managing shareholders and auditors
9. The list of business relationships transferred through division transaction

5.2.7. Division Report

Managing parties of companies participating in division transaction prepare a report called "division report". Joint report is acceptable as division report. Below issues are explained with their economic and legal aspects in division report.

1. The aim and result of division
2. Division agreement or division plan
3. Exchange ratio of shares and balancing item if prescribed, explanations about the acquired company shareholders' rights and shares in acquiring company
4. Valuation particulars regarding the determination of exchange ratio;
5. If prescribed, additional payments or other personal liabilites to be fulfilled by the shareholders of acquired company;
6. The additional liabilities to be fulfilled by shareholders due to the new form in case the companies participating into division are of different form
7. The effect of division transaction on employees and the content of social plan if exists;
8. The effect of division on creditors

Draft Article 169 cites that newly established company's Article of Association must be attached to division plan in case a new company establishment is foreseen in division transaction. Small and medium size companies are allowed to discard preparing division report providing that all shareholders or partners approve.

5.2.8. Examination Right

Each company participating into division transaction submit below documents to the examination of other participants' shareholders in their head offices at least two months before General Assembly.

1. Division agreement or division plan
2. Division report
3. Auditing Report
4. Financial tables of last three years, annual reports and interim balance sheet, if exists

Each company participating into division transaction makes an announcement in TTR Newspaper about the examination right of other parties' shareholders. Provided that all partners or shareholders approve, small and medium size companies could discard examination right.

5.2.9. Division Decision

Managing parties of companies participating in division transaction submit division agreement or division plan to the approval of General Assembly. (assuming that the companies provide the security foreseen in Article 175)

The quorums for merger transaction, which are prescribed in Draft Article 151 for the approval, are exactly binding for the approval of division transaction. The quorums prescribed in Draft Article 151 has been mentioned in 5.1.11.

5.2.10. Protection of Creditors

According to arrangement called “Call” in Draft Article 174, the companies call their creditors to declare their receivables and to prompt for quarantee for their receivables. “Call” is announced three times in TTR Newspaper, newspapers prescribed in Article of Association and in company web site.

The companies involving in division transaction must quarantee the receivables of creditors prompting quarantee within two-month period starting from the announcement date in Draft Article 174. If it is confirmed that the receivables of creditors are not jeopardized due to the division transaction, the liability of quaranteing receivables is discarded. Companies involving in division transaction could pay for their receivables rather than quarantee them, unless other creditors bear loss.

5.2.11. Joint Liability

According to Article 176 of Draft TCC, if the company that is allocated debt liability through division agreement and division plan (1st degree liable company) does not fulfill the receivables of creditors, other companies participating into division transaction (2nd degree liable companies) become jointly liable for that receivable.

Legal proceedings against 2nd degree liable companies will be possible provided that the receivable are not quaranteed and 1st degree company must be in one of the cases below:

1. Insolvency
2. Composition in banktruptcy stage
3. Conditions for taking evidence of insolvency must arise
4. Legal proceeding in Turkey becomes impossible due to the head office moving abroad
5. Legal proceeding become difficult due to the change in the place of head office abroad

5.2.12. Transfer of Employee Relationships

Draft Article 178 cites that employment agreements, providing that the employees donot make an objection, get through transferee parties with all rights and liabilities arising until the transfer date. If employees make an objection, employment agreement ends at the end of statutory dismissal time. Both transferee company and employees are liable for fulfilling the employment agreement made with transferor company. Employees could also claim quarantee for their receivables.

Former employer and transferee company are jointly liable for the employee debt maturated before division transaction and to be maturated till the end of employee agreement. Employer could not transfer rights arising from employer agreement to 3rd parties, unless the contrary is agreed.

5.2.13. Application of Clauses Regarding Merger Through Deductive Reasoning

Article 170 of Draft TCC cites that Article 148 clauses of Draft TCC regarding merger transaction will be applied for the audit of division agreement or division plan through deductive reasoning.

Article 172 of Draft TCC cites that Article 150 clauses of Draft TCC regarding merger transaction will also be applied through deductive reasoning in case changes occur in the asset structure of companies participating division transaction.

According to Article 177 of Draft TCC, Article 158 clauses of Draft TCC regarding merger transaction will be also valid for shareholders' or partners' personal liabilities in division transactions.

5.2.14. Registry in Trade Registry and Effectiveness

Division becomes effective with the registry in TTR. All assets and liabilities subject to division transaction are transferred to transferee

companies at the time of the registry in TTR. Managing bodies claim registry after the approval of division.

In partial division, article of association change must also be registered in case capital decrease is needed in transaction.

In full division, divised or transferee company dissolves through the registry in TTR.

5.3. EXCHANGE OF SHARES

Exchange of shares transaction is a transaction that is not clearly defined in TCC numbered 6762, however, there exists a consensus towards applying clauses regarding putting capital in kind for exchange of shares. In other words, exchange of shares transaction is regarded as putting the equity shares of a share capital company to another share capital company as capital in kind in practice.

In Draft TCC, there still exists no definition for the exchange of share transaction. That shows us that old practice must continue, in other words, exchange of shares will be considered as putting capital in kind and clauses regarding putting capital in kind will be valid for those transactions.

6. ASSESSMENT BASED ON CAPITAL MARKET LAW

Capital Market Law numbered 2499 does not include any legal arrangements regarding merger, acquisition, division and exchange of shares transactions due to the nature of being a framework law. Capital Market Board makes legal arrangement on those issues through Communiqués declared based on the legal authority given by Capital Market Law.

Communique Serial: 1 No:31, which has been prepared by CMB and become effective at 14/07/2003, deals with the principles regarding merger transaction. There does not exist any CMB Communique regarding division and exchange of shares transactions.

6.1. The Scope and Aim of Communique Serial: 1 No:31

Communiqué cites that the transactions will be subject to Communiqué principles in case at least one of the parties in transaction is a publicly held joint stock corporation. Type of transaction, merger through acquisition or merger through establishing a new company, does not affect being subject to Capital Market Board regulations.

According to CML, a company could become publicly held in two ways:

1. the issuance of its shares to the public
2. having more than 250 shareholders

6.2. Legal Basis of Communiqué

The legal basis of Communique Serial:1 No:31 is "Article 16/A" of CML. Article 16/A states that Capital Market Board could make principles regarding merger and acquisition of publicly held corporations in order to protect the rights of minority shareholders and to inform public opinion.

6.3. Principles Regarding Merger

The main principles explained in CMB Communique Serial:1 No:31 are summarized below.

6.3.1. Preliminary Resolution of the Companies' Authorized Bodies

Article 4 of Communique Serial:1 No:31 cites that although the resolution of the Board of Directors in each of the merging companies is sufficient to begin merger procedure, the General Assembly could make decisions about the merger procedure, the preparation of the merger contract and the principles or may authorize the Board of Directors concerning the relevant matters if the merging parties demand.

6.3.2. Financial Statement Periods to Be Used As a Basis for the Merger and Special Independent Audit Report

It is compulsive for the merging parties to prepare their financial statements according to the legislations of CMB and have the financial statements independently audited. Special independent auditing is not required in case the financial statements which are considered as base are audited independently.

The time period between the date of financial statements which base merger and the date of General Assembly at which the merger contract will be approved finally cannot exceed 6 months.

The merging companies should prepare new financial statements that display the last financial position of the company, to have it specially audited based on the CMB's independent auditing standards and take new financial statements as a basis for merger if new transactions are made that affect the financial statements and equity capital over which the merger ratio is calculated and that are except from the main line of activity of the merging companies until the registration of the new company in merger through establishing a new company or registration of capital increase in

merger through acquisition and registration of the shareholders meeting in which the merging contract is approved if capital increase is not required.

6.3.3. Expert Examination

According to Article 6 of Communique, an examination is done by an expert who is appointed by the court in order to determine the equity capital of the merging companies. The expert ties his/her examination to a report at the end.

Financial statements rectified according to the conditions which require arrangement and approved by the independent auditor is presented to the examination of the expert in case a conditional view is presented in the report or the inspection results of the CMB decides it is essential, although the views about the accounts which will base the merging are positive at the end of the special independent auditing report.

The expert report is prepared by basing on these financial statements. The merging procedure cannot be based on the financial statements if a negative view is presented or there's no view in the independent auditing report which will base the merging procedure.

6.3.4. The Methods in Calculation of Merger Ratio

Communique sets parties free in choosing the method of merger ratio calculation. All the same, additional conditions are foreseen in certain cases.

It is compulsory in merger procedure to place merger ratios, exchange ratio and the capital amount to be reached after merger transaction in the expert report. If the method applied is a method other than equity method, expert report must include above information for both chosen method and equity method.

Another restriction in merger ratio calculation arises when the merger ratio is calculated based on stock exchange prices. The additional requirements to be met on the date of application of the merging companies for approval to the Board are as below:

1. The ratio of the sum of publicly offered shares' nominal values to corporation's nominal capital should be at least 25% and shares should be listed in Stock Exchange.
2. Shares must be traded in Stock Exchange
3. When Stock Exchange price is established, the arithmetic average of the last annual, corrected, weighted average prices should be based.

If the parties consider equity values calculated based on current value of assets in the calculation of merger ratio, then the real estates subject to valuation are valued by the real estate valuation companies which are included in the list of Capital Market Board. In these cases, the expert report is based on the results of the valuation made by the real estate valuation company concerning the real estates.

6.3.5. Expert Institution Examination

In addition to the expert examination aiming for the equity capital determination of the merging parties, another examination is made by independent audit companies listed in Communique Serial:1 No:31. Independent auditing companies are defined as below in Article 8 of Communique.

1. Independent auditing companies having the qualifications which the CMB sets.
2. the consultancy firms which operates in accordance with the licence, know-how and alike agreements signed by the foreign companies which have the membership contracts with these auditing companies,

3. the brokerage houses which have certificates of authorization for both intermediation in public offering and investment consultancy
4. one of the non-deposit banks

The report to be prepared should consist of the equity method and at least two other methods which can be applied by equity method and the merger ratios which is calculated according to those methods, the reason of selecting the method which will be used for merger ratio, exchange ratio and the amount of capital to be reached after transaction.

6.3.6. Merger Contract

Communiqué lists minimum elements to be included in a merger contract prepared by the Board of Directors of the merging parties.

6.3.7. Board of Director's Report

Another report prepared in a merger transaction is "Board of Director's Report". According to Article 10 of Communiqué, the report explains the merger contract, setting out the economical and legal grounds for merger and including the conditions that affect the valuation.

6.3.8. The Approval of Capital Market Board (CMB)

Communiqué cites that approval of CMB must be obtained prior to General Assembly at which the merger contract will be approved in merger.

6.3.9. Informing Shareholders

It is compulsory for the merging companies to prepare an announcement annexed with the merger contract and approved by the CMB and to publish it to inform shareholders both in a newspaper distributed over Turkey and in one of the most circulated local papers if its equity shares are traded in a Stock Exchange; or in at least two papers which are published or

distributed locally if the company shares are not traded in a Stock Exchange, within thirty days before General Assembly in which the merger contract will be approved. The companies could fulfill their local newspaper announcement obligation by making the announcement in a newspaper which is distributed over the country.

The announcement and the merger agreement should be sent to the Stock Exchange in order to be published in the bulletin and Stock Exchange web site in not less than thirty days before General Assembly if at least one of the merging parties' shares are traded in Stock Exchange.

For companies whose shares are not traded in Stock Exchange, the announcement and the merger agreement should be published at the Board's web site starting from at least thirty days before the shareholders meeting in which the merging contract will be approved until the registration of the new company in merger through establishing a new company or registration of capital increase in merger through acquisition and registration of the shareholders meeting in which the merging contract is approved if capital increase is not required.

6.3.10. The Approval of Merger Agreement and Decision of Capital Decrease by Acquisition

After the approval of CMB, the merger agreement is approved by the General Assembly of the merging companies.

In merger through acquisition, General Assembly of the acquiring company decrees about increasing the capital, while General Assembly of acquired company decrees about the transfer of assets and dissolution.

In merger through establishing a new company, however, General Assembly of the merging companies decree on merging and dissolution.

The decisions of the General Assembly regarding the merger cannot be applied without a private meeting of approval to be arranged by the preference stock holders, bonus share holders, as well debenture and other debt instruments holders if there are any.

6.3.11. Registration with Capital Market Board

Following the General Assembly of the merging companies, within fifteen days, application is made to CMB for,

1. the registration of the shares to be issued in merger through acquisition and the shares of the acquiring company which has not been registered with Capital Market Board,
2. the registration of the shares of the new corporation in mergers through establishing a new company and the registration of the shares which covers the capital unregistered with the CMB and are owned by the companies which ends its legal personality because of merging.

6.3.12. The Delivery of Common Shares

The delivery places of the shares should be announced at least two work days before the delivery date in accordance with the principles stated in the first subparagraph of Article 12 by the means of the share delivery announcement approved by Capital Market Board.

Delivery principles of common shares could differ depending on capital system the company is subject to, type of merger and legal characteristic of shares.

The share delivery of the corporations with share capital system is obligatory in thirty days for bearer shares and in ninety days for registered shares following the date of;

1. The registration of the capital at the TTR in merger through acquisition,
2. The registration of the new corporation in merger through establishing a new company.

The share delivery of the corporations with “registered capital system” should begin in 15 days following the date of the CMB’s registration document.

6.3.13. The Capital Amount To Be Reached After Merger through Acquisition

The capital amount to be reached, which will be reached after the merger through acquisition, is calculated by the following formula.

$$\textbf{Merger Ratio} = \frac{A}{A+B} = \textbf{D}$$

$$\textbf{Capital To Be Reached} = \frac{C}{D}$$

A: Equity Capital of Acquiring Company
B: Equity Capital of Acquired Company
C: Paid in Capital of Acquiring Company

If the merging company is the subsidiary of another merging company, that is taken into consideration while making the calculation regarding the chosen method.

The capital which will be increased after the merger is distributed to the existing shareholders of the acquired company or companies according to the proportion of their shares in the capital.

6.3.14. The Capital Amount To Be Reached After Merger through Establishing a New Company

After merger through establishing a new company, the capital of the new company equals to the sum of the paid-in/issued capital of the merging companies.

If any one merging company is the subsidiary of another merging company, that is taken into consideration in the calculation of the merger ratio and the capital of the newly established company.

The capital of newly established company is distributed to the shareholders of the merging companies according to the proportion of their equity shares in total equity.

7. ASSESSMENT BASED ON TURKISH COMPETITION LAW

Competition Law system is a legal system aiming for establishing a free competition environment and preventing dominant industry player from setting monpolistic industry condition through mergers and acquisitions. Countries order laws in order to protect competition according to Competition Law system. Economic globalisation also requires international regulations to prevent transactions aiming to restrict competition.

Within this context, international legislation towards the protection of competition have been formed. For EU countries, Council Regulation numbered 4064/89/AET, which was published in 1989, is the main guide for developing their own regulation to protect competition.

Competition Law system in Turkey has been built on the "The Act on Protection of Competition" numbered 4054, which was published in 1994. The Act numbered 4054 is legally rooted Article 167 of Constitution. For the periods before the enactment of TAPC numbered 4054, main legal guide regarding unfair competition was TCC numbered 6762.

Furthermore, Article 16 of Ankara Agreement, which was signed between Turkey and EEC in 1963, cites that competition legislation of contracting countries will be harmonized. That clause has been executed by the Decision numbered 1/95 in Turkey-EEC Council met in Brussels on March 6th, 1995.

7.1. Mergers and Acquisitions in The Act on Protection of Competition

Article 7 of TAPC prohibits mergers and acquisitions aimed for creating a dominant position or strengthening their dominant position, as a result of which, competition is significantly decreased in any market for goods or services within the whole or part of the country.

Article 7 also cites that Turkish Competition Board will declare, via Communiqués to be issued, the types of mergers and acquisitions which

have to be notified to TCB and for which permission has to be obtained, in order them to become legally valid.

The Article 7 clause tries to control the growth of companies, which is outside of their internal potential. Dominant position gained through internal potential is not a prohibition cause in its own right, while having a dominant position through mergers and acquisitions is prohibited in Article 7. That is due to the principle that having a dominant position through mergers and acquisitions disrupts competition environment more than having a dominant position through internal dynamics.

7.2. Cases Considered as Merger or Acquisition

Communique numbered 1997/1, which was issued in 1997, form the main guideline for merger and acquisition transactions in TAPC practice.

According to Article 2 of Communique, following transactions are deemed as mergers and acquisitions under Article 7 of TAPC. The authorization of the TCB must be taken depending on the conditions listed in Article 4 of the Communiqué.

1. Merger of two or more independent enterprises
2. Control or acquisition, by any enterprise or person, of the assets of another enterprise, or the whole or a part of its partnership shares, or the means granting it the power to have a right in the management.
3. Joint ventures which emerge as an autonomous economic entity possessing labour and assets to achieve their goals, and which do not have the aims or effect of restricting competition between the parties, or between the parties and the joint venture.

For the purposes of Communiqué numbered 1997/1, control may be brought about by rights, contracts or any other means which, either separately or in combination, de facto or by law, grant the opportunity of

exercising decisive influence on an enterprice, and in particular by an ownership right or an operative right to use on all or part of the assets of an enterprise. Control may also be brought by rights or contracts which ensure decisive influence on the composition or decisions of the bodies of an enterprise.

Control will be deemed to have been acquired by the holders of rights, or persons or enterprises entitled to use the rights under a contract, or in spite of not having such right and power, have de facto power to exercise such rights.

7.3. Cases not Considered as Merger or Acquisition

Article 3 of Communiqué numbered 1997/1 lists merger and acquisition transactions, which do not require the authorization of the TCB, as below.

1. The enterprises whose ordinary activities are to transact with securities for their own account or for the account of others, temporarily hold the securities acquired with a view to reselling them, provided that the voting rights arising from such securities are not exercised by them in such a way that the competition policies of the enterprise issuing the securities are affected.
2. The acquisition is carried out by a public institution and an organization with the aim or reason of liquidation, winding up, insolvency, cessation of payments, composition, privatization or by a similar reason, and as required by law.
3. The cases provided in Article 2 of Communiqué take place via inheritance.

7.4. Mergers and Acquisitions Subject to Authorization

Article 4 of Communiqué cites that total market share of the companies that carry out the merger or acquisition exceeds 25 % of the market in the relevant product market within the whole or a part of the territory, or even though it does not exceed this rate, their total turnover exceeds twenty-five million YTL, it is compulsory for them to take the authorization of the TCB.

Turnover comprise the net sales achieved in the preceding financial year, in accordance with uniform scheme of accounts. The turnovers resulting from the sales between the enterprises themselves are not taken into account in the calculation of the turnover. In mergers and acquisitions realized with partial acquisition of undertakings, the turnover of the transferred part will be taken as the basis.

7.5. Notification of Mergers or Acquisitions

Notification to TCB is made jointly by persons or enterprises who/which realize the conditions deemed as a merger or an acquisition under Article 2 of Communiqué numbered 1997/1. Notification made by either of the parties will also be deemed valid.

Principles regarding notification are explained in Article 5 of Communiqué. Merger and acquisition will not become legally valid till the TCB gives a judgement about the notification, either explicitly under Article 10/2 of TAPC or tacitly under Article 10/3 of TAPC.

Notification could also be made by legal representatives of persons and enterprises. In this case, certificates showing that the representatives are authorised have to be attached to the Notification Form. In cases where notification is made by two or more persons or enterprises, they may file a notification through a joint representative as well.

According to Article 10 of TAPC, as of the date Competition Board is notified of merger or acquisition agreements falling under Article 7, TCB

performs a preliminary examination within 15 days. It could be two results at the end of that preliminary examination.

1. Competition Board could authorize the transaction
2. Board could decide to deal with the transaction under final examination

If TCB decides to deal with the transaction under final examination, it is obliged to duly notify, with its preliminary objection letter, those concerned of the fact that the merger or acquisition transaction is suspended and cannot be put into practice until the final decision, together with other measures deemed necessary by it.

According to Article 10 of TAPC, where TCB does not respond to or take any action for the application as to a merger or acquisition within due time, merger or acquisition agreements will take effect and become legally valid after 30 days as of the date of the notification.

7.6. Failure to Notify Merger and Acquisition

A merger or an acquisition will not legally become valid until a decision, either explicitly under Article 10/2 of TAPC or tacitly under Article 10/3 of TAPC, is taken on the notification duly made pursuant to Article 5 of Communiqué numdered 1997/1. In case the notification is deemed as not having been made, Article 11 of TAPC will be applied.

According to Article 11 of TAPC, where a merger and acquisition transaction whose notification to the TCB is compulsory is not notified to the Board, the Board deals with the merger or acquisition under examination on its own initiative, when it is informed about the transaction anyway.

Below results could arise at the end of the examination made by TCB.

1. It allows the merger or acquisition in case it decides that the merger or acquisition does not fall under Article 7/1

of TAPC, but imposes fines on those concerned due to their failure to notify.

2. In case it decides that the merger or acquisition falls under Article 7/1 of TAPC; it could impose below results in addition to fine.

- It could decide that merger and transaction be terminated

- all de facto situations committed contrary to the law be eliminated

- any shares or assets seized be returned, if possible, to their former owners, whose terms and duration shall be determined by the Board, or if not possible, these be assigned and transferred to third parties

- the acquiring persons may by no means participate in the management of enterprises acquired during the period until these are assigned to their former owners or third parties,

- and that other measures deemed necessary by it be taken.

8. ASSESSMENT BASED ON TURKISH CODE OF CORPORATE TAX

Section 2 and Part 4 of Turkish Code of Corporate Tax numbered 5520 contain clauses regarding merger, acquisition, division and exchange of shares transactions.

Pertinent part of TCCT begins with Article 17 introducing liquidation in detail. Article 18 includes definition and taxation rules for merger transaction. Article 19 is allocated to the definition of acquisition, divison and exchange of shares transactions, while Article 20 sets the taxation principles for those transactions.

8.1. MERGERS

8.1.1. Place in Code of Corporate Tax

Merger transaction is arranged in Article 18 of TCCT, seperately from acquisition, division and exchange of shares transactions. The main reason for the seperate arrangement is the taxation rule difference among them.

In TCC, acquisition is defined as a type of merger and all clauses regarding merger are applicable for acquisition transaction as well. However, merger and acquisition are two seperate transaction type in TCCT application, that is why merger and acquisition are arranged in seperate articles.

Article 19 of TCCT defines main characteristics of acquisition transaction. Accordingly, a merging transactions, which does not have the characteristics listed in Article 19, will be appraised as merger within the context of Article 18.

According to Article 18 of TCCT, merging of one or more corporations with another corporation is considered as liquidation for the

corporation dissolving at the end of transaction. Merger profit becomes tax base instead of liquidation profit in merger transaction.

8.1.2. Arrangements Regarding Liquidity

According to Article 18 of TCCT, merger is defined as liquidation within the context of tax application. That definition is not related to merger arrangement in TCC, however it is entirely a tax definition.

On the other hand, liquidation and its taxation results are arranged in Article 17 of TCCT numbered 5520. The liquidation clause in Article 17 of TCCT is as below:

(1) Liquidation Period: Liquidation period takes the place of fiscal period for the taxation of companies in liquidation stage.

a)Liquidation starts at the date at which General Assembly decision regarding the entrance into liquidation stage is registered and it ends at the date at which liquidation decision is registered in TTR. Period between the starting date of liquidation stage and the end of calendar year, which includes starting date, following calendar years and the period between the beginning of calendar year, in which the end date is, and the date at which the liquidation ends are accepted as seperate liquidation periods.

b) If the liquidation ends at a date in the calendar year, which includes starting date, then liquidation period starts with the date at which the company enters liquidation stage and continues till the date, at which the liquidation ends.

c) If the liquidation is closed with losses, the liquidation result is corrected towards previous liquidation periods and the residual tax paid is paid back to tax-payer.

ç) For the liquidation lasting more than one calendar year, the period of limitation for taxation starts from the beginning of the calendar year following the period in which liquidation ends.

d) If the liquidation is discontinued, liquidation arrangements are not executed for discarding companies. Discontinuance decision becomes valid from the beginning of period in which liquidation decision is taken. The returns given till the date at which discountinuance decision is taken stand for the returns of normal fiscal period. Pre-paid corporate tax liabilities start from the beginning of period including the date at which discontinuance decision is taken.

(2) Liquidation Returns: Liquidation returns are given by liquidator within the period written in Article 14 of TCCT after liquidation period ends. Liquidation return of the period, in which the liquidation ends, is given to the related tax administration within 30 days after the date at which the liquidation ends.

(3) Balance sheet, income statement, table regarding the cash and other assets allocated to shareholders according to liquidation result are attached to liquidation returns.

(4) Liquidation Profit: Tax-base of liquidating companies is liquidation profit, which is the favorable difference between the asset value in the beginning of liquidation and the asset value in the end of liquidation.

a) In calculating liquidation profit,

1) All payments made to shareholders or partners as advanced payment or in other names are added to the asset value in the end of liquidation,

2) All additions of shareholders and partners to existing capital or all income which are earned and exempted from tax in liquidation period are added to asset value in the beginning of liquidation period.

b) Values of business assets allocated, sold, transferred or restituted to shareholders against their shares are determined according to Article 13 of TCCT as of the date at which allocation, sale, transfer or restitution are realized.

c) The legal arrangements in Article 8,9,10 and 11 of TCCT must also be considered in calculating liquidation profit according to this Article.

(5) Asset Value: The asset value in the beginning and the asset value in the end of liquidation period are actually the owner's equity in the balance sheet of corporation for the beginning and the end of liquidation period. If liquidation lasts for more than one year, the asset value in the beginning of following liquidation period will be the asset value in the end of previous period.

(6) All provisions and retained earnings except the ones listed below are included in the owner's equity.

a) All depreciation and provisions are accounted according to tax laws. Technical provisions are also allowed to be accounted by insurance companies

b) Earnings to be distributed to persons that are not shareholder or owner.

(7) Liquidator's Liability: Liquidators are not allowed to make a payment to creditors listed in the 4th place of Article 206 of Execution and Bankruptcy Law and an allocation to shareholders without making any provision, according to Article 207 of Execution and Bankruptcy Law, for accrued taxes, taxes calculated on liquidation returns and other appealed taxation. Otherwise, liquidators become jointly and personally liable for taxes, delinguent tax-dues and tax penalties.

a) Taxes cited above and taxes and tax surcharges to be imposed after the examination of liquidation operations could be demanded from the shareholders, who receive some asset through allocation, sale, transfer or restitution in liquidation stage or repartition from liquidation residual. Liquidators are not applied for the taxes collected from shareholders.

b) Liquidators could take recourse against shareholders receiving some assets through the ways mentioned above or gathering liquidation residual, or if the assets received or gathered by shareholders are not

enough to meet taxes, liquidators could take recourse against creditors, who collected their receivables written in Article 206 of Execution and Bankruptcy Law, either partially or completely according to Article 207 of Execution and Bankruptcy Law.

(8) Examination of Liquidation Transactions: After giving liquidation return, liquidators petition their transactions with regard to the tax laws. Tax examination is started in 3 months at the latest and is continued ceaselessly. Tax administration informs the liquidator within 30 days after tax examination ends. Liability of liquidators within the 7th clause continue till the result of taxes demanded is obtained.

(9) Ministry of Finance is authorized to cancel tax investigation considering legal status, industries and asset sizes in the beginning of liquidation stage.

8.1.3. Merger Period

Clauses regarding the determination of liquidation profit is exactly valid for the determination of merger profit. The merger profit is calculated for merger period and the difference between the equity value in the beginning of merger period and the equity value in the end of merger period gives us merger profit.

On the other hand, the calculation of merger profit is not that much clear due to the disputes about identifying merger period. Merger period is not defined in TCCT numbered 5520, thus there exists debate on that issue in tax literature.

According to 1st argument, merger period is defined as liquidation period due to the fact that merger's being equivalent to liquidation. Accordingly, the date of balance sheet, which is regarded as base in merger, should be considered as the beginning of merger period. However, the opponents argue that the period between balance sheet date and the date at which merger agreement is approved in General Assembly of merging parties does not imply a legal binding for the parties. Legitimization of

merger agreement is done with the approval of General Assembly and the registry and announcement in TTR.

The advocates of 1st opinion argue that tax law deals with actual circumstances of economic activities, thus the focus should be on the actual beginning date rather than the legal beginning date.

According to 2nd argument, it is not possible to define a period as merger period. In TCC, mergers have a legal status as of the date at which the changes in Article of Association of merging companies are registered and announced in TTR. Legal status of merger transaction is formed at the registry and announcement date. Then, it becomes impossible to determine two seperate dates as beginning and/or end, because merger transaction starts and ends at the same date.

8.1.4. Merger Profit

8.1.4.1. 1st Argument on Merger Period

In general, merger profit is calculated as liquidation profit. However, the calculation of merger profit differs depending on the definition of merger period.

According to 1st argument on merger period, merger profit arises from 3 different sources.

1. Income earned by acquired company from commercial and industrial activities during the merger period,
2. Income earned through the realization of hidden reserves, which are involved in the assets of acquired company,
3. Income earned through the realization of goodwill, which is not seen in accounting records but accepted as an economic asset[40]

---

[40] Hızır TARAKÇI, op.cit., p. 142

Accordingly, book value of equity is gathered from the balance sheet in the beginning of merger period, while current value of equity is derived from the merger report, which is prepared during merger period and includes current value of company assets and liabilities.

Current value of equity which will be used as base in transaction is derived by adding goodwill, which is not seen in balance sheet, to current value of equity, which is calculated through current valuation of assets and liabilities in balance sheet, and deducting tax liabilities that will arise at the end of transaction. The reason for deducting tax liabilities that will arise at the end of transaction is the ignorance of current year corporate tax burden while calculating the fair value of company assets.

After determining book value and current value of equity for both acquiring and acquired company, exchange ratio is calculated based on those values. Exchange ratio will give us the amount of capital increase needed by acquiring party. The formulas for the calculation of exchange ratio and the amount of required capital incrase are given below.

$$\textbf{Exchange Ratio} = \frac{\text{Current EV of Y / Nominal Capital of Y}}{\text{Current EV of X / Nominal Capital of X}}$$

X : Acquiring or Merging Company   EV: Equity Value
Y: Acquired or Merging Company

RCI for X = ER * Nominal Equity Value of Y

Y: Acquired Company
X : Acquiring Company
RCI: Reguired Capital Increase
ER: Exchange Ratio

Merger profit calculation will be easier after finding exchange ratio and the amount of required capital increase for the acquiring company.

According to proponents of 1st Argument on merger period, the nominal equity value in the balance sheet as of the beginning of merger

period is regarded as "the asset value in the beginning of merger period", while the nominal equity value in the the balance sheet as of the end of merger period is regarded as "the asset value in the end of merger period", which is actually equal to 0 as of the date at which the capital increase of acquiring company is registered and announced in TTR.

Article 18/2 of TCCT numbered 5520 cites that *"Clauses regarding the determination of liquidation profit will be exactly valid for the determination of merger profit. Insofar, the assets given to liquidating company shareholders or owners by acquiring company stand for the assets allocated to shareholders. The assets gathered from acquiring company are valued based on principles in the Code of Tax Procedure."*

Accordingly, the equity shares of acquiring company given to acquired company shareholders stand for "the assets allocated to shareholders by acquired company" and thus the values of those equity shares must be added to acquired company's asset value in the end of merger period.

Similarly, if there exists some assets transferred to acquiring company as a provision against tax liabilities that will arise possibly (Merging parties sometimes take those kind of provisions in the calculation of exchange ratio and required capital increase), those assets are also considered as assets withdrawn from company and added to the asset value in the end of merger period.

Finally, income earned from the activities of acquired company in the merger period must be taken into account for the calculation of the asset value in the end of merger period. If acquired company didnot liquidate at the end of merger, then those earnings gained from operations would be under the equity section of balance sheet and thus would be taken into account in the calculation of asset value in the end of period directly. However, acquired company is liquidated at the end of transaction and that requires income from operations to be added to the asset value in the end of merger period.

In sum, the difference between the asset value in the end of merger period and the asset value in the beginning of merger period, the calculation of which is summarized above, will give us merger profit.

8.1.4.2. 2nd Argument on Merger Period

As mentioned previously, 2nd argument on merger period argues mainly the existence of “merger instance” rather than “merger period”. According to that argument, merger starts and ends at the same date, which is the registry and announcement date in TTR. Thus, the asset value in the beginning and the asset value in the end of merger period must be interpreted seperately from the definition in Article 17 of TCCT numbered 5520.

Accordingly, acquiring company’s asset value in the beginning of merger period is considered as the book value of equity as of the date, at which capital increase is registered and announced in TTR. At the time of merger, all assets of acquired company are transferred to acquiring company, thus there remains no asset component in the balance sheet of acquired company as of the date of merger. [41] In this case, the equity shares of acquiring company given to the shareholders of acquired company are valued with their purchase value and added to the asset value in the end as an asset group withdrawn from acquired company. Purchase value of acquiring company shares is accepted as agreed value of equity shares during the merger negotiations.

If the tax burden regarding merger profit is not taken into account in the calculation of acquired company’s equity value, then it must also be added to acquired company’s asset value in the end. Because the tax burden regarding merger profit is undertaken by the acquiring company after merger transaction, that is, it should be considered as a debt of acquired company in the calculations. In essence, acquiring company transfers a

---

[41] Hızır TARAKÇI, op.cit. p. 158

value to the shareholders of acquired company and Article 18 of TCCT numbered 5520 requires the addition of that value transfer to acquired company's asset value in the end.

In the 2nd Argument on Merger Period, merger is realized at an instance rather than in a period in principle. Thus, earnings gained from the acitivities of acquired company in the merger period are not added to merger profit in this approach. However, the 1st Argument foresees those income to be added to acquired company's asset value in the end. Actually, the main difference between merger profit of 1st Argument and merger profit of 2nd argument is those earnings gained in the merger period.

However, there is no difference between 1st Argument and 2nd argument in terms of tax results. At first sight, tax collected on merger profit will be less in 2nd Argument due to lower merger profit calculated, whereas income earned by the acquired company in merger period are also subject to corporate tax and tax collected on those earnings will compensate the lower tax amount collected on merger profit.

8.1.5. Payment of Corporate Tax on Merger Profit

As the acquired company is liquidated at the end of merger transaction, different views are proposed about the payment of taxes on merger profit.

Common view is to consider tax on merger profit as a debt item in net asset calculation. That view requires acquiring company to pay the tax on merger profit.

Alternative view is to keep some assets (espacially liquid assets) out of merger transaction in order for the payment of taxes on merger profit by the shareholders of acquired company. In this case, the shareholders of acquired company will pay for the tax.

In some cases, the acquired company shareholders sell off the shares of acquiring company, which they receive in merger transaction, in order to pay for the tax on merger profit.

8.1.6. Examples Regarding Merger Profit Calculation

Calculation of merger profit could sometimes be a complex issue especially when the acquiring company is a subsidiary of acquired company or vice versa. The method of calculation directly affects the taxation results in those cases. Some examples regarding merger profit calculation will be given in the following sections in order for better explanation of that issue.

8.1.6.1. Case 1: Acquired Company and Acquiring Company Has No Subsidiary Relationship

Company B is a foreign-based tax-payer and takes a decision to merge with Company S due to its growing strategy in Turkey. Balance sheets of Company B and Company S, which will be considered as base in merger transaction, are given as below. It is assumed that Company S could not generate income from its operations in the merger period.

Company B *(Before Merger)*

Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	500.000	Accounts Payable	3.000.000
Notes Receivables	2.000.000		
Inventory	4.000.000	**Long Term Liabilities**	
		Loans	2.000.000
Fixed Assets			
Tangible Assets	9.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid-in Capital	3.000.000
		Profit Reserves	3.500.000
		Net Profit	500.000
TOTAL ASSETS	**12.000.000**	**TOTAL LİAB.&EQUİTY**	**12.000.000**

Company S ***(Before Merger)***

Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	1.000.000	Accounts Payable	1.600.000
Notes Receivables	1.500.000		
Inventory	2.500.000	**Long Term Liabilities**	
		Loans	2.000.000
Fixed Assets			
Tangible Assets	5.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid-in Capital	1.000.000
		Profit Reserves	1.500.000
		Net Profit	400.000
TOTAL ASSETS	**6.500.000**	**TOTAL LİAB.&EQUİTY**	**6.500.000**

Company S, the acquired party, consider tax liabilities that will arise after merger transaction among their liabilities, in other words, tax on merger profit will be paid by Company B at the end.

Current asset values, which are agreed between Company B and Company S and also approved by the transaction expert assigned by the Court, are as below.

Asset	**Company B**	**Company S**
Cash & Cash Equivalents	500.000	1.000.000
Notes Receivables	2.000.000	1.500.000
Inventory	4.800.000	3.500.000
Tangible Assets (Net)	8.000.000	6.000.000
Current Asset Value	**15.300.000**	**12.000.000**

When the book value of assets are deducted from current value of assets, then it is reached to hidden reserve, which is an equity item. Current value of equity (derived from book records) is reached, when hidden reserves are added to the book value of equity.

	Company B	**Company S**
Current Asset Value (Net) (1)	15.300.000	12.000.000
Net Book Value of Assets (-) (2)	12.000.000	6.500.000
Valuation Difference (Hidden Reserve) (3=1-2)	3.300.000	5.500.000
Capital (4)	3.000.000	1.000.000
Profit Reserves (5)	3.500.000	1.500.000
Net Profit (6)	500.000	400.000
Current Value of Equity (Derived from Book Records) (7=3+4+5+6)	**10.300.000**	**8.400.000**

Value of a company does not arise only from assets recorded in its balance sheet. Some of the value comes into being when the company is subject to a merger transaction. The value arising in a merger transaction through the negotiations between parties is called "goodwill" and it has implications in tax application providing that the contract between merging parties do not involve fictitious clauses. In calculating "real current value of equity", goodwill is added to "the current value of equity derived from book records" and tax liabilities expected to arise at the end of transaction are deducted from that summation.

	Company B	**Company S**
Current Value of Equity (Derived from Book Records) (1)	10.300.000	8.400.000
Goodwill (2)	12.000.000	7.000.000
Tax Liabilities (-) (3)	800.000	1.500.000
Real Current Value of Equity (4=1+2-3)	**21.500.000**	**13.900.000**

Real current value of equity for Company S is 13.900.000. The shareholders of Company S will receive shares of Company B at the end of merger transaction and the real current value of equity calculated for Company S will stand for the purchase value of Company B shares received by the shareholders of Company S.

The asset value in the beginning of merger period and the asset value in the end of merger period will be compared and favourable difference will be the tax base as merger profit for Company S.

Purchase Value of Company B Shares [42] (1)	13.900.000
Provision for Tax Liabilities[43] (2)	1.500.000
The Asset Value in the End of Merger Period [44] (3=1+2)	15.400.000
The Asset Value in the Beginning of Merger Period(-) (4)	2.900.000
Merger Profit (5=3-4)	**12.500.000**

The amount of capital increase required by acquiring company will be calculated based on the formulas below.

$$\textbf{Exchange Ratio} = \frac{\text{Current EV of S / Nominal Capital of S}}{\text{Current EV of B / Nominal Capital of B}}$$

$$\textbf{Exchange Ratio} = \frac{13.900.000 / 1.000.000}{21.500.000 / 3.000.000} = \textbf{1.93953}$$

Exchange Ratio (1)	1,939535
Nominal Capital of Company S (2)	1.000.000
Required Capital Increase for Company B (3=1x2)	1.939.535
Real Current EV of Company S (4)	13.900.000
Merger Premium (Issue Premium) (5=3-4)	11.960.465

The assets of acquired company are transferred to acquiring company with its current values. If goodwill arises in the transaction, it also takes place in the balance sheet of acquiring company. All liabilities ,including tax liabilities on merger profit, are also transferred to acquiring company. The asset size of acquiring company increases by the real current equity value of acquired company. Capital increase and merger premium are the increasing items on the other side of acquiring company balance sheet. Merger premium, which is like an issue premium, is except from corporate

---

[42] The equity shares of acquiring company, given to the shareholders of acquired company, are measured according to the measurement clauses in TCTP. The purchase value must be the current equity value of acquired company, which is agreed between parties and approved by court expert.
[43] Provision for tax liabilities are considered as a debt item in the calculation of exchange ratio, because it is undertaken by Company B according to the agreement between parties. As provision for tax liabilities is regarded as values witdrawn fom acquired company, it must added to the asset value in the end.
[44] The income gained by Company S will either be added to the asset value in the end and considered as part of merger profit or be subject to corporate tax with a corporate tax retun for limited period.

tax and does not bring a tax liability for the acquiring company. Company B balance sheet after transaction will be as below.

Company B (After Merger)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	1.500.000	Accounts Payable	4.600.000
Notes Receivables	3.500.000	Provisions for Tax Liab.	1.500.000
Inventory	7.500.000		
		Long Term Liabilities	
		Loans	4.000.000
Fixed Assets			
Tangible Assets	15.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid-in Capital	4.939.535
Goodwill	7.000.000	Profit Reserves	3.500.000
		Net Profit	500.000
		Merger Premium	11.960.465
TOTAL ASSETS	**31.000.000**	**TOTAL LİAB.&EQUİTY**	**31.000.000**

8.1.6.2. Case 2: Acquired Company Is a Subsidiary of Acquiring Company

It is very common to see merger transactions between companies having subsidiary relationships. Acquiring company could be a subsidiary of acquired company as well as acquired company could be a subsidiary of acquiring company. The critical issue in those kind of transactions is that the current value of equity pertaining to subsidiary shares should not be considered in the calculation of merger profit.

Case 2, which is an expanded version of Case 1, explains the calculation of merger profit for transactions, in which acquiring company is the subsidiary of acquired company.

Company B has % 40 share in Company S. Company B has purchased those Company S shares at 2.000.000. On the other hand, the current value of those shares are valued as 2.500.000. It is assumed that Company S could not generate income from its operations in the merger period.

Balance sheet of Company B and Company S, which will be considered as base in merger transaction, and current value of assets for transaction parties are given below.

Company B ***(Before Merger)***			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	500.000	Accounts Payable	4.000.000
Notes Receivables	2.000.000		
Inventory	4.000.000	**Long Term Liabilities**	
		Loans	3.000.000
Fixed Assets			
Tangible Assets	9.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid in Capital	3.000.000
Subsidiaries	2.000.000	Profit Reserves	3.500.000
		Net Profit	500.000
TOTAL ASSETS	**14.000.000**	**TOTAL LİAB.&EQUİTY**	**14.000.000**

Company S ***(Before Merger)***			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	1.000.000	Accounts Payable	1.600.000
Notes Receivables	1.500.000		
Inventory	2.500.000	**Long Term Liabilities**	
		Loans	2.000.000
Fixed Assets			
Tangible Assets	5.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid in Capital	1.000.000
		Profit Reserves	1.500.000
		Net Profit	400.000
TOTAL ASSETS	**6.500.000**	**TOTAL LİAB.&EQUİTY**	**6.500.000**

Asset	**Company B**	**Company S**
Cash & Cash Equivalents	500.000	1.000.000
Notes Receivables	2.000.000	1.500.000
Inventory	4.800.000	3.500.000
Net Fixed Assets	8.000.000	6.000.000
Subsidiaries	2.500.000	0
Current Asset Value	**17.800.000**	**12.000.000**

	Company B	Company S
Current Asset Value (Net) (1)	17.800.000	12.000.000
Net Book Value of Assets (-) (2)	12.000.000	6.500.000
Valuation Difference (Hidden Reserve) (3=1-2)	5.800.000	5.500.000
Capital (4)	3.000.000	1.000.000
Profit Reserves (5)	3.500.000	1.500.000
Net Profit (6)	500.000	400.000
Current Value of Equity (Derived from Book Records) (7=3+4+5+6)	**12.800.000**	**8.400.000**

	Company B	Company S
Current Value of Equity (Derived from Book Records) (1)	12.800.000	8.400.000
Goodwill (2)	12.000.000	7.000.000
Tax Liabilities (-) (3)	800.000	1.500.000
Real Current Value of Equity (4=1+2-3)	**24.000.000**	**13.900.000**

40 % of Company S's current value of equity belongs to Company B, while the remaining 60% belongs to 3rd parties. In other words, the portion of Company S, which is acquired by Company B, is the portion in the hands of 3rd parties, because 40% of real current value of equity does already belong to Company B.

Accordingly, Company B will increase its capital in such an amount that it will acquire 60% of Company S shares, which belongs to 3rd parties.

$$\textbf{Exchange Ratio} = \frac{13.900.000 / 1.000.000}{24.000.000 / 3.000.000} = \textbf{1,7375}$$

Exchange Ratio (1)	1,737500
Nominal Capital of Company S (2)	1.000.000
Nominal Capital Value of Company S shares in 3rd parties (3=2x60%)	600.000
Required Capital Increase for Company B (4=3/1)	1.042.500
Real Current Value of Equity for Company S (5)	13.900.000
Merger Premium (Regarding Capital Increase) (6=(5x60%-4)	7.297.500
Original Purchase Value of Subsidiary Shares (7)	2.000.000
Merger Premium (Regarding Subsidiary Value Increase) (8=(5x40%-7)	3.560.000

Merger premium in the acquiring company arises from two sources.

1. Merger premium pertaining to the shares owned by 3rd parties equals to (8.340.000 - 1.042.500) 7.297.500.
2. Current equity value pertaining to 40 % of Company S shares, which Company B has originally purchased at 2.000.000, is (13.900.000 * % 40) 5.560.000. Considering Company B has made a capital increase of 2.000.000 to purchase those shares, the value increase realized, or merger premium regarding subsidiary value increase, becomes (5.560.000 – 2.000.000) 3.560.000.

On the other hand, there is no controversial issue regarding the merger profit realized in Company S. According to 1st Argument on merger period, the difference between the asset value in the end of merger period and the asset value in the beginning of merger period will be the merger profit, which is tax base for corporate tax.

Purchase Value of Company B Shares (1)	13.900.000
Provision for Tax Liabilities (2)	1.500.000
The Asset Value In the End of Merger Period (3=1+2)	15.400.000
The Asset Value In the Beginning of Merger Period (-) (4)	2.900.000
Merger Profit (5=3-4)	**12.500.000**

Balance sheet of Company B after merger transaction will be as below.

Company B (After Merger)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	1.500.000	Accounts Payable	5.600.000
Notes Receivables	3.500.000	Provisions for Tax Liabilities	1.500.000
Inventory	7.500.000		
		Long Term Liabilities	
		Loans	5.000.000
Fixed Assets			
Tangible Assets	15.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid-in Capital	4.042.500
Goodwill	7.000.000	Profit Reserves	3.500.000
		Net Profit	500.000
		Merger Premium	10.857.500
		Regarding Capital Increase	*7.297.500*
		Regarding Subsidiary Share	*3.560.000*
TOTAL ASSETS	**31.000.000**	**TOTAL LİAB.&EQUİTY**	**31.000.000**

8.1.6.3. Case 3: Acquiring Company Is a Subsidiary of Acquired Company

Company S, which will be acquired by Company B, has subsidiary shares in Company B. In this case, Company B shares, which are given to Company S shareholders at the end of merger transaction, will turn back to Company B due to the subsidiary relationship among parties and the values transferred pertaining to subsidiary shares must not be taken into account in the calculation of merger profit for Company S. Those values must not also be taken into account in the calculation of merger premium for Company B.

Balance sheets of Company B and Company S, which will be considered as base in merger transaction, are given below. Company S has purchased % 20 of Company B shares at 2.000.000. The current value of those shares, as of merger date, is 3.500.000. It is assumed that Company S could not generate income from its operations in the merger period.

Company B *(Before Merger)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	500.000	Accounts Payable	3.000.000
Notes Receivables	2.000.000		
Inventory	4.000.000	**Long Term Liabilities**	
		Loans	2.000.000
Fixed Assets			
Tangible Assets	9.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid in Capital	3.000.000
		Profit Reserves	3.500.000
		Net Profit	500.000
TOTAL ASSETS	**12.000.000**	**TOTAL LİAB.&EQUİTY**	**12.000.000**

Company S *(Before Merger)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	1.000.000	Accounts Payable	3.100.000
Notes Receivables	1.500.000		
Inventory	2.500.000	**Long Term Liabilities**	
		Loans	2.500.000
Fixed Assets			
Tangible Assets	5.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid in Capital	1.000.000
Subsidiaries	2.000.000	Profit Reserves	1.500.000
		Net Profit	400.000
TOTAL ASSETS	**8.500.000**	**TOTAL LİAB.&EQUİTY**	**8.500.000**

Current value of assets and current value of equity are summarized in below tables.

Asset	Company B	Company S
Cash & Cash Equivalents	500.000	1.000.000
Notes Receivables	2.000.000	1.500.000
Inventory	4.800.000	3.500.000
Net Fixed Assets	8.000.000	6.000.000
Subsidiaries		3.500.000
Current Asset Value	**15.300.000**	**15.500.000**

	Company B	Company S
Current Asset Value (Net) (1)	15.300.000	15.500.000
Net Book Value of Assets (-) (2)	12.000.000	6.500.000
Valuation Difference (Hidden Reserve) (3=1-2)	3.300.000	9.000.000
Capital (4)	3.000.000	1.000.000
Profit Reserves (5)	3.500.000	1.500.000
Net Profit (6)	500.000	400.000
Current Value of Equity (Derived from Book Records) (7=3+4+5+6)	**10.300.000**	**11.900.000**

	Company B	Company S
Current Value of Equity (Derived from Book Records) (1)	10.300.000	11.900.000
Goodwill (2)	12.000.000	7.000.000
Tax Liabilities (-) (3)	800.000	1.500.000
Real Current Value of Equity (4=1+2-3)	**21.500.000**	**17.400.000**

Real current value of equity pertaining to subsidiary shares is 3.500.000. As acquiring company partly acquires its own shares, lesser capital increase will be sufficient.

Exchange Ratio (1)	2,427907
Nominal Value of Company S Capital (Excluding Subsidiary Share) (2)	400.000
Required Capital Increase for Company B (3=2/1)	771.163
Real Current Value of Equity for Company S (excluding the value pertaining to subsidiary shares) (4)	13.900.000
Merger Premium (5=4-3)	13.128.837

Based on above calculation, the value pertaining to Company B subsidiary shares, which is 3.500.000, must be subtracted from Company S's current value of equity. Accordingly, Company B makes a capital increase of 771.163 for the Company S's current value equity excluding the value pertaining to subsidiary shares, which is 13.900.000. The difference equals merger premium, which is except from corporate tax.

On the other hand, Company B shares received by Company S, pertaining to its participation in Company B, must not be taken into account in the calculation of merger profit. In essence, Company B acquires its shares back through merger transaction.

Real Current Value of Equity for Company S (1)	17.400.000
Current Value of Subsidiary Shares (-) (2)	3.500.000
Provision for Tax Liabilities (3)	1.500.000
The Asset Value in the End of Merger Period (4=1-2+3)	15.400.000
The Asset Value in the Beginning of Merger Period (-) (5)[45]	2.217.647
Merger Profit (6=4-5)	**13.182.353**

The values in Company S balance sheet are transferred to Company B balance sheet with their current values. Subsidiaries item in Company S balance sheet, which is regarding the Company S's participation in Company B, is written off, becasuse TCC does not permit a company to purchase its own shares back or keep its own shares as an asset item in its balance sheet.

Accordingly, the balance sheet of Company B after the merger transaction will be as below.

Company B ***(After Merger)***			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	1.500.000	Accounts Payable	6.100.000
Notes Receivables	3.500.000	Provision for Tac Liab.	1.500.000
Inventory	7.500.000		
		Long Term Liabilities	
		Loans	4.500.000
Fixed Assets			
Tangible Assets	15.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid-in Capital	4.156.744
Goodwill	7.000.000	Profit Reserves	3.500.000
		Net Profit	500.000
		Merger Premium	12.743.256
TOTAL ASSETS	**31.000.000**	**TOTAL LİAB.&EQUİTY**	**33.000.000**

8.1.7. Taxation After Merger

Taxation results for merger transaction must be appraised for three parties: acquired company, acquiring company and the shareholders of acquired company.

---

[45] The asset value in the beginning or merger period is calculated as 2.900.000 x (1-2.000.000 / 8.500.000) = 2.217.647 in order to exclude the value of subsidiary share from the merger profit calculation.

8.1.7.1. Taxation for Acquired Company

As mentioned before, corporate tax arises in a merger transaction and merger profit becomes the tax base for acquired company. The most common method for the payment of arising corporate tax is to set a provision for tax liabilities and consider that provision seperate from equity as a debt item of acquired company before the transaction. Acquiring company undertakes taxes arising in merger transaction

8.1.7.2. Taxation for Acquired Company Shareholders

There are different views about the taxation of acquired company shareholders.

According to 1st view, merger transaction is regarded as liquidation for the acquired company. According to liquidation clauses in TCCT numbered 5520, the equity items allocated to the shareholders of acquired company, excluding nominal capital, are regarded as dividend distribution. Thus, the value of acquiring company shares given to acquired company shareholders, after deducting nominal value of their equity shares, must be considered as dividend and be subject to income tax. Witholding tax on dividend distributed will be collected by the acquiring company according to this argument.

2nd view argues that giving out acquiring company shares to the shareholders of acquired company is nothing other than barter. That means that no taxation is required regarding the shares given to acquired company shareholders due to the barter characteristic of transaction.

3rd view assesses income from disposing of shares or partnership rights as appreciation income. Taxation on acquired company shareholders should be based on that appreciation.

As seen above, there are various views regarding the taxation of acquired company shareholders and there is no mutual agreement on one of above views till now.

8.1.7.3. Taxation for Acquiring Company

Merger premium seems the most important taxation issue for acquiring company in merger transactions. As known, merger premium equals to the difference between acquired company's real current value of equity and the amount of capital increase that acquiring company makes. Being like an issue premium, merger premium does not require a taxation for the acquiring company.

8.1.8. Issues Related to After Merger Period

Article 18 of TCCT cites that liabilities and duties of liquidators in liquidation belong to the acquiring company in merger transactions. Accordingly, acquiring company will;

1. pay taxes accrued but not paid by the acquired company with the tax accrued on merger profit
2. Article 17 of TCCT cites that after giving liquidation return, liquidators apply to Tax Administration for the examination of transaction with regard to tax laws. Tax examination is started in three months after petition at the latest and continued ceaselessly. Tax Administration informs the liquidator within 30 days after tax examination ends. Liability of liquidators within the 7th clause continue till the result of taxes demanded is obtained. The responsibilities of liquidators are exactly valid for the acquiring company in merger transactions.
3. If there exists appealed tax imposements on acquired company, some provision must be set for tax imposements and that provision must be regarded as debt in calculations. If the appeal is finalized in favour of the acquired company, the agreement between acquiring company and acquired company will be the determinant of what to do. If parties decide to give additional

acquiring company shares to the shareholders of acquired company, then acquiring company must make a capital increase. Difference between the additional value transferred to acquiring company and the capital increase made by acquiring company is regarded as additional merger premium. If it is not foreseen any additional share distribution to the shareholders of acquired company in merger agreement, then all the provision set aside for the appealed tax imposements will be added to merger premium in acquiring company balance sheet.

4. Fixed assets subject to depreciation are transferred to acquiring company balance sheet with their current values and hidden reserves in those fixed assets are realized in the acquired company. Depreciation of fixed assets transferred is re-started in the acquiring company.
5. The deduction of acquired company's previous year losses from acquiring company's taxable income is a debated issue. Common view is that previous year losses belonging to acquired company should not be deducted from the taxable income of acquiring company, because merger is reckoned as liquidation for the acquired party and the losses of liquidating company are not allowed to be deducted by the parties having allocation from liquidation residual. Another view is that loss deduction should be possible for the acquiring company as well, because universal succession rule in TCC requires all rights to be transferred to acquiring company in a merger transaction.

8.2. ACQUISITION

8.2.1. Place in Code of Corporate Tax

In TCC numbered 6762, there is no seperate definition for merger and acquisition transactions; however, when the definition of merger in the Article 146 of TCC and clauses between Articles 451 and Article 454 of TCC, which is about dissolution without liquidation, are considered together, it is conferred that merger transaction could be in two ways within the context of TCC. In Section 5, acquisition transaction has been defined such that a company's assets and liabilities as a whole are acquired by an existing company and the acquired company is dissolved without liquidation at the end of transaction.

Definition of acquisition is made more clear in Draft TCC. Article 136 of Draft TCC defines mergers in two groups: mergers through acquisition and mergers through new establishment.

In TCCT application, acquisition is defined independently from the definitions in both TCC numbered 6762 and draft TCC. Article 19 of TCCT defines acquisition as a merger transaction satisfying certain conditions. Article 19 of TCCT lists two conditions in order to name a merger transaction as an acquisition transaction.

1. Both legal and principal place of business must be in Turkey (in other words both acquiring and acquired company must be full fledged taxpayer)
2. Balance sheet items of acquired company must be taken over by the acquiring company as a whole and must be transferred to acquiring company balance sheet exactly as of the transaction date

Providing that the conditions listed above are satisfied, the status change of companies are also reckoned as acquisition.

The regulation regarding the acquisition in TCCT is nothing but a tax deferral instrument. Transferring acquired company assets as a whole to acquiring company ensures tax deferral function. Assets are transferred with their book values rather than current values so that appreciation income is precluded. In other words, the appreciation income arises in acquiring company rather than acquired company and that makes acquisition transaction a tax deferral tool for parties.

Transferring the assets of acquired company to acquiring company exactly helps the aim of consolidation of balance sheets.

As a result of being a tax deferral instrument, the collection of tax in the future must be ensured in some way. That ensurement is provided with the second condition, which is both acquiring and acquired parties' being a full fledged taxpayer. If acquiring party becomes a foreign based tax-payer, the collection of tax in the future is questionable; because acquiring party could sell off acquired assets abroad and by this way taxation right of Turkey on appreciation income could disappear. (foreign-based tax payers are taxed on their income gained in Turkey, whereas full fledged tax-payers are taxed on their income gained in both Turkey and abroad)

When the acquiring company is a full fledged tax-payer, the collection of tax is certain as income gained in Turkey and abroad is subject to taxation for full fledged tax-payer.

On the other hand, Article 19 requires not only acquiring company but also acquired company to be full fledged tax payer. As mentioned above, the requirement regarding acquiring company is due to guarantee tax collection in the future. However, the requirement for acquired company's being full fledged tax payer is not related to future tax collection gurantee but is related to a basic taxation principle. In essence, deferring a tax will be possible as long as the tax arises within the country's domination area. If the transaction occurs outside the domination area of a country, deferring tax will not be possible unless the parties in transaction are full fledged tax payer. Thus, the requirement regarding the acquired party's being a full

fledged tax payer quarantees taxation right of country and tax is deferred based on that right.

The main principles regarding the taxation of acquisition transaction are explained in Article 20 of TCCT. Merger profit will not be subject to tax as long as the principles listed in Article 20 are followed. The principles in Article 20 of TCCT are listed as below.

1. Acquiring company and acquired company must prepare the tax return of acquired company together and co-sign it as of the date of acquisition (acquisition date is the date at which acquisition decision is registered to TTR); in case the transaction occurs between the balance sheet date and the date at which the tax return of previous accounting period must be submitted, the previous year's tax return for corporate tax is also given to Tax Authority within 30 days after merger transaction is registered in TTR.
2. Acquiring company must undertake to pay acquired company's all taxes accrued and to accrue, and to fulfill all obligations with a letter of undertaking attached to corporate tax return, which is given by acquiring company on behalf of acquired company.

The income earned by acquired company till the acquisition date, will be subject to taxation. The arguments on merger period are not valid for acquisition transaction. Because acquisition starts and ends at the same date and thus all the income earned before is subject to corporate tax for acquired company.

The subsidiary relationship between acquiring company and acquired company is a very much debated issue for the implementation of acquisition transaction. In case subsidiary relationship exists between parties, transaction could be implemented under two systems called "gross" and "net".

8.2.2. Examples Regarding Acquisition Transaction

8.2.2.1. Case 1: Acquisition Parties Have No Subsidiary Relationship

Company B will acquire Company S, which it has no subsidiary relationship. Company B and Company S have taken the decision of acquisition on February 14th, 2007 and have formed their balance sheet as basis for acquisition transaction on February 17th,2007. Acquisition transaction has been realized on July 7th, 2007 through the registry and announcement in TTR and Company S has been dissolved on that date.

Balance sheets of Company B and Company S, which are regarded as base in transaction, are as below.

Company B ***(Balance Sheet for Acquisition)***

Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	300.000	Accounts Payable	1.600.000
Notes Receivables	800.000		
Inventory	2.500.000	**Long Term Liabilities**	
		Loans	0
Fixed Assets			
Tangible Assets	2.000.000	**Equity**	
Accumulated Deprec. (-)	1.200.000	Paid-in Capital	1.200.000
		Profit Reserves	450.000
		Net Profit	1.150.000
TOTAL ASSETS	**4.400.000**	**TOTAL LİAB.&EQUİTY**	**4.400.000**

Company S (*Balance Sheet for Acquisition)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	100.000	Accounts Payable	300.000
Notes Receivables	250.000		
Inventory	300.000	**Long Term Liabilities**	
		Loans	0
Fixed Assets			
Tangible Assets	600.000	**Equity**	
Accumulated Deprec. (-)	250.000	Paid-in Capital	200.000
		Profit Reserves	350.000
		Net Profit	150.000
TOTAL ASSETS	**1.000.000**	**TOTAL LİAB.&EQUİTY**	**1.000.000**

The items in Company S balance sheet will be transferred to Company B balance sheet without any valuation. On the other hand, the shareholders of Company S will receive Company B shares in return and the amount of shares to be received by the shareholders of Company S is a debated issue in tax literature. In essence, the amount of shares to be given depends on the exchange ratio, however the results of transaction differ with respect to the calculation method of exchange ratio.

8.2.2.1.a. View 1: Exchange Ratio Calculated Using Current Values

According to View 1, the current value of equity must be found for both companies in order to calculate the exchange ratio for transaction. Company B will determine required capital increase based on that calculated exchange ratio.

Proponents of this view argue that there exists no determination regarding acquisition premium in both TCC and TCCT numbered 5520. The only determination in TCCT numbered 5520 is that acquisition transaction is a tax-free transaction.

In the above case, the current value of equity is calculated as 24.000.000 for Company B and 6.000.000 for Company S. The resulting exchange ratio is as follows:

$$\textbf{Exchange Ratio} = \frac{6.000.000 / 200.000}{24.000.000 / 1.200.000} = \textbf{1,50}$$

Exchange ratio of 1,50 means that 1.50 Company B shares will be given for each Company S share. Then, acquiring 200.000 shares of Company S will require a capital increase of (1.50*200.000) 300.000 by Company B. Company B acquires assets and liabilities of Company S, which has current value of 6.000.000, in return for the capital increase of 300.000. The difference, which is 5.700.000, gives us acquisition premium, which will take place in the balance sheet of Company B after transaction.

On the other hand, TCCT numbered 5520 requires the transfer of acquired company balance sheet as a whole. All asset and liability items in the balance sheet of acquired company will be transferred to the balance sheet of acquiring company and the difference between current value of equity and book value of equity for Company S will be followed under "Acquisition Balance" account, which will be formed in Company B balance sheet after acquisition. [46]

We should note that "balance sheet for acquisition", "balance sheet as of acquisition date" and "balance sheet after acquisition" are different financial tables. The first one is formed at the beginning of transaction negotiations and considered as base in calculations, while the second is formed as of the acquisiton date for both taxation and consolidation reasons. The earning before tax figure in Company S's balance sheet as of acquisition date is subject to corporate tax and is given to Tax Authority following the transaction, while Company B's balance sheet as of acquisition date is solely prepared for consolidation reasons and is presented to Tax Authority if demanded.

[46] Tarakci, op.cit.

Based on above explanations, balance sheet of Company B and Company S as of acquisition date will be as below.

Company B *(As of Acquisition Date)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	400.000	Accounts Payable	1.800.000
Notes Receivables	600.000		
Inventory	3.000.000	**Long Term Liabilities**	
		Loans	0
Fixed Assets			
Tangible Assets	2.200.000	**Equity**	
Accumulated Deprec. (-)	1.200.000	Paid-in Capital	1.200.000
		Profit Reserves	450.000
		Net Profit	1.550.000
TOTAL ASSETS	**5.000.000**	**TOTAL LIAB.&EQUİTY**	**5.000.000**

Company S *(As of Acquisition Date)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	100.000	Accounts Payable	300.000
Notes Receivables	350.000		
Inventory	500.000	**Long Term Liabilities**	
		Loans	0
Fixed Assets			
Tangible Assets	700.000	**Equity**	
Accumulated Deprec. (-)	300.000	Paid-in Capital	200.000
		Profit Reserves	350.000
		Net Profit	500.000
TOTAL ASSETS	**1.350.000**	**TOTAL LIAB.&EQUİTY**	**1.350.000**

As seen above, “the balance sheet for acquisition” and “balance sheet as of acquisition date” are totally different. That is due to the fact that both Company B and Company S have run their operations during the negotiation period. Company S has additional earnings of 350.000 in the negotiation period and finally short period earning of 500.000 becomes tax-base for the corporate tax to be collected from acquired party.

Balance sheet of acquiring company will be as below after consolidating the balance sheets of Company B and Company S.

Company B *(After Acquisition)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	500.000	Accounts Payable	2.100.000
Notes Receivables	950.000	Provision for Tax Liab.	**100.000**
Inventory	3.500.000		
		Long Term Liabilities	
		Loans	0
Fixed Assets			
Tangible Assets	2.900.000	**Equity**	
Accumulated Deprec. (-)	1.500.000	Paid-in Capital	1.500.000
		Profit Reserves	450.000
Acquisition Balance Account	**5.050.000**	Net Profit	1.550.000
		Acquisition Premium	**5.700.000**
TOTAL ASSETS	**11.400.000**	**TOTAL LIAB.&EQUİTY**	**11.400.000**

Proponents of View 1 argue that showing acquisition premium in the balance sheet of acquiring company is necessary from the legal point of view. Issue premiums are considered as exempt from corporate tax; however, as there is no legal arrangement making issue premiums exempt from corporate tax in case of their distribution to shareholders, the distribution of issue premium as dividend will make acquisition premium tax base for the witholding tax according to the Article 94 of Personal Income Tax Law. Thus determination of acquisition premium is crucial for tax purposes.

8.2.2.1.b. View 2: Exchange Ratio Calculated Using Book Values of Equity

Opponents of View 1 argue that exchange ratio should be calculated using the book values of equity. The main argument behind View 2 is the transfer of acquired company assets with their book value in order to defer the realization of hidden reserves in acquisition transaction. Taxation will be realized when acquiring company sells off acquired assets in the future. Acquisition premium is calculated by getting the difference between the capital increase of acquiring company and the book value of equity of acquired company. This view is dominant in Capital Market Board Communique numbered Serial: 1 No: 31.

Balance sheet of Company B will be as below.

Company B *(After Acquisition)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	500.000	Accounts Payable	2.100.000
Notes Receivables	950.000	Provision for Tax Liab.	**100.000**
Inventory	3.500.000		
		Long Term Liabilities	
		Loans	0
Fixed Assets			
Tangible Assets	2.900.000	**Equity**	
Accumulated Deprec. (-)	1.500.000	Paid-in Capital	1.500.000
		Profit Reserves	450.000
		Net Profit	1.550.000
		Acquisition Premium	**650.000**
TOTAL ASSETS	**6.350.000**	**TOTAL LIAB.&EQUİTY**	**6.350.000**

8.2.2.2. Case 2: Acquisition Transaction Is Among Parties Having Subsidiary Relationship

As mentioned before, having subsidiary relationship among transaction parties is a very common state. Whether considering subsidiary shares in the calculation of acquiring company's required capital increase amount or not will directly affect the results of acquisition transaction.

The method considering subsidiary shares in calculations are known as "gross method". In order to eliminate tax disadvantages of "gross method", Corporate Tax Communique numbered 67 proposes a new method called "net method" and the general principles of method are explained in the related Communique. "Net method" proposes that capital increase are not required for subsidiary shares. Serial:1 Communique:31, which is published by Capital Market Board, brings in parallel regulations with Corporate Tax Communique numbered 67.

On the other hand, there exists one main difference between Capital Market Board regulation and Corporate Tax Communique numbered 67. Capital Market Board regulation does not consider merger and acquisition transactions as seperate transactions, that is, the regulations regarding merger transactions are exactly valid for acquisition transactions.

On the other hand, TCCT considers mergers and acquisitions as seperate and independent transactions and thus the results of transactions differ from tax point of view. Corporate Tax Communique numbered 67 is arranged for only acquisition transactions.

8.2.3. Capital Market Board Communique Serial:1 No:31

Communique Serial 1 No 31 of CMB brings detailed explanations regarding the implementation of acquisition transaction. Communique starts with the definition of two crucial concepts: merger ratio and exchange ratio

Merger ratio is defined as the ratio accounted having regard to the method of merging, while exchange ratio denotes the ratio of the shares which the shareholders of the merging parties will get in exchange for an existing share.

Determination of merger ratio and exchange ratio is left to transaction parties' initiative. The methods like discounted cash flow method, market price method or equity method could be used for the determination of merger ratio.

According to DCF method, company values are found by discounting the expected future cash flows of companies and merger ratio is reached by proportioning company values calculated through DCF.

In market price method, merger ratio is calculated through proportioning market prices of companies. CMB brings some additional conditions to use market price method in the calculation of merger ratio.

1. The sum of publicly offered shares' nominal value must at least be 25% of company's nominal capital value and shares should be listed in Stock Exchange.
2. The arithmetic average of the last annual, corrected, weighted average prices must be considered as market price

3. Merger ratio calculations based on equity method and market price method must be given seperately in transaction expert report and that report must be presented to General Assembly
4. Merger ratio calculations based on equity method and market price method must be announced to public according to CMB Communiques

Equity method considers the proportion of equity values of companies engaging in acquisition transaction. According to this widely accepted method, either current or book value of equity could be used in calculations. If the current value of equity are used in calculations, the value must be determined by appraisal institutions, which are included in the list of CMB.

No matter which method is chosen for the calculation of equity value, the required capital increase to be made by acquiring company will be found through below formulas.

$$\textbf{Merger Ratio} = \frac{A}{A+B} = \textbf{D}$$

$$\textbf{Capital to Be Reached} = \frac{C}{D}$$

A: Equity Value of Acquiring Company
B: Equity Value of Acquired Company
C: Paid-in Capital of Acquiring Company

Example 1:

Company S will be acquired by Company B and Company S has 40 % participation in Company B. Required capital increase amount for Company B will be calculated as below.

Acquiring Company B		**Acquired Company S**	
Capital	250.000	Capital	350.000
Reserves	50.000	Reserves	10.000
Net Profit	100.000	Net Profit	75.000
Total Equity	**400.000**	**Total Equity**	**435.000**
The Capital Covering the Shares of Company S (-)	100.000		
The Reserves Covering the Shares of Company S (-)	20.000	Reserves Transmitted from Company B (+)	20.000
Net Profit Covering the Shares of Company S (-)	40.000	Profit Transmitted from Company B (+)	40.000
Netted Equity	**240.000**	**Netted Equity**	**495.000**
Netted Capital	**150.000**	**Netted Capital**	**350.000**

$$\textbf{Merger Ratio} = \frac{240.000}{240.000+495.000} = \mathbf{0{,}3265}$$

$$\textbf{Capital to Be Reached} = \frac{150.000}{0{,}3265} = \mathbf{459.375}$$

A: Equity Value of Acquiring Company
B: Equity Value of Acquired Company
C: Paid-in Capital of Acquiring Company (Netted)

The required capital increase to be made by acquiring Company A will be (459.375- 250.000) 209.375. Increased capital of 209.375 will be used in the acquisition of Company B's shares of 350.000. Exchange ratio is calculated as (209.375 / 350.000) 0,5982, meaning that 0,5982 Company B share will be exchanged for each Company S share acquired.

Example 2: Assuming that Company B, which is the acquiring party, has 40 % stake in Company S, which is the acquired party, the required capital increase amount for Company B will be found as below.

Acquiring Company B		Acquired Company S	
Capital	250.000	Capital	350.000
Reserves	50.000	Reserves	10.000
Net Profit	100.000	Net Profit	75.000
Total Equity	**400.000**	**Total Equity**	**435.000**
		The Capital Covering the Shares of Company B (-)	140.000
Reserves Transmitted from Company S (+)	4.000	The Reserves Covering the Shares of Company B (-)	4.000
Net Profit Transmitted from Company S (+)	30.000	Net Profit Covering the Shares of Company B (-)	30.000
Netted Equity	**434.000**	**Netted Equity**	**261.000**
Netted Capital	**250.000**	**Netted Capital**	**210.000**

$$\textbf{Merger Ratio} = \frac{434.000}{434.000+261.000} = \textbf{0,6244}$$

$$\textbf{Capital to Be Reached} = \frac{250.000}{0,6244} = \textbf{400.345}$$

A: Equity Value of Acquiring Company
B: Equity Value of Acquired Company
C: Paid-in Capital of Acquiring Company (Netted)

The required capital increase to be made by Company B will be (400.345 - 250.000) 150.346. Increased capital of 150.346 will be used in the acquisition of Company B's shares of 210.000. Exchange ratio is calculated as (150.346 / 210.000) 0,7159, meaning that 0,7159 Company B share will be exchanged for each Company S share.

8.2.4. Corporate Tax Communique Serial No: 67

If the "gross method" rather than "netted method" is chosen in acquisition transactions, acquiring party will also consider subsidary shares in its calculation of required capital increase.

If the acquiring company participates in acquired company and considers its stake in the calculation of required capital increase, then it will receive its own shares back while exchanging newly issued shares with acquired company shares at the end of transaction. On the other hand, receiving its own shares back will necessitate the disposal of those shares due to the Article 329 clause of TCC numbered 6762. Acquiring company could dispose its own shares through various ways.

1. First alternative is to sell off shares, but it is certain that appreciation income, which is subject to tax, will be realised in this alternative.
2. Second alternative is capital decrease. If a company decreases its capital using own shares in its assets, that means that company distributes the difference between market price and nominal price of those shares to its shareholders as dividend and that will be subject to tax at the end.
3. Third alternative is giving out own shares to acquired company shareholders in a different acquisition transaction. The realisation of appreciation income in this scenario is debateful.

When acquired company participates in acquiring company and acquiring company increases its capital considering the subsidiary shares, in essence the acquiring party will partly acquire its own shares at the end of transaction. As Article 329 of TCC does not allow to keep own shares as an asset, acquiring company will have to dispose those shares. Disposal of own

shares will be realized trough one of the ways mentioned above and that could necessitate taxation for acquiring company.

As the preference of "gross method" indirectly brings taxation burden for parties, acquisition transaction used to be a dead mechanism rather than being a tax incentive in the past.

Hereupon, Corporate Tax Communique Serial No 67 has made some explanations regarding the application of "netted method" under the heading of "Capital Reached Through Acquisition of Companies Having Subsidiary Relationships".

Related Communique cites that having a lesser capital increase due to subsidiary relationship does not mean the violation of conditions listed in TCCT for acquisition transactions. If the value of subsidiary is not equal to nominal value of subsidiary, favorable and unfavorable difference could be accounted in temporary accounts and those temporary accounts could be written off without any taxation. CMB defines those temporary accounts as goodwill and obliges their amortization. However, considering those temporary accounts as goodwill and deducting amortization from taxable income is not possible from tax point of view.

Example 3: Company Y will be acquired by Company X and it has 60 % stake in Company X. Nominal value Company X shares in the hands of Company Y shareholders is 3.600.000 and the purchase value of those shares is 5.400.000.

Company X ***(Balance Sheet for Acquisition)***			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	3.000.000	Accounts Payable	1.600.000
Notes Receivables	2.500.000		
Inventory	1.500.000	**Long Term Liabilities**	
		Loans	2.000.000
Fixed Assets			
Tangible Assets	8.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid-in Capital	6.000.000
		Profit Reserves	1.500.000
		Net Profit	400.000
TOTAL ASSETS	**11.500.000**	**TOTAL LIAB. &EQUİTY**	**11.500.000**

Company Y *(Balance Sheet for Acquisition)*			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	500.000	Accounts Payable	3.400.000
Notes Receivables	2.000.000		
Inventory	4.000.000	**Long Term Liabilities**	
		Loans	2.500.000
Fixed Assets			
Tangible Assets	9.000.000	**Equity**	
Accumulated Deprec. (-)	3.500.000	Paid-in Capital	7.500.000
Subsidiaries	5.400.000	Profit Reserves	3.500.000
		Net Profit	500.000
TOTAL ASSETS	**17.400.000**	**TOTAL LIAB. &EQUITY**	**17.400.000**

As explained in Corporate Tax Communique numbered 61, the difference between purchase value and nominal value of subsidiary shares will be accounted in a temporary account. In CMB application, that temporary account is regarded as goodwill and will be subject to amortization.

Accordingly, the calculation of merger ratio and required capital increase for Company X are given below.

Acquiring Company X		**Acquired Company Y**	
Capital	6.000.000	Capital	7.500.000
Reserves	1.500.000	Reserves	3.500.000
Net Profit	400.000	Net Profit	500.000
Total Equity	**7.900.000**	**Total Equity**	**11.500.000**
The Capital Covering the Shares of Company Y (-)	3.600.000		
The Reserves Covering the Shares of Company Y (-)	900.000	Reserves Transmitted from Company X (+)	900.000
Net Profit Covering the Shares of Company Y (-)	240.000	Profit Transmitted from Company X (+)	240.000
Netted Equity	**3.160.000**	**Netted Equity**	**12.640.000**
Netted Capital	**2.400.000**	**Netted Capital**	**7.500.000**

$$\textbf{Merger Ratio} = \frac{3.160.000}{3.160.000+12.640.000} = \mathbf{0,20}$$

$$\textbf{Capital to Be Reached} = \frac{2.400.000}{0,20} = \mathbf{12.000.000}$$

The required capital increase to be made by acquiring Company X will be (12.000.000- 2.400.000) 9.600.000. Increased capital of 9.600.000 will be used in the acquisition of Company B's shares of 7.500.000. Exchange ratio is calculated as (9.600.000 / 7.500.000) 1.28, meaning that 1.28 Company X share will be exchanged for each Company Y share. Balance sheet of Company X after acquisition will be as below.

Company X ***(After Acquisition)***			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	3.500.000	Accounts Payable	5.000.000
Notes Receivables	4.500.000		
Inventory	5.500.000	**Long Term Liabilities**	
		Loans	4.500.000
Fixed Assets			
Tangible Assets	17.000.000	**Equity**	
Accumulated Deprec. (-)	7.000.000	Paid-in Capital	12.840.000
Goodwill or Temporary Account	**1.800.000**	Profit Reserves	1.500.000
		Net Profit	400.000
		Acquisition Premium	**1.060.000**
TOTAL ASSETS	**25.300.000**	**TOTAL LIAB. &EQUITY**	**25.300.000**

8.3. DIVISION

As previously mentioned in Section 2 , M&A's are implemented for very different aims like operating at efficient scale, growing, operating in more profitable areas or tax planning. However, the aims like operating at optimal scale or generating more profit sometimes requires downsizing rather than growing. Especially the companies operating in various fields

could sometimes quit from inefficient or unprofitable businesses in order to channel their funds to more profitable fields. Downsizing of companies due to reach optimal scale or any other reason is realized through division transaction.

Division transaction was firstly defined in TCCT numbered 5422; however, the lack of legal ground in TCC has prevented the implementation of that transaction in practice. On the other hand, Draft Code of Trade defines division transaction and will maintain a legal ground for transactions.

TCCT numbered 5520 consider division transactions in two groups: full division and partial division. The explanations will be made in parallel to that classification.

8.3.1. Full Division

Full division is defined as the conveyance of all assets, receivables and undertakings of a full-fledged corporate tax payer company to a single or more to-be incorporated companies or existing full-fledged tax payer companies over such assets, receivables and undertakings' recorded values for the acquisition of the transferee company's shares by the existing shareholders of such transferor company. Cash payout does not prevent the consideration of transaction as full division if it is 10 per cent of the nominal value of shares to be distributed to transferor company shareholders.

Article 20 of TCCT cites that if the conditions listed in Article 20 are satisfied, full division transaction will not be subject to tax. However, the income earned by divised or transferor company till the date of division will be subject to corporate tax.

The date for division is defined as the date, at which the decision regarding division is registered to TTR. Transferor company and the tranferee company/companies,

1. will give corporate tax return of transferor company as of the date for division and tax return will be co-signed by each transferee company in the transaction,
2. in case the transaction occurs between the balance sheet date and the date at which tax return must be submitted, the previous year's tax return for corporate tax (with co-signature of transferee companies) will also be given

within 30 days after division transaction is announced in TTR.

Transferee companies must undertake to pay for transferor company's all taxes accrued and to accrue, and to fulfill all obligations with a letter of undertaking attached to corporate tax return. Additional quarantee could be demanded by the Treasurer.

In essence, full division transaction is another tax deferral instrument. The definition of full division in TCCT numbered 5520 lists the general characteristics of transaction as below.

1. Full division is a transaction that could be realized by only full fledged tax-payers. The reason behind that is related to the aim for deferring tax due to the hidden reserves. Deferral of taxation requires certainty regarding the collection of tax in the future and that certainty is provided such that the Tax Authority must have all taxation rights on existing tax-payer, which is the case only for full fledged tax payers.
2. Transferee companies must also be full fledged tax payer. Collection of tax is quaranteed if and only if the Tax Authority have all taxation right on potential tax-payer. That is satisfied through covering both domestic and abroad income of potential tax payer.

Transferee companies will devolve assets, receivables and undertakings of transferor company to their balance sheet at their book

values. If the assets are sold off in the future, hidden reserve will be realized and the appreciation income will be calculated by getting the difference between the sales price and the recorded value in balance sheet.

Exemption arrangements of TCCT numbered 5520 must also be considered in those type of cases. Article 5/1-e of TCCT exempts 75 % of the income gained through selling off real property, equity participations, founder's share, pre-emptive rights and dividend right certificates held for at least 2 years. Exemption is applicable in the period on which the sales transaction has been effected and the portion of income benefiting from exemption is kept in a special account among liabilities for a 5-year period. In addition, the sales amount must be collected until the end of the second year that follows the sales transaction.

For real property and equity participations acquired through merger and acquisition, two-year condition considers the time passing in previous owners. For bonus shares, the acquisition time of original shares determines the beginning of 2-year period. In case of division, the date for assets' entering into divised company balance sheet will be the determinant for the beginning of 2-year period.

8.3.1.1. Examples Regarding Full Division Transaction

Example 1: Company B will be divided into Company X and Company Y. Company X and Company Y will transfer 60% and 40% of Company B respectively. Balance sheet of Company B, X and Y, which are considered as base in transaction, are as below.

Company B *(Balance Sheet for Division)*

Current Assets		Short Term Liabilities	
Cash & Cash Equivalents	200.000	Accounts Payable	400.000
Notes Receivables	100.000		
Inventory	1.500.000	**Long Term Liabilities**	
		Loans	200.000
Fixed Assets			
Tangible Assets	1.000.000	**Equity**	
Accumulated Deprec. (-)	800.000	Paid-in Capital	800.000
		Profit Reserves	400.000
		Net Profit	200.000
TOTAL ASSETS	**2.000.000**	**TOTAL LİAB.&EQUİTY**	**2.000.000**

Company X (Balance Sheet for Division)

Current Assets		Short Term Liabilities	
Cash & Cash Equivalents	100.000	Accounts Payable	300.000
Notes Receivables	250.000		
Inventory	300.000	**Long Term Liabilities**	
		Loans	0
Fixed Assets			
Tangible Assets	600.000	**Equity**	
Accumulated Deprec. (-)	250.000	Paid-in Capital	200.000
		Profit Reserves	350.000
		Net Profit	150.000
TOTAL ASSETS	**1.000.000**	**TOTAL LİAB.&EQUİTY**	**1.000.000**

Company Y (Balance Sheet for Division)

Current Assets		Short Term Liabilities	
Cash & Cash Equivalents	300.000	Accounts Payable	400.000
Notes Receivables	750.000		
Inventory	1.300.000	**Long Term Liabilities**	
		Loans	1.000.000
Fixed Assets			
Tangible Assets	1.200.000	**Equity**	
Accumulated Deprec. (-)	400.000	Paid-in Capital	1.000.000
		Profit Reserves	450.000
		Net Profit	300.000
TOTAL ASSETS	**3.150.000**	**TOTAL LİAB.&EQUİTY**	**3.150.000**

When we divide Company B balance sheet into 2 parts in order to show assets and liabilities to be transferred to Company X and Company Y, the composition will be as below.

Company B ***(To Be Transferred to Company X)***

Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	120.000	Accounts Payable	240.000
Notes Receivables	60.000		
Inventory	900.000	**Long Term Liabilities**	
		Loans	120.000
Fixed Assets			
Tangible Assets	600.000	**Equity**	
Accumulated Deprec. (-)	480.000	Paid-in Capital	480.000
		Profit Reserves	240.000
		Net Profit	120.000
TOTAL ASSETS	**1.200.000**	**TOTAL LİAB.&EQUİTY**	**1.200.000**

Company B ***(To Be Transferred to Company Y)***

Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	80.000	Accounts Payable	160.000
Notes Receivables	40.000		
Inventory	600.000	**Long Term Liabilities**	
		Loans	80.000
Fixed Assets			
Tangible Assets	400.000	**Equity**	
Accumulated Deprec. (-)	320.000	Paid-in Capital	320.000
		Profit Reserves	160.000
		Net Profit	80.000
TOTAL ASSETS	**800.000**	**TOTAL LİAB.&EQUİTY**	**800.000**

Comparing balance sheet portions with the related transferee company balance sheet, exchange ratios are calculated as below. As mentioned before, using current values instead of book values is also possible for the calculation of exchange ratio. Eventually, the determination of exchange ratio are left to transaction parties. The crucial item in determining exchange ratio is to protect the rights of both parties' shareholders.

$$\textbf{Exchange Ratio} = \frac{\text{Equity Value of B / Nominal Capital of B}}{\text{Equity Value of X / Nominal Capital of X}}$$

$$\textbf{Exchange Ratio} = \frac{840.000 / 480.000}{700.000 / 200.000} = \mathbf{0,50}$$

Accordingly, Company X must increase its capital (480.000 * 0,50) by 240.000 in exchange for the assets and liabilities to be transferred from Company B. The difference between net value of assets transferred and capital increase amount will take its place in Company X balance sheet as division premium.

When same calculation is made for Company Y, exchange ratio is calculated as 1,00. Accordingly, required capital increase for Company B becomes 1.000.000, while division premium is calculated as 340.000 based on that calculation.

$$\textbf{Exchange Ratio} = \frac{560.000 / 320.000}{1.750.000 / 1.000.000} = \mathbf{1,00}$$

Balance sheet of Company X and Company Y will be as below after transaction.

Company X (Balance Sheet after Transaction)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	220.000	Accounts Payable	540.000
Notes Receivables	310.000		
Inventory	1.200.000	**Long Term Liabilities**	
		Loans	120.000
Fixed Assets			
Tangible Assets	1.200.000	**Equity**	
Accumulated Deprec. (-)	730.000	Paid-in Capital	440.000
		Profit Reserves	350.000
		Net Profit	150.000
		Division Premium	600.000
TOTAL ASSETS	**2.200.000**	**TOTAL LİAB.&EQUİTY**	**2.200.000**

Company Y (Balance Sheet after Transaction)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	380.000	Accounts Payable	460.000
Notes Receivables	790.000		
Inventory	1.900.000	**Long Term Liabilities**	
		Loans	1.080.000
Fixed Assets			
Tangible Assets	1.600.000	**Equity**	
Accumulated Deprec. (-)	720.000	Paid-in Capital	1.320.000
		Profit Reserves	450.000
		Net Profit	300.000
		Division Premium	340.000
TOTAL ASSETS	**3.950.000**	**TOTAL LIAB.&EQUİTY**	**3.950.000**

Example 2: If Company B receives cash payment, which is 5% of the nominal value of Company Y shares distributed to Company B shareholders, the transaction will still be regarded as division. (As long as the cash payment is 10% of nominal value of transferee company shares distributed to Company B shares, division status of transaction will not change.)

There are two different views on how cash payment will be reflected in Company Y balance sheet.

1st view argues that cash payment must be deducted from required capital increase calculated based on the exchange ratio. Cash payment will also be deducted from the current assets in Company Y balance sheet after transaction. Balance sheet of Company Y will be as below based on 1st view.

Company Y (Balance Sheet after Transaction)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	330.000	Accounts Payable	460.000
Notes Receivables	790.000		
Inventory	1.900.000	**Long Term Liabilities**	
		Loans	1.080.000
Fixed Assets			
Tangible Assets	1.600.000	**Equity**	
Accumulated Deprec. (-)	720.000	Paid-in Capital	1.270.000
		Profit Reserves	450.000
		Net Profit	300.000
		Division Premium	340.000
TOTAL ASSETS	**3.900.000**	**TOTAL LIAB.&EQUITY**	**3.900.000**

2nd view argues that exchange ratio must be calculated considering the cash payment.

$$\textbf{Exchange Ratio} = \frac{\text{(Equity of B – Cash Payment) / Nominal Capital of B}}{\text{Equity of Y / Nominal Capital of Y}}$$

Based on 2nd view, exchange ratio is found as 0,97. Accordingly, the required capital increase becomes (0,97*1.000.000) 970.000. Division premium becomes 370.000. Company Y balance sheet will be as below according to 2nd view.

Company Y (Balance Sheet after Transaction)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	380.000	Accounts Payable	460.000
Notes Receivables	790.000		
Inventory	1.900.000	**Long Term Liabilities**	
		Loans	1.080.000
Fixed Assets			
Tangible Assets	1.600.000	**Equity**	
Accumulated Deprec. (-)	720.000	Paid-in Capital	1.290.000
		Profit Reserves	450.000
		Net Profit	300.000
		Division Premium	370.000
TOTAL ASSETS	**3.950.000**	**TOTAL LIAB.&EQUITY**	**3.950.000**

Example 3: Adding subsidiary relationship to above case will complicate the issue more. There exists no exact view on how division will be realized in case of subsidiary relationship exists between the parties of transaction. Alternative arguments regarding the merger and acquisition transactions could also be proposed for the division transaction between companies having subsidiary relationship.

8.3.1.2. The Results of Full Division for the Shareholders of Divised Company

8.3.1.2.a. For Real Person Shareholders

The income earned by transferor company till the date of transaction is subject to corporate tax. On the other hand, there are different views about the taxation on equity shares given or cash payment made to the shareholders of transferor company.

Common view asserts that giving out equity shares to transferor company shareholders must be tax-free due to Article 19 clause of TCCT. Allocation of transferee companies' equity shares to the shareholders of transferor company is not treated as a sell-off for transferor company, because Article 19 of TCCT considers division transaction as a tax-free transaction. There is no doubt regarding the taxation requirement when divised or transferor company shareholders sell off the equity shares of transferee company in the future.

Cash payment received by the shareholders of divised or transferor company will be deducted from the purchase value of equity share, thus income realized when shares are sold off will be increased by the amount of cash payment received in transaction. Below example, which is extended on Case 1 given above, will make the issue more clear.

Example: The real person shareholder, Mr. A, has 50% share in Company B. Equity share of Company X, nominal value of which is 240.000, has been given to the shareholders of Company B in exchange for the equity value of 480.000 transferred to Company X through full division transaction. The shareholders of Company B has also received Company Y shares, nominal value of which is 1.000.000, in exchange for the equity value of 320.000 transferred to Company Y through full division. Company Y has also made cash payment of 40.000 in division transaction, while Company X has not made any cash payment. Mr. A had purchased 50% share of Company B at 600.000.

Mr. A exchanges Company X shares having nominal value of 120.000 with Company B shares, which he had bought at 360.000 in the past. Thus, the purchase value of Company X shares received by Mr. A is considered as 360.000. Similarly, the purchase value of Company Y shares, received by Mr. A, will be 240.000.

Purchase Value of Shares Received From Company X	**Cash Payment of Company X**	**Purchase Value of Shares Received From Company Y**	**Cash Payment of Company Y**
600.000*%60=360.000	-	600.000*%40=240.000	40.000

When Mr. A sells the shares of Company X and Company Y at 400.000 and 300.000 respectively, appreciation income realized by Mr A will be as below.

Appreciation Income Regarding the Sell-Off of Company X Shares:

400.000 – 360.000 = 40.000

Appreciation Income Regarding the Sell-Off of Company Y Shares:

300.000 – (240.000- 40.000) = 100.000

8.3.1.2.b. For Legal Person Shareholders

If the shareholder of transferor company is a legal person, the assessment regarding the taxation results of full division transaction will not change. Legal person shareholder will account the equity shares of transferee company received under its "Subsidiary" account. Subsidiary account will be valued with the purchase value of Company B shares. Cash payment received, if exists, will also be deducted from the purchase value of Company B shares. When transferee companies' shares are sold off in the future, taxation of appraisal income will be realized based on Article 5/1-e of TCCT.

Example: Company C has 40% stake in Company B. Company C had acquired Company B shares, having nominal value of 320.000, at 700.000 in January 2006. Company C has accounted Company X shares received with the purchase value (700.000* %60) 420.000 and Company Y shares received with the purchase value of (700.000*%40) 280.000 at the end of division transaction. Company Y has also made cash payment of 40.000 in addition to the equity shares given.

Company C has sold off subsidiary shares in Company X at 1.000.000 in February 2008, while Company Y shares have been sold at 1.000.000 in February 2007.

Company C will benefit from exemption in Article 5/1-e of TCC for the appreciation income arising from the sale of Company X shares. On the other hand, income realized from selling off Company Y shares will be subject to taxation. The rules in Article 5/1-e of TCCT are not satisfied for the sale of Company Y shares.

8.3.2. Partial Division

Article 19 of TCCT defines partial division as *"conveyance of real property, shares of subsidiaries being hold at least for two years, production facilities and service enterprises in the balance sheet of a full-fledged tax payer company or a foreign incorporation's representative*

office in Turkey as capital in kind to a newly established or existing full-fledged tax payer company over their recorded values in return for the acquisition of the transferee company's shares either by such transferor company or the existing shareholders thereof."

Essential characteristics of partial division based on the definition in Article 19 of TCCT could be summarized as below.

1. Definition in Article 19 of TCCT specifies the assets subject to partial division transaction in a limited extent. Accordingly, the assets subject to partial division transaction are real property, shares of subsidiaries being hold at least for two years, production facilities and service enterprises.
2. Foreign-based taxpayers could engage in partial division transaction as full fledged companies. The assets subject to partial division must be in the balance sheet of foreign-based taxpayers' permanent representative or business establishment.
3. Transferee company or companies must be a full fledged taxpayer in partial division transaction. The requirement for transferee company's being full fledged taxpayer is due to quarantee collection of tax deferred through partial division transaction.
4. Assets are transferred to transferee company's (or companies') balance sheet with their book values so that hidden reserves regarding the assets subject to partial division are not realized.

Article 19 of TCCT also cites that all assets and liabilities must be transferred such that business integrity is protected when production facilities and service enterprises are subject to partial division.

If the equity shares of transferee company are given to the shareholders of divised company rather than company itself and the assets subject to partial division are real property or subsidiary share held for at least 2 years, then liabilities regarding real property and subsidiaries must also be transferred to transferee company or companies.

Article 20 of TCCT cites that income gained from partial division transaction will not be calculated and taxed. Transferee companies will be jointly responsible for the accrued or to be accrued taxes of partially divised company till the date of partial division transaction. The liability of transferee companies is limited to the imputed cost of assets transferred through partial division transaction.

8.3.2.1. Communique About Partial Division (Propagated by Ministry of Finance and Ministry of Industry and Trade)

As mentioned before, partial division is not defined in TCC and that makes a legal loophole for the application of partial division transaction. The lack of legal ground has been passed through a Communique, which has been jointly prepared and propagated by Ministry of Industry and Trade and Ministry of Finance. The Communique contains detailed explanation regarding the implementation of partial division transaction. [47]

8.3.2.2. Cases Regarding Partial Division

Case 1: Company B, which is a full fledged tax payer, will transfer a real property in its balance sheet to Company X through partial division transaction. Parties will determine the number shares to be given in exchange for the real property by using the current market value of real property. Current value of equity for Company X is calculated as 6.500.000, while it is 3.500.000 for Company B. Balance sheet of Company B and Company X considered as base in partial division transaction are given below.

---

[47] Communique about Partial Division Transaction is available at www.gib.gov.tr

Company B ***(Balance Sheet for Partial Division)***			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	200.000	Accounts Payable	400.000
Notes Receivables	100.000		
Inventory	1.500.000	**Long Term Liabilities**	
		Loans	700.000
Fixed Assets			
Tangible Assets	3.500.000	**Equity**	
Accumulated Deprec. (-)	1.600.000	Paid-in Capital	2.000.000
		Profit Reserves	400.000
		Net Profit	200.000
TOTAL ASSETS	**3.700.000**	**TOTAL LİAB.&EQUİTY**	**3.700.000**

Company X (Balance Sheet for Partial Division)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	100.000	Accounts Payable	1.300.000
Notes Receivables	250.000		
Inventory	300.000	**Long Term Liabilities**	
		Loans	0
Fixed Assets			
Tangible Assets	4.000.000	**Equity**	
Accumulated Deprec. (-)	250.000	Paid-in Capital	2.600.000
		Profit Reserves	350.000
		Net Profit	150.000
TOTAL ASSETS	**4.400.000**	**TOTAL LİAB.&EQUİTY**	**4.400.000**

Based on the above data, current EV/nominal EV is calculated as (6.500.000/2.600.000) 2.5 for Company X. In this case, the required capital increase for acquiring the real property, which has current value of 3.500.000, is calculated as (3.500.000/2,5) 1.400.000.

Real property subject to partial division transaction will be transferred to Company X balance sheet with its book value. Net book value of real property as of partial division date is (3.500.000-1.600.000) 1.900.000. The difference between net book value of real property and the amount of capital increase will take its place in Company X balance sheet as division premium.

Purchase value of Company X shares received in exchange for the real property transferred in division transaction is assumed to be equal to the net book value of real property.

Accordingly, Company X shares received will be valued as 1.900.000 in the balance sheet of Company X. Company X and Company B balance sheet will be as below after transaction ends.

Company B ***(Balance Sheet After Transaction)***			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	200.000	Accounts Payable	400.000
Notes Receivables	100.000		
Inventory	1.500.000	**Long Term Liabilities**	
		Loans	700.000
Fixed Assets			
Subsidiaries	1.900.000	**Equity**	
		Paid-in Capital	2.000.000
		Profit Reserves	400.000
		Net Profit	200.000
TOTAL ASSETS	**3.700.000**	**TOTAL LİAB.&EQUİTY**	**3.700.000**

Company X (*Balance Sheet After Transaction*)			
Current Assets		**Short Term Liabilities**	
Cash & Cash Equivalents	100.000	Accounts Payable	1.300.000
Notes Receivables	250.000		
Inventory	300.000	**Long Term Liabilities**	
		Loans	0
Fixed Assets			
Tangible Assets	7.500.000	**Equity**	
Accumulated Deprec. (-)	1.850.000	Paid-in Capital	4.000.000
		Profit Reserves	350.000
		Net Profit	150.000
		Division Premium	500.000
TOTAL ASSETS	**6.300.000**	**TOTAL LİAB.&EQUİTY**	**6.300.000**

Case 2: If Company X shares are given to Company B shareholders rather than Company B in Case 1, the accounting of transaction in Company B balance sheet is explained in Communique propagated by Ministry of Finance and Ministry of Industry and Trade. According to Communique arrangement, partially divised company must decrease its capital by the

value of transferee company shares given to the shareholders. Communique does not make any definition regarding the amount of capital decrease.

Restricting clauses in TCC regarding capital decrease will be determinant for the amount of capital decrease in this case. If the capital amount of an transferor company comes below the minimum capital amount or transferor company falls within the Article 324 of TCC, then cash capital increase will be required for transferor company. Capital increase could be made from capital or profit reserves provided that rights of 3rd parties are protected.

Giving out transferee company shares to the shareholders of partially divised company is regarded as selling off shares, which are received against in kind. However, selling off shares received against in kind is clearly forbidden in Article 404 of TCC. Article 404 of TCC does not allow the transfer of shares received in return of a fixed asset within a 2-year period starting from the registry in TTR. In this case, if Company B distributes the shares of Company X, which are received in partial division transaction, it would be against the mandatory provision of TCC.

In order to eliminate that legal loophole, Provisional Article numbered 30 has been added to TCCT numbered 5422. Provisional article cites that Article 404 of TCC will not be applicable for partical division transactions. Hovewer, TCCT numbered 5422 ceased to be effective with the TCCT numbered 5520 becoming effective since 1.1.2006 and TCCT numbered 5520 does not include any legal arrangement ragarding Provisional Article 30. That means that TCCT numbered 5520 re-creates the legal loophole mentioned above and that legal loophole will prevent the transfer of transferee company's equity shares to the shareholders of partially divised company till a new provision is made effective.

8.4. EXCHANGE OF SHARES

Exchange of shares transaction is a transaction defined only in TCCT. As mentioned in previous sections, the transaction is regarded as putting capital in kind within the context of TCC.

8.4.1. Place in Code of Corporate Tax

Article 19 of TCCT numbered 5520 defines exchange of shares as a transaction, whereby a fully liable equity company acquires a holding in the capital of another equity company such that it obtains the majority in the management and capital stock of that company, in exchange for the pro-rata issue to the shareholders of the latter company securities representing the capital of the former company, and if applicable a cash payment. Cash payment will not prevent transaction being regarded as "exchange of share" provided that it is 10% of the nominal value of equity shares given to acquired company shareholders. Main characteristics of exchange of share transaction could be listed as below.

1. Acquiring company must be a full fledged taxpayer, while there is no requirement for the tax status of acquired company. In other words, it is possible for acquired company to be a foreign-based taxpayer.
2. Acquiring company must obtain the majority of acquired company shares and take the control of management and obtain the majority of shares at the end of transaction. Having control of management without obtaining majority of shares or obtaining majority of shares without having control of management will not be enough.
3. The equity shares of acquiring company must be given to the shareholders of acquired company. Acquiring company shares are not allowed to remain with the acquired company.

Article 20 of TCCT numbered 5520 cites that income generated from exchange of shares transaction is not calculated and hence is not subject to taxation.

8.4.2. Examples Regarding Exchange of Shares Transaction

<u>Example 1:</u> Company B, which is a full fledged tax payer will take control of management and majority shares of Company S, which is a foreign-based taxpayer. Existing shareholders of Company S are given below. Company B acquires the equity shares belonging to Mr X, Collective Company Z and Corporation T.

Shareholder Structure of Company S			
Shareholder	**Purchase Value**	**Face Value**	**Current Value**
Mr X	4.000.000	2.000.000	6.000.000
Mr Y	750.000	500.000	1.000.000
W Limited Company	800.000	500.000	1.000.000
Collective Company Z	1.250.000	1.000.000	2.000.000
T Incorporated	3.500.000	2.000.000	4.000.000

Company B's nominal value of equity is 8.000.000, while current value of equity is 14.000.000. In exhange of shares transaction, Company B is regarded to put capital in kind to Company S. The current value of capital in kind put by Company S shareholders is 12.000.000. Exchange ratio is calculated such that the rights of shareholders are protected. Exchange ratio for transaction is calculated as below.

$$\textbf{Exchange Ratio} = \frac{\text{Current Value of Company S Shares}}{\text{Current Value of Company S Shares} + \text{Current Equity Value of Company B}}$$

$$\textbf{Exchange Ratio} = \frac{12.000.000}{12.000.000 + 14.000.000} \quad \mathbf{= 0,4615}$$

Company B will increase its capital to (8.000.000 / (1-0,4615)) = 14.856.081, in other words required capital increase will be 6.856.081 for Company B. The current value of equity transferred from Company S is 12.000.000, which creates an exchange premium of 5.143.919.

There is no legal arrangement regarding the valuation of Company S shares acquired by Company B in Company B balance sheet. In practice, the problem is solved through assessing the issue within the context of TCC.

Main fundemental of TCC is to protect the rights of 3rd party creditors.Therefore, Company S shares to be transferred to Company B must not be overvalued. Maximum value of Company S shares will be the current value of equity, which is determined by Court and that value will be considered base in exchange ratio calculation. Any value below maximum value determined by Court will be acceptable for TCC.

According to Article 20 of TCCT, exchange of shares transaction will be tax-free for Mr X, Collective Company Y and T Incorporated. The shareholders will receive Company B shares in exchange of Company X shares transferred to Company B. The shareholders will value received Company B shares with the value of Company X shares transferred to Company B. The purchase value of Company X shares will also be the purchase value of Company B shares for Company X shareholders.

Example 2: If some cash payment is made to the shareholders of Company S, cash payment is required to be kept out of the exchange ratio calculation. Assuming that each shareholder receives cash payment of 100.000, the exchange ratio will be calculated through the formula below.

$$\textbf{Exchange Ratio} = \frac{\text{Current Value of Company S Shares} - \text{Cash Payment Received}}{\text{Current Value of Company S Shares} - \text{Cash Payment Received} + \text{Current Value of Equity for Company B}}$$

$$\textbf{Exchange Ratio} = \frac{12.000.000 - 300.000}{12.000.000 - 300.000 + 14.000.000} \quad \mathbf{= 0,4552}$$

Company B will increase its capital to (8.000.000 / /(1-0,4552)) = 6.685.714, in other words the required capital increase will be 6.685.714. The Company B shares, nominal value of which is 6.685.714, will be distributed to the shareholders of Company X and the shareholders of Company X will value the received shares of Company B by deducting the cash payment from the purchase value of Company X shares, which are given in exchange for the Company B shares received in transaction.

Distribution and Valuation of Company B Shares Received				
Shareholder	**Purchase Value of Company X Shares**	**Face Value of Company B Shares Received**	**Cash Payment Received**	**Purchase Value of Company B Shares Received**
Mr X	4.000.000	2.674.286	100.000	3.900.000
Collective Company Y	1.250.000	1.337.143	100.000	1.150.000
Z Incorporated	3.500.000	2.674.286	100.000	3.400.000

Exchange of shares transaction does not require the consolidation of balance sheet of companies engaged in transaction. Shareholders swap in such a way that management control and majority shares of one company is obtained by another company. Acquiring company will account the shares acquired as subsidiary in its balance sheet.

9. ASSESSMENT BASED ON OTHER TAX LAWS

9.1. Code of Value Added Tax Implications

According Article 1 of CVAT, value added tax arises in two conditions:

1. when a person or entity delivers an asset or carries out a service within its commercial, industrial, agricultural or independent professional activities in Turkey,
2. when goods or services are imported into Turkey.

Article 2 of CVAT defines “delivery” as the transfer of disposal right on an asset to the buyers or the parties acting on behalf of the buyer by the owner or the parties acting on behalf of owner.

In merger, acquisition, division and exchange of shares transactions, the shareholders of acquired or divised company delivers their equity shares to the acquiring or transferee company and that delivery causes VAT to arise in those transactions.

However, Article 17/4-c of CVAT Law exempts acquisition and division transactions from value added tax. Related article also asserts that Article 30/a of CVAT will not be applicable for merger, acquisition and division transactions, in other words deductible VAT of acquired or divised company is allowed to be deducted by acquiring or transferee company.

On the other hand, merger and exchange of shares transactions are not exempted from value added tax, in other words, deliveries of assets within the context of those transactions will be subject to VAT.

9.1.1. Value Added Tax in Merger Transaction

Payment to the shareholders of acquired company in a merger transaction could be in different forms. Accordingly, if payment is made solely with cash, the cash amount paid to acquired company shareholders

will be tax-base for the acquired company. On the other hand, if payment is made fully or partially with stocks of acquiring company, then tax-base will be determined through Article 27/1 of CVAT.

In Article 27/1 of CVAT, tax-base is defined as imputed cost when consideration is goods, benefits, services or values other than cash. Imputed cost will be VAT tax-base in merger and division transactions, because equity shares of acquiring company are given to the shareholders of acquired or divised company in exchange for the assets acquired or transferred. Thus, the imputed cost for assets considered in transaction must be determined and VAT must be collected on those values.

9.1.2. Value Added Tax in Full Division Transaction

As explained in previous sections, delivery of assets in a division transaction is subject to VAT. However, Article 17/4-c of CVAT makes division transaction exempt from VAT.

Article 17/4-c of CVAT allows the deduction of VAT, which is not deducted by divised company beforehand. CVAT also cites that deduction is made such that double-deduction is prevented. Various distribution keys could be used in calculating the amount of VAT deductible by each transferee company.

1. Deductable tax could be distributed in proportion to the division ratio calculated for each transferee company
2. The proportion assets transferred by each transferee company
3. If the assets related to deductable VAT could be found, transferee company acquiring those assets could have the right for deduction

In essence, deductable VAT is an asset item for divised or transferor company and represent a receivable from Tax Authority, which is not different from a receivable from a third party. To whom deductable VAT

will be transferred is not important so that it could be transferred to all transferee companies or any one company engaging in transaction. The real matter is to prevent double-deduction of VAT.

9.1.3. Value Added Tax in Partial Division Transaction

Exemption in Article 17/4-c of CVAT is valid for also partial division transaction. Exemption article does not make any difference between partial division or full division.

9.1.4. Value Added Tax in Exchange of Shares Transaction

In essence, the equity shares representing the right of disposal on company assets are bartered in exchange of shares transaction. Article 2 of CVAT cites that barter is equivalent to two seperate delivery in VAT application.

In general, "an asset" is defined as movable or immovable estate and rights subject to purchase and sale. [48] Equity shares of a company gives right of disposal on a company's assets and thus are accepted as a right subject to purchase and sale. That view asserts that exchange of shares transaction is a barter and both parties must be tax-payer of VAT at the end of transaction. Making barter subject to VAT brings the problem of tax base determination.

In merger transaction, acquired company assets are transferred as a whole, thus determining tax-base through calculating imputed costs of assets transferred is possible. However, assets are not transferred or delivered in exchange of shares transaction, thus calculation of imputed cost for assets will not give us tax-base for VAT. That makes the determination of tax-base as a real problem for exchange of shares transaction.

---

[48] Mehmet MAÇ," ***KDV Yorum ve Uygulaması",*** Denet Yayınları, İstanbul 1998

9.2. Tax Procedure Law Implications

Acquisition of an asset through merger transaction, defined in Article 18 of TCCT, is regarded as new acquirement for the acquiring company. Assets subject to depreciation will be depreciated according to useful economic life principle in acquiring company.

Assets and liabilities are transferred with their book values in acquisition and division transactions. Transferring with book values means transferring fixed assets with their accumulated depreciation. The common view regarding the depreciation of transferred assets is to resume or continue depraciation in transferring company.

9.3. Stamp Law and Charges Law Implications

Stamp Law makes papers, which are composed within merger, acquisition and division transactions, exempt from stamp tax.

Article 123 of Charges Law makes transactions of merger, acquisition and division exempt from charges.

Both Stamp Law and Charges Law does not foresee tax or charge exemption for exchange of shares transaction.

9.4. Private Consumption Tax Implications

Code of Private Consumption Tax does not include an exemption arrangement similar to Article 17/4-c of CVAT. If the assets transferred in transaction are subject to private consumption tax, there exists no exemption arrangement to prevent taxation according to Code of Private Consumption Tax.

9.5. Other Taxation Implications

9.5.1. Loss Deduction

Article 9 of TCCT contains clauses regarding loss deduction. Losses regarding previous 5-year period are allowed to be deducted in corporate tax application according to Article 9 of TCCT.

Article 9 of TCCT numbered 5520 explains the application of loss deduction in acquisition and full division transactions. Accordingly, the amount of loss deduction is limited to acquired company’s book value of equity on acquisiton date for acquisition transactions, while loss deduction is limited to transferred portion divised company equity and it must be proportional to the book value of assets transferred in division transactions.

Article 9 also proposes two additional conditions for loss deduction in acquisition and division transactions. First condition is such that previous five years’ corporate tax returns must be given within the terms foreseen in TCCT. Second condition is the continuance of operations of acquired company or divised company operations for at least five years starting from the date of acquisition or division.

Loss deduction is a right only for parties engaged in acquisition and division transactions. Loss deduction is not allowed in merger, partial division and exchange of shares transactions, that is due to the fact that parties in partial division and exchange of shares transactions are not liquidated at the end of transaction and acquired company, which is liquidated in merger transaction, could deduct previous year losses from merger profit at the end of transaction. Previous year losses after deduction remains with the shareholders of acquired company.

There are opposing arguments asserting that previous year losses must be deducted by acquiring company. The main legal ground for that argument is universal succession rule in TCC. However, universal succession rule is seen as a general arrangement, while Article 9 of TCCT in Corporate Tax Law is a special arrangement and takes precedence over

general arrangement of TCC. Article 18 of TCCT sees merger transaction as liquidation, that means that non-deducted previous year losses are hold by the shareholders of acquired company.

For acquisition and division transactions, tax regarding the unrealized hidden reserves is deferred. Deferred tax is undertaken by acquiring or transferee company when transferred assets are sold off in the future. As the final undertaker of deferred tax is acquiring or transferee company, the right for loss deduction is also given to acquiring or transferee company in acquisition and division transactions. Limitations regarding the use of that right is for preventing the misuse with tax-planning motives.

9.5.2. Investment Allowances, Rigths and Priveleges

According to universal succession rule in Article 151 of TCC, all rights, priveleges, business and credit agreements are transferred to acquired or transferee company. Investment allowance, rights and priveleges, which acquired or divised company have, are considered within the context of Article 151 of TCC. Any taxation benefit related to those are also transferred to acquiring party at the end of transaction.

10. ASSESSMENT BASED ON ACCOUNTING APPLICATIONS

10.1. General View on Accounting Applications in Turkey

Accounting applications in Turkey has a diverse and complex structure. Entitities in Turkey used to prepare two different balance sheet for long years, which were trade balance sheet and tax balance sheet. That method has been ceased and the uniform accounting system has been adopted in 1994. However, uniform accounting system adopted in 1994 has been prepared within the context of tax application, in other words the aim for informing the 3rd parties through the accounting system has been the secondary concern. That structure has raised some problems for public companies and international companies in time. Thus, CMB has brought new standards binding for only public companies, while international companies have started to prepare another set of financial tables which is in compatible with IFRS and has been audited by international audit firms.

The first step to solve that diverse and complex structure in financial reporting system has been the establishment of Turkish Accounting Standards Board with the Act numbered 4487. In designing a new reporting system compatible with international applications, TASB has adopted the international financial reporting standards as principle set of standards. A copy-right act has been signed between TASB and IASCF and the project regarding the translation of IFRS's and IAS's into Turkish has been started. TASs, which are fully in line and updated with IAS, have been set at the end of the project.

After the formation of TASs, with a Communique propogated by Banking Regulation and Supervision Agency (BRSA), convergence to TASs has been mandatory for bank institutions. On the other hand, CMB has propagated Communique Serial:1 No:25 and explained accounting standards in compatible with TASs. Draft TCC also obliges all companies to converge to TASs.

10.2. Relationship Between Turkish Accounting Standards and Tax Legislation

TASB Communique, which is called “The Conceptual Framework Regarding The Principles about Preparation and Presentation of Financial Tables”, defines the relationship between TASs and tax legislation. Accordingly, TASs are related to the formation of trade balance sheet, while the valuation provisions in Tax Procedure Law is related to the determination of tax returns. Tax-payers must add or subtract valuation differences and consider exemptions and non-deductible expenses in order to reach their corporate tax return. Ministry of Finance has the right for special arrangements providing that those are in line with TASs.

10.2.1. Business Combinations in Turkish Financial Reporting Standard 3

TASB has brought special arrangements regarding business combinations in its Communique Serial:1 No:35. TFRS 3 has become effective through the announcement in Official Newspaper of 31.03.2006 and been legally valid for the accounting periods starting from 31.12.2005. TFRS 3 arranges accounting standards for business combinations in 84 paragraphs and 2 appendices.

10.2.1.1. Aim of TFRS 3

The objective of TFRS 3 is cited in Paragraph 1 as to specify the financial reporting rules when an entity engages in a business combination. In particular, it specifies that all business combinations should be accounted for by applying the purchase method.

Therefore, the acquirer recognises the acquiree’s identifiable assets, liabilities and contingent liabilities at their fair values at the acquisition date, and also recognises goodwill, which is subsequently tested for impairment rather than amortised.

10.2.1.2. Scope of TFRS 3

Context of TFRS 3 is wide. Standard lists certain types of business combinations and cites that TFRS 3 application will be mandatory for the combinations not listed in Paragraph 3. Accordingly, TFRS 3 will not be applied for the business combinations listed below (Paragraph 3);

1. business combinations in which separate entities or businesses are brought together to form a joint venture.
2. business combinations involving entities or businesses under common control.
3. business combinations involving two or more mutual entities.
4. business combinations in which separate entities or businesses are brought together to form a reporting entity by contract alone without the obtaining of an ownership interest (for example, combinations in which separate entities are brought together by contract alone to form a dual listed corporation).

10.2.1.3. Definition of Business Combination

Paragraph 4 in TFRS 3 defines business combinations as bringing together of separate entities or businesses into one reporting entity. That definition is a definition made within the context of accounting standards.

A business combination may be structured in a variety of ways for legal, taxation or other reasons. It may involve the purchase of the equity of another entity, the purchase of all net assets of another entity, the assumption of the liabilities of another entity, or the purchase of some of the net assets of another entity that together form one or more businesses. It may be affected by the issue of equity instruments, the transfer of cash, cash equivalents or other assets, or a combination thereof. The transaction may be between the shareholders of the combining entities or between one entity

and the shareholders of another entity. It may involve the establishment of a new entity to control the combining entities or the transfer of net assets to an existing entity, or the restructuring of one or more of the combining entities.

A business combination may result in a parent-subsidiary relationship in which the acquirer is the parent and the acquiree a subsidiary of the acquirer. In such circumstances, the acquirer applies TFRS 3 in its consolidated financial statements. It includes its interest in the acquiree in any separate financial statements it issues as an investment in a subsidiary. (Paragraph 6)

10.2.1.4. Accounting Methods

All business combinations should be accounted for by applying the purchase method. The purchase method views a business combination from the perspective of the combining entity that is identified as the acquirer. The acquirer purchases net assets and recognises the assets acquired and liabilities and contingent liabilities assumed, including those not previously recognised by the acquiree.

The measurement of the acquirers' assets and liabilities is not affected by the transaction, nor are any additional assets or liabilities of the acquirer recognised as a result of the transaction, because they are not the subjects of the transaction. (Paragraph 15)

10.2.1.5. Purchase Method

TFRS 3 cites that all business combinations should be accounted for through using the purchase method. In essence, the purchase method involves 3 stages.

1. Identifying an acquirer,
2. Measuring the cost of business combination

3. Allocating, at the acquisition date, the cost of the business combination to the assets acquired and liabilities and contingent liabilities assumed. (Paragraph 16)

10.2.1.6. Identifying Acquiring Company

Acquiring company is the combining entity that obtains the control of other combining entities or businesses. Because the purchase method views a business combination from the acquirers' perspective, it assumes that one of the parties to the transaction can be identified as the acquirer.

Control is the power to govern the financial and operating policies of an entity or business so as to obtain benefits from its activities. A combining entity will be presumed to have obtained the control of another combining entity when it acquires more than one-half of that other entity's voting rights, unless it can be demonstrated that such ownership does not constitute control. (Paragraph 19)

Even if one of the combining entities does not acquire more than one-half of the voting rights of another combining entity, it might have obtained control of that other entity if, as a result of the combination, it obtains:

1. power over more than one-half of the voting rights of the other entity by virtue of an agreement with other investors;
2. power to govern the financial and operating policies of the other entity under a statute or an agreement;
3. power to appoint or remove the majority of the members of the board of directors or equivalent governing body of the other entity;
4. power to cast the majority of votes at meetings of the board of directors or equivalent governing body of the other entity.

Although sometimes it may be difficult to identify an acquirer, there are usually indications that one exist and it is possible to follow those indications for determining the acquirer party. (Paragraph 20)

1. if the fair value of one of the combining entities is significantly greater than that of the other combining entity, the entity with the greater fair value is likely to be the acquirer;
2. if the business combination is affected through an exchange of voting ordinary equity instruments for cash or other assets, the entity giving up cash or other assets is likely to be the acquirer;
3. if the business combination results in the management of one of the combining entities being able to dominate the selection of the management team of the resulting combined entity, the entity whose management is able to dominate is likely to be the acquirer.

In some type of business combinations, it could be more difficult to find acquirer company. For instance, in a business combination realized through an exchange of shares, the entity that issues the equity interests is normally the acquirer. However, all pertinent facts and circumstances will be considered to determine which of the combining entities has the power to govern the financial and operating policies of the other entity (or entities) so as to obtain benefits from its (or their) activities. That might be the case when, for example, a private entity arranges to have itself ‘acquired’ by a smaller public entity as a means of obtaining a stock exchange listing. Commonly the acquirer is the larger entity; however, the facts and circumstances surrounding a combination sometimes indicate that a smaller entity acquires a larger entity. (Paragraph 21)

When a new entity is formed to issue equity instruments to realize a business combination, one of the combining entities that existed before the

combination will be identified as the acquirer on the basis of the evidence available. (Paragraph 22)

Similarly, when a business combination involves more than two combining entities, one of the combining entities that existed before the combination will be identified as the acquirer on the basis of the evidence available. Determining the acquirer in such cases will include a consideration of, among other things, which of the combining entities initiated the combination and whether the assets or revenues of one of the combining entities significantly exceed those of the others. (Paragraph 23)

10.2.1.7. Determining Cost for Business Combination

According to TFRS 3, the acquirer will measure the cost of business combination in the second stage. Cost of business combination is defined as the aggregate of below items:

1. the fair values, at the date of exchange, of assets given
2. liabilities incurred or assumed
3. equity instruments issued by the acquirer, in exchange for the control of the acquiree
4. any costs directly attributable to the business combination (Paragraph 24)

The acquisition date is the date at which the acquirer effectively obtains control of the acquiree. When this is achieved through a single exchange transaction, the date of exchange coincides with the acquisition date. However, a business combination may involve more than one exchange transaction, for example when it is achieved in stages by successive share purchases. When this occurs, the cost of combination equals to the aggragate cost of the individual transactions and the date of exchange is the date of each exchange transaction (ie the date that each individual investment is recognised in the financial statements of the

acquirer), whereas the acquisition date is the date on which the acquirer obtains control of the acquiree. (Paragraph 25)

According to Paragraph 24 of TFRS 3, assets given and liabilities incurred or assumed by the acquirer in exchange for the control of acquiree are required to be measured at their fair values at the date of exchange. When settlement of all or any part of the cost of a business combination is deferred, the fair value of that deferred component will be determined by discounting the amounts payable to their present value at the date of exchange, taking into account any premium or discount likely to be incurred in settlement. (Paragraph 26)

TFRS 3 provides a guidance towards the determination of fair value. The published price at the date of exchange of a quoted equity instrument provides the best evidence of the instrument's fair value and will be used, except in rare circumstances. Other evidence and valuation methods will be considered only in rare circumstances when the acquirer can demonstrate that the published price at the date of exchange is an unreliable indicator of fair value, and that the other evidence and valuation methods provide a more reliable measure of the equity instruments fair value. (Paragraph 27)

The cost of a business combination includes liabilities incurred or assumed by the acquirer in exchange for the control of the acquiree. Future losses or other costs expected to be incurred as a result of a combination are not liabilities incurred or assumed by the acquirer in exchange for the control of the acquiree, and are not, therefore, included as part of the cost of the combination. (Paragraph 28)

The cost of a business combination includes any costs directly attributable to the transaction, such as professional fees paid to accountants, legal advisers, valuers and other consultants involved in combination. General administrative costs, including the costs of maintaining an acquisitions department, and other costs that cannot be directly attributed to the particular combination being accounted for are not included in the cost

of the combination: they are recognised as an expense when incurred. (Paragraph 29)

The costs of arranging and issuing financial liabilities are an integral part of the liability issue transaction, even when the liabilities are issued to realize a business combination, rather than costs directly attributable to the combination. Therefore, entities will not include such costs in the cost of a business combination. In accordance with TAS 39, such costs will be included in the initial measurement of the liability. (Paragraph 30)

Similarly, the costs of issuing equity instruments are an integral part of the equity issue transaction, even when the equity instruments are issued to effect a business combination, rather than costs directly attributable to the combination. Therefore, entities will not include such costs in the cost of a business combination. In accordance with TAS 32 Financial Instruments: Disclosure and Presentation, such costs reduce the proceeds from the equity issue. (Paragraph 31)

When a business combination agreement provides for an adjustment to the cost of the combination contingent on future events, the acquirer will include the amount of that adjustment in the cost of the business combination at the acquisition date if the adjustment is probable and can be measured reliably. (Paragraph 32)

A business combination agreement may allow for adjustments to the cost of the combination that are contingent on one or more future events. The adjustment might, for example, be contingent on a specified level of profit being maintained or achieved in future periods, or on the market price of the instruments issued being maintained. It is usually possible to estimate the amount of any such adjustment at the time of initially accounting for the combination without impairing the reliability of the information, even though some uncertainty exists. If the future events do not occur or the estimate needs to be revised, the cost of the business combination will be adjusted accordingly. However, when a business combination agreement provides for such an adjustment, that adjustment is not included in the cost

of the combination at the time of initially accounting for the combination if it either is not probable or cannot be measured reliably. If that adjustment subsequently becomes probable and can be measured reliably, the additional consideration will be treated as an adjustment to the cost of the combination. (Paragraph 33-34)

10.2.1.8. Allocation of "Cost for Business Combination" to Acquired Assets, Liabilities and Contingent Liabilities Assumed

According to TRFS 3, the acquirer will, at the acquisition date, allocate the cost of a business combination by recognising the acquiree's identifiable assets, liabilities and contingent liabilities at their fair values at that date through satisfying the recognition criteria explained in detail in Paragraph 37 of TFRS 3.

The acquirer will recognise separately the acquiree's identifiable assets, liabilities and contingent liabilities at the acquisition date only if they satisfy the following criteria at that date.

1. in the case of an asset other than an intangible asset, it is probable that any associated future economic benefits will flow to the acquirer, and its fair value can be measured reliably;
2. in the case of a liability other than a contingent liability, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation, and its fair value can be measured reliably;
3. in the case of an intangible asset or a contingent liability, its fair value can be measured reliably. (Paragraph 36-37)

The difference between the cost of business combination and total fair value of identifiable assets, liabilities and contingent liabilities is accounted as goodwill.

The acquirer's income statement will incorporate the acquiree's profits and losses after the acquisition date by including the acquiree's income and expenses based on the cost of the business combination to the acquirer. (Paragraph 38) Assets, liabilities and contingent liabilities, fair value of which could not be recognised in balance sheet seperately, will be included in goodwill.

Because the acquirer recognises the acquiree's identifiable assets, liabilities and contingent liabilities that satisfy the recognition criteria in paragraph 37 at their fair values at the acquisition date, any minority interest in the acquiree is stated at the minority's proportion of the net fair value of those items. (Paragraph 40)

In accordance with Paragraph 37, the acquirer recognises separately an intangible asset of the acquiree at the acquisition date only if it meets the definition of an intangible asset in TAS 38 Intangible Assets and its fair value can be measured reliably. (Paragraph 45)

A non-monetary asset without physical substance must be identifiable to meet the definition of an intangible asset. In accordance with TAS 38, an asset meets the identifiability criterion in the definition of an intangible asset only if it: (Paragraph 46)

1. is separable, ie capable of being separated or divided from the entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, asset or liability;
2. arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.

Paragraph 37 specifies that the acquirer recognises separately a contingent liability of the acquiree only if its fair value can be measured reliably. If its fair value cannot be measured reliably:

1. there is a resulting effect on the amount recognised as goodwill or accounted for in accordance with paragraph 56[49];
2. the acquirer will disclose the information about that contingent liability required to be disclosed by TAS 37. (Paragraph 47)

Contingent liabilities recognised separately while allocating the cost of a business combination are excluded from the scope of TAS 37. However, the acquirer will disclose for those contingent liabilities the information required to be disclosed by TAS 37 for each class of provision. (Paragraph 50)

10.2.1.9. Goodwill

According to Paragraph 51 of TFRS 3, the acquirer will, at the acquisition date, recognise goodwill acquired in a business combination as an asset. The acquirer will initially measure that goodwill at its cost, being the excess of the cost of the business combination over the acquirer's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities recognised in accordance with Paragraph 36.

Goodwill acquired in a business combination represents a payment made by the acquirer in anticipation of future economic benefits from assets that are not capable of being individually identified and separately recognised. (Paragraph 52)

To the extent that the acquiree's identifiable assets, liabilities or contingent liabilities do not satisfy the criteria in paragraph 37 for separate recognition at the acquisition date, there is a resulting effect on the amount

---

[49] **Paragraph 56:** If the acquirer's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities recognised in accordance with paragraph 36 exceeds the cost of the business combination, the acquirer shall:

a) reassess the identification and measurement of the acquiree's identifiable assets, liabilities and contingentliabilities and the measurement of the cost of the combination;

b) and recognise immediately in profit or loss any excess remaining after that reassessment.

recognised as goodwill (or accounted for in accordance with paragraph 56). This is because goodwill is measured as the residual cost of the business combination after recognising the acquiree's identifiable assets, liabilities and contingent liabilities. (Paragraph 53)

After initial recognition, the acquirer will measure goodwill acquired in a business combination at cost less any accumulated impairment losses. (Paragraph 54)

Goodwill acquired in a business combination will not be amortised. Instead, the acquirer will test it for impairment annually, or more frequently if events or changes in circumstances indicate that it might be impaired, in accordance with "TAS 36 Impairment of Assets." (Paragraph 55)

10.2.1.10. A Special Case: Acquirer Company's Share in Net Realizable Value of Acquiree Company Assets, Identifiable Assets, Liabilities and Provisional Liabilities Exceeds The Cost of Business Combination

If the acquirer's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities recognised in accordance with Paragraph 36 exceeds the cost of the business combination, the acquirer will reassess the identification and measurement of the acquiree's identifiable assets, liabilities and contingent liabilities and the measurement of the cost of the combination and recognise immediately in profit or loss any excess remaining after that reassessment.

This special case could either be due to the errors in measuring the fair value of either the cost of the combination or the acquiree's identifiable assets, liabilities or contingent liabilities or be due to a bargain purchase. (Paragraph 56)

10.2.1.11. Business Combination Achieved in Stages (Step Acquisitions)

A business combination may involve more than one exchange transaction, for example when it occurs in stages by successive share purchases. If so, each exchange transaction will be treated separately by the

acquirer, using the cost of the transaction and fair value information at the date of each exchange transaction, to determine the amount of any goodwill associated with that transaction.

That results in a step-by-step comparison of the cost of the individual investments with the acquirer's interest in the fair values of the acquiree's identifiable assets, liabilities and contingent liabilities at each step.

10.2.1.12. Initial Accounting and Adjustment of Provisional Accounts

The initial accounting for a business combination involves identifying and determining the fair values to be assigned to the acquiree's identifiable assets, liabilities and contingent liabilities and the cost of the combination. (Paragraph 61)

If the initial accounting for a business combination can be determined only provisionally by the end of the period in which the combination is realized because either the fair values to be assigned to the acquiree's identifiable assets, liabilities or contingent liabilities or the cost of the combination can be determined only provisionally, the acquirer will account for the combination using those provisional values.

The acquirer will recognise any adjustments to those provisional values as a result of completing the initial accounting:

1. within twelve months of the acquisition date;
2. from the acquisition date. (Paragraph 62)

10.2.1.13. Adjusments After Initial Accounting

Adjustments to the initial accounting for a business combination after that initial accounting is complete will be recognised only to correct an error in accordance with TAS 8 "Accounting Policies, Changes in Accounting Estimates and Errors". Adjustments to the initial accounting for a business combination after that accounting is complete will not be recognised for the effect of changes in estimates. In accordance with TAS 8,

the effect of a change in estimates will be recognised in the current and future periods. (Paragraph 63)

TAS 8 requires an entity to account for an error correction retrospectively, and to present financial statements as if the error had never occurred by restating the comparative information for the prior period(s) in which the error occurred. Therefore, the carrying amount of an identifiable asset, liability or contingent liability of the acquiree that is recognised or adjusted as a result of an error correction will be calculated as if its fair value or adjusted fair value at the acquisition date had been recognised from that date. Goodwill or any gain recognised in a prior period in accordance with Paragraph 56 will be adjusted retrospectively by an amount equal to the fair value at the acquisition date. (Paragraph 64)

10.2.1.14. Recognition of Deferred Tax Assets After Initial Accounting is Complete

If the potential benefit of the acquiree's income tax loss carry-forwards or other deferred tax assets did not satisfy the criteria in Paragraph 37 for separate recognition when a business combination is initially accounted for but is subsequently realised, the acquirer will recognise that benefit as income in accordance with "TAS 12 Income Taxes". In addition, the acquirer will

1. reduce the carrying amount of goodwill to the amount that would have been recognised if the deferred tax asset had been recognised as an identifiable asset from the acquisition date;
2. recognise the reduction in the carrying amount of the goodwill as an expense. (Paragraph 65)

10.2.1.15. Issues Explained in Disclosures

An acquirer will disclose information that enables users of its financial statements to evaluate the nature and financial effect of business combinations that were realized during the period or after the balance sheet date but before the financial statements are authorised for issue. (Paragraph 66)

TFRS 3 makes explanation regarding the issues to be explained in disclosures between Paragraph 66 and Paragraph 77.

According to Paragraph 67, the acquirer will disclose the following information for each business combination that is realized during the period.

1. the names and descriptions of the combining entities or businesses,
2. the acquisition date.
3. the percentage of voting equity instruments acquired.
4. the cost of the combination and a description of the components of that cost, including any costs directly attributable to the combination. When equity instruments are issued or issuable as part of the cost, the number of equity instruments issued or issuable and the fair value of those instruments and the basis for determining that fair value must also be disclosed.
5. details of any operations the entity has decided to dispose of as a result of the combination.
6. the amounts recognised at the acquisition date for each class of the acquiree's assets, liabilities and contingent liabilities, and, unless disclosure would be impracticable, the carrying amounts of each of those classes, determined in accordance with TFRSs, immediately before the combination. If such disclosure would be impracticable,

that fact will be disclosed, together with an explanation of why this is the case.

7. the amount of any excess recognised in profit or loss in accordance with Paragraph 56, and the line item in the income statement in which the excess is recognised.
8. description of the factors that contributed to a cost that results in the recognition of goodwill – a description of each intangible asset that was not recognised separately from goodwill and an explanation of why the intangible asset's fair value could not be measured reliably – or a description of the nature of any excess recognised in profit or loss in accordance with Paragraph 56.
9. the amount of the acquiree's profit or loss since the acquisition date included in the acquirer's profit or loss for the period, unless disclosure would be impracticable. If such disclosure would be impracticable, that fact will be disclosed, together with an explanation of why this is the case. (Paragraph 67)

The information required to be disclosed by Paragraph 67 will be disclosed in aggregate for business combinations realized during the reporting period that are individually immaterial. (Paragraph 68)

If the initial accounting for a business combination that was realized during the period is determined only provisionally as described in Paragraph 62, that fact will also be disclosed together with an explanation of why this is the case. (Paragraph 69)

An entity must disclose information that enables users of its financial statements to evaluate changes in the carrying amount of goodwill during the period. To give effect to the principle in Paragraph 74, the entity will disclose a reconciliation of the carrying amount of goodwill at the beginning and end of the period, showing separately:

1. the gross amount and accumulated impairment losses at the beginning of the period;
2. additional goodwill recognised during the period except goodwill included in a disposal group that, on acquisition, meets the criteria to be classified as held for sale in accordance with TFRS 5;
3. adjustments resulting from the subsequent recognition of deferred tax assets during the period in accordance with Paragraph 65;
4. goodwill included in a disposal group classified as held for sale in accordance with TFRS 5 and goodwill derecognised during the period without having previously been included in a disposal group classified as held for sale;
5. impairment losses recognised during the period in accordance with TAS 36;
6. net exchange differences arising during the period in accordance with TAS 21 The Effects of Changes in Foreign Exchange Rates;
7. any other changes in the carrying amount during the period;
8. the gross amount and accumulated impairment losses at the end of the period. (Paragraph 75)

10.2.1.16. Provisional Clauses and Effective Date

Article 6 of Communique about TFRS 3 cites that standard will apply to the accounting for business combinations for which the agreement date is on or after 31 December 2005 and will become effective on 31 March 2006.

10.2.1.17. Previously Recognised Goodwill

An entity will apply TFRS 3 prospectively, from the beginning of the first annual period beginning on or after 31 March 2006, to goodwill acquired in a business combination for which the agreement date was before 31 March 2006, and to goodwill arising from an interest in a jointly controlled entity obtained before 31 March 2006 and accounted for by applying proportionate consolidation. Therefore, an entity will;

1. from the beginning of the first annual period beginning on or after effective date, discontinue amortising such goodwill;
2. at the beginning of the first annual period beginning on or after effective date, eliminate the carrying amount of the related accumulated amortisation with a corresponding decrease in goodwill;
3. from the beginning of the first annual period beginning on or after effective date, test the goodwill for impairment in accordance with TAS 36 (Paragraph 79)

If an entity previously recognised goodwill as a deduction from equity, it will recognise that goodwill in profit or loss when it disposes of all or part of the business to which that goodwill relates or when a cash generating unit to which the goodwill relates becomes impaired. (Paragraph 80)

10.2.1.18. Pre-Accounted Negative Goodwill

The carrying amount of negative goodwill at the beginning of the first annual period beginning on or after 31 March 2006 that arose from either a business combination for which the agreement date was before 31 March 2006 or an interest in a jointly controlled entity obtained before 31 March 2006 and accounted for by applying proportionate consolidation will

be derecognised at the beginning of that period, with a corresponding adjustment to the opening balance of retained earnings. (Paragraph 81)

10.2.1.19. Previously Recognised Intangible Assets

The carrying amount of an item classified as an intangible asset that either was acquired in a business combination for which the agreement date was before 31 March 2006 or arises from an interest in a jointly controlled entity obtained before 31 March 2006 and accounted for by applying proportionate consolidation will be reclassified as goodwill at the beginning of the first annual period beginning on or after 31 March 2006, if that intangible asset does not at that date meet the identifiability criterion in TAS 38. (Paragraph 82)

10.2.1.20. Equity Accounted Investments

For investments accounted for by applying the equity method and acquired on or after 31 March 2006, an entity will apply TFRS 3 in the accounting for:

1. any acquired goodwill included in the carrying amount of that investment. Therefore, amortisation of that notional goodwill will not be included in the determination of the entity's share of the investee's profits or losses.
2. any excess included in the carrying amount of the investment of the entity's interest in the net fair value of the investee's identifiable assets, liabilities and contingent liabilities over the cost of the investment. Therefore, an entity will include that excess as income in the determination of the entity's share of the investee's profits or losses in the period in which the investment is acquired. (Paragraph 83)

For investments accounted for by applying the equity method and acquired before 31 March 2006:

1. an entity will apply TFRS 3 on a prospective basis, from the beginning of the first annual period beginning on or after 31 March 2006, to any acquired goodwill included in the carrying amount of that investment. Therefore, an entity will, from that date, discontinue including the amortisation of that goodwill in the determination of the entity's share of the investee's profits or losses.
2. an entity will derecognise any negative goodwill included in the carrying amount of that investment at the beginning of the first annual period beginning on or after 31 March 2006, with a corresponding adjustment to the opening balance of retained earnings. (Paragraph 84)

10.2.1.21. Appendix A ve Appendix B

TFRS 3 has 2 appendices, which are Appendix A and Appendix B. Appendix A makes definitions of concepts included in Standard, while Appendix B gives details about a special type business combination, which is reverse acquisition, and allocation of the cost of a business combination.

TFRS 3 requires an acquirer to recognise the acquiree's identifiable assets, liabilities and contingent liabilities that satisfy the relevant recognition criteria at their fair values at the acquisition date. If the determination of fair value is not possible, then related asset, liability or conditional liabilitiy will be seperated from identifiable assets and liabilities and will be considered in goodwill or an item of earning calculated based on Paragraph 56

For the purpose of allocating the cost of a business combination, the measures that acquirer will treat are given in Appendix B16. Based on the explanations made in Appendix B16;

1. **<u>for financial instruments:</u>** traded in an active market the acquirer will use current market values.

2. **<u>for financial instruments not traded in an active market:</u>** the acquirer will use estimated values that take into consideration features such as price-earnings ratios, dividend yields and expected growth rates of comparable instrument of entities with similar characteristics.
3. **<u>for receivables, beneficial contracts and other identifiable assets</u>**: the acquirer will use the present values of the amounts to be received, determined at appropriate current interest rates, less allowances for uncollectibility and collection costs, if necessary. However, discounting is not required for short-term receivables, beneficial contracts and other identifiable assets when the difference between the nominal and discounted amounts is not material.
4. **<u>for inventories of finished goods and merchandise</u>**: the acquirer will use selling prices less the sum of (1) the costs of disposal
5. **<u>for inventories of work in progress</u>**: the acquirer will use selling prices of finished goods less the sum of (1) costs to complete, (2) costs of disposal and (3) a reasonable profit allowance for the completing and selling effort based on profit for similar finished goods;
6. **<u>for inventories of raw materials:</u>** the acquirer will use current replacement costs.
7. **<u>for land and buildings:</u>** the acquirer will use market values.
8. **<u>for plant and equipment:</u>** the acquirer will use market values, normally determined by appraisal. If there is no market-based evidence of fair value because of the specialised nature of the item of plant and equipment and the item is rarely sold, except as part of a continuing

business, an acquirer may need to estimate fair value using an income or a depreciated replacement cost approach.

9. **for intangible assets:** the acquirer will determine fair value either by reference to an active market as defined in TAS 38 Intangible Assets or if no active market exists, on a basis that reflects the amounts the acquirer would have paid for the assets in arm's length transactions between knowledgeable willing parties, based on the best information available (see TAS 38 for further guidance on determining the fair values of intangible assets acquired in business combinations)
10. **for net employee benefit assets or liabilities for defined benefit plans:** the acquirer will use the present value of the defined benefit obligation less the fair value of any plan assets. However, an asset is recognised only to the extent that it is probable it will be available to the acquirer in the form of refunds from the plan or a reduction in future contributions.
11. **for tax assets and liabilities:** the acquirer will use the amount of the tax benefit arising from tax losses or the taxes payable in respect of profit or loss in accordance with TAS 12 Income Taxes, assessed from the perspective of the combined entity. The tax asset or liability is determined after allowing for the tax effect of restating identifiable assets, liabilities and contingent liabilities to their fair values and is not discounted.
12. **for accounts and notes payable, long-term debt, liabilities, accruals and other claims payable:** the acquirer will use the present values of amounts to be disbursed in settling the liabilities determined at

appropriate current interest rates. However, discounting is not required for short-term liabilities when the difference between the nominal and discounted amounts is not material.

13. **<u>for onerous contracts and other identifiable liabilities of the acquiree</u>**: the acquirer will use the present values of amounts to be disbursed in settling the obligations determined at appropriate current interest rates.

14. **<u>for contingent liabilities of the acquiree:</u>** the acquirer will use the amounts that a third party would charge to assume those contingent liabilities. Such an amount will reflect all expectations about possible cash flows and not the single most likely or the expected maximum or minimum cash flow.

According to Appendix B17, if the guidance for a particular item does not refer to the use of present value techniques, such techniques may be used in estimating the fair value of that item.

10.2.2. Comparison of TFRS 3 with IFRS and US GAAP

As mentioned before, Turkish Accounting Standards Board, established with the Act numbered 4487, has set Turkish accounting standards through translating IFRS's into Turkish. TASB and IASB have signed a copy-right agreement for the Turkish translation of IFRSs. In conclusion, accounting standards in Turkey are fully compatible with IFRSs and updated based on the changes in IFRSs. As draft TCC will set the preparation of financial tables according to TASs mandatory for all entities, all financial tables will be compatible with TASs in the near future.

On the other hand, there exists some differences between US GAAP, which is another widely-accepted accounting standard system especially in USA and Canada, and IAS. FASB, releasing US GAAP, and IASB, releasing IAS, came together in 2002 and decided to eliminate differences

between two sets of accounting standards. Information memorandum announced in 2006 cited a list, which covers the issues FASB and IASB will come to a common solution.

As TASs are one-to one translation of IASs, the differences between US GAAP and IASs also exist between TASs and US GAAP.

Standard related to business combinations is TFRS 3 or IFRS 3 in TFRS and IAS accounting systems. Parallel regulation in US GAAP accounting system is FAS 141.

Both US GAAP and TAS consider the purchase method as principal method for business combinations. Pooling of interest method, mentioned in US GAAP, has been abolished in 2002 so that a monotony between US GAAP and IAS has been established for business combinations.

Comparison of TFRS 3 and FAS 141 are summarized below.

10.2.2.1. Date of Combination

There exists no difference between US GAAP and TFRS in terms of defining the date of combination. Both standards define date of combination as the date in which acquirer entity takes control of acquiree entity.

10.2.2.2. Cost of Combination

In TFRS application, equity shares given to the shareholders of acquiree entity shareholders are measured with their fair values and added to the cost of combination. In US GAAP application, the value considered in the calculation of the cost of combination is average market price of given equity shares within a reasonable time period. Reasonable time period is accepted as a few days before and after the public announcement of business combination.

In TFRS application, date of combination is the date at which acquirer entity gains all control over assets and operations of acquiree entity. If business combination is realized in steps, fair value must be

determined when the control in acquiree company is gained. If the equity shares of acquirer entity are listed in Stock Exchange, market price as of combination date is directly regarded as fair value.

10.2.2.3. The Cost of Contingent Combinations

If the cost of business combination is contingent on a future event (for instance acquirer company could give additional equity shares to acquiree enttiy shareholders if certain profitability margins are met) TFRS 3 cites that the additional costs related to contingency must be added to the cost of business combination. If prevision regarding contingency is realized in the opposite manner, an adjustment has been made through using the goodwill account.

In US GAAP application, costs regarding contingency are not considered in the cost of business combination until the contingency is realized and additional cost regarding contingency becomes definite.

10.2.2.4. Allocation of "The Cost of Business Combination" to Acquired Assets, Liabilities and Contingent Liabilities

Both TFRS and US GAAP consider fair values of assets, liabilities and contingent liabilities at the date of business combination in allocating the cost of business combination to acquired assets, liabilities and contingent liabilities. However, there are some differences regarding the determination of fair value or market value of some assets and liabilities. Valuation differences between TFRS 3 and FAS 141 are summarized below.

10.2.2.4.a. Intangible Assets

In TFRS application, transferring an intangible asset to the balance sheet of acquirer entity depends on intangible asset's being an identifiable asset. If intangible asset is separable, ie capable of being separated or is divided from the entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, asset or liability, and arises from contractual or other legal rights, regardless of whether those

rights are transferable or separable from the entity or from other rights and obligations, then it is regarded as an identifiable asset. If an intangible asset does not meet the criteria of being an identifiable asset, it will be regarded as goodwill in the balance sheet of acquirer company.

US GAAP applications put forward similar conditions for intangible asset's transfer to the balance sheet of acquirer entity. An additional condition for US GAAP is that intangible asset must have a value creation potential for the acquirer entity.

10.2.2.4.b. Reserves for Restructuring

TFRS application treats reserves for restructuring, measured according to TAS 37, as a liability to be transferred to acquirer's balance sheet. Reserves, which donot exist as of the date for business combination, are not transferred to the balance sheet of acquirer entity.

In US GAAP application, transfer of restructuring reserves into acquirer's balance sheet is subject to some conditions. First of all, tasks to be realized within the context of restructuring must be programmed and completed in one year from date of business combination. Secondly, restructuring reserve must have the characteristics of a liability for acquiree entity.

10.2.2.4.c. Contingent Liabilities

In TFRS application, contingent liabilities are transferred to acquirer entity balance sheet, providing that contingent liabilities could be measured at their fair values as of the date of combination.

In US GAAP application, transfer of contingent liability to acquirer entity balance sheet will be possible if contingency is probable to be realized and the amount of liability must be foreseen with certainty by acquirer entity management.

10.2.2.4.d. Minority Shares in Business Combinations

In TFRS application, if less than 100% of acquiree entity shares are acquired, acquiree entity's assets, liabilities and contingent liabilities pertaining to minority shareholders are accounted as "minority shares" in the balance sheet of acquirer company.

In US GAAP application, acquirer entity measures minority shares with its net book value in its balance sheet. Fair value measurement is used for the acquired portion of assets, liabilities and contingent liabilities or acquiree entity.

10.2.2.4.e. Goodwill

In TFRS application, the favorable difference between the cost of business combination and the fair value of identifiable assets, liabilities and contingent liabilities is accounted as goodwill in the balance sheet of acquirer entity. TFRS 3 does not allow the amortization of goodwill formed through a business combination, however, it could be subject to impairment test.

In US GAAP application, goodwill is calculated in the same manner with TFRS application. US GAAP allows the amortization of goodwill and also permits impairment test once in a year.

In terms of impairment test, a single phase approach is followed in TFRS application. In single phase approach, net realizable value, which equals to the higher of net sales value or deprival value, and book value of cash generating units are compared. If book value exceeds net realizable value, the exceeding amount is accounted as impairment. Impairment is first deducted from goodwill pertaining to cash generating unit. If goodwill amount pertaining to cash generating unit is inadequate, then impairment is deducted from other asset classes of cash generating unit.

Impairment test is a two-stage test in US GAAP application. In the first stage, fair values and book values of reporting units are compared . If fair value of reporting unit is less than book value, then goodwill amount related to reporting unit is deducted. In the second stage of US GAAP

application, the amount of decrease in goodwill is calculated. The amount of reporting unit value pertaining to goodwill is found by having the difference between fair value of reporting unit and fair value of reporting unit excluding goodwill.

In US GAAP application, impairment in goodwill is deducted from entity's taxable income and the amount of deduction from taxable income is limited to the book value of goodwill. On the other hand, TFRS application allocates the amount of impairment exceeding goodwill to other asset classes of reporting unit in a pro-rata basis.

10.2.2.4.f. Negative Goodwill

In TFRS application, if the the cost of business combination is less than the fair value of acquiree entity's assets, liabilities and contingent liabilities, then difference is accounted as profit in income statement.

In US GAAP application, the difference is deducted from certain asset classes in a pro-rata basis. Assets other than current assets, financial assets, prepaid insurance expenses and deferred tax assets are certain asset classes that impairment is deductable. If negative goodwill is not eliminated from those asset classes, the amount is considered as extraordinary income in taxable income.

10.2.2.4.g. Adjustments in Asset and Liability Items

In TFRS application, adjustments regarding the contingent values of assets and liabilities at the date of business combination are allowed within 1-year period after the date of business combination. The counter account is goodwill in those adjustments. Adjustments after 1-year period is still possible, however, the adjustments after 1-year period will directly be related to taxable income.

In US GAAP application, 1-year period is for unfavorable adjustments. If adjustment is asset value increase or liability value decrease, goodwill is used as the counter account without any time limitation. If adjustment is asset value decrease or liability value increase, then goodwill is used as the counter account within 1-year period. If adjustments are not

related to business combination, then it will not be possible to use goodwill account as a counter account. It must be an assumption mistake in allocating the cost of business combination to identifiable assets and liabilities.

10.2.2.4.h. Business Combinations Among Companies Having Subsidiary Relationship

TFRS 3 does not refer explicitly to business combinations among entities having subsidiary relationship. TFRS 3 lists those type of business combinations as transactions outside the context of Standard, in other words, parties of transaction are set free in the accounting of those combinations. For instance, it is possible to use pooling of interest method rather than puchase method in acocunting of those type of transactions.

US GAAP includes special arrangements for those type of business combinations. Assets and liabilities must be transferred to the balance sheet of acquirer entity with their book values in the balance sheet of acquiree entity.

10.2.2.4.i. Business Combination Achieved in Stages

In TFRS application, fair values of identifiable assets, liabilities and contingent liabilities are found and goodwill is calculated in each stage. Date of combination is the date at which acquirer entity takes control of acquiree entity, and thus, the fair values of identifiable assets, liabilities and contingent liabilities are reassessed and valuation differences are transferred to related accounts.

In US GAAP application, process is almost similar to TFRS application. However, there is no reassessment for the fair values of identifiable assets, liabilities and contingent liabilities as of the transaction date. Goodwill calculated in each stage remains unchanged in US GAAP application.

10.2.3. Recent Changes in IFRS 3 and FAS 141

As we mentioned in previous sections, IASB and FASB had come together to eliminate differences regarding the accounting of business combinations. The first step to monotony has been the announcement of FAS 141, in which pooling of interest method was abolished and purchase method has been determined as the single method for business combination accounting. Discussions have continued after FAS 141 was released, and the product of second phase discussion have emerged in December 2007. FASB has revised the standard of FAS 141 and announced that FAS 141R will be effective for business combinations occurring after December,15th 2008.

On the other hand, IASB has announced revised IFRS 3, which is almost identical to FAS 141R, in January 2008. New IFRS 3 will be effective for the business combinations realized in accounting periods starting after June,30 2009. Early adoption of IFRS 3R is allowed with some additional conditions, while it is forbidden in FAS 141R practice.

TASB, which updates TASs with respect to changes in IFRSs, also announced new TFRS 3 in August,13th 2008. New TFRS 3 will be effective for the accounting periods starting on or after June, 30th 2009, but early application is possible for business combinations realized in accounting periods after June, 30th 2007.

When this Thesis work has been prepared, new TFRS 3 was not binding in Turkish legislation. Thus explanations regarding the accounting of business combinations have been made with respect to old legislation. It should also be noted that the comparison of TFRS 3 with US GAAP application in Section 10.2.2. has also been made considering old FAS 141 regulation.

After FAS 141R and IFRS 3R announcements, IASB and US GAAP applications have come together more and more. Below table summarizes the main changes that IFRS 3R anf FAS 141 brings. The business combinations standard represents some significant changes for IFRS but is less of a radical change than the comparable standard in US GAAP.

IFRS 3R/TFRS 3R	FASB 141R
Business combinations achieved by contract alone and business combinations involving only mutual entities are accounted for under the revised IFRS 3.	100% of the fair value of the assets acquired, liabilities assumed and any non-controlling interests in the acquiree are recognized whenever the acquisition results in a change of control of the acquiree.
Transaction costs incurred in connection with the business combination are expensed when incurred and are no longer included in the cost of the acquiree.	In-process research and development costs are initially capitalized. The costs are written off upon abandonment of the project or amortized the costs as a finite lived intangible.
An acquirer recognises contingent consideration at fair value at the acquisition date. Subsequent changes in the fair value of such contingent consideration will often affect the income statement.	Acquisition-related transaction costs are expensed as incurred.
The acquirer recognises either the entire goodwill inherent in the acquiree, independent of whether a 100% interest is acquired (full goodwill method), or only the portion of the total goodwill which corresponds to the proportionate interest acquired (as currently the case under IFRS 3).	Any shares or other equity securities issued by the acquirer as consideration are measured at fair value as of the acquisition date.

IFRS 3R/TFRS 3R	FASB 141R
Any previously held non-controlling interest (as a financial asset or associate, for example) is remeasured to its fair value at the date of obtaining control, and a gain or loss is recognised in the income statement.	Contingent consideration is recognized at fair value as of the acquisition date as a liability or a decrease in equity and changes in the fair value of contingent consideration recorded as a liability subsequently are recognized in current earnings.
There are new provisions to determine whether a portion of the consideration transferred for the acquiree or the assets acquired and liabilities assumed are part of the business combination or part of another transaction to be accounted for separately under applicable IFRS.	Pre-acquisition gain and loss contingencies (both contractual and certain non-contractual contingencies) are recognized at their fair value as of the acquisition date and certain decreases in the estimated realizable value of contingent assets and certain increases in the value of contingent liabilities are subsequently recognized.
There is new guidance on classification and designation of assets, liabilities and equity instruments acquired or assumed in a business combination on the basis of the conditions that exist at the acquisition date, except for leases and insurance contracts.	Adjustments to the initial allocation of the purchase price for the final determination of fair value made within the measurement period are recognized (generally, no longer than one year) by retrospectively adjusting comparative amounts in previously issued post-acquisition financial statements as if the adjustments had been made as of the acquisition date.

IFRS 3R/TFRS 3R	FASB 141R
Recognition of deferred tax assets of the acquiree after the initial accounting for the business combination leads to an adjustment of goodwill only if the adjustment is made within the measurement period (not exceeding one year from the acquisition date) and the adjustment results from new information about facts and circumstances that already existed at the acquisition date. Otherwise, it must be reflected in the income statement	Adjustments to deferred tax assets and uncertain tax positions during the measurement period are recognized generally as a component of goodwill and adjustments after that period are recognized as a component of income tax expense (previously, all such adjustments were recorded through goodwill).
Intangible assets are recognised separately from goodwill if they are identifiable – ie, if they are separable or arise from contractual or other legal rights. The reliably measurable criterion no longer has to be met.	Any gain from a "bargain purchase" (the excess of the fair value of the net assets acquired over the fair value of the consideration paid to the acquiree plus the fair value of any non-controlling interests recorded) is recognized in the income statement during the period of the acquisition
Additional disclosure requirements exist.	The fair value of any rights reacquired by the acquirer are recognized.

10.2.4. Comparison of TFRS 3 and Tax Procedure Law Clauses

Article 282 of Tax Procedure Law cites that goodwill is measured with its book value and is subject to amortization within a 5-year period in equal amounts. However, Paragraph 55 of TFRS 3 cites that amortization of goodwill is not allowed in TRFS application. Goodwill is subject to impairment test according to TAS 36 in case some changes occur in the conditions affecting valuation assumptions.

Communique, which is called "The Conceptual Framework Regarding The Principles about Preparation and Presentation of Financial Tables", defines the relationship between TAS and tax legislation. Accordingly, TAS is related to formation of trade balance sheet, while the valuation provisions in Tax Procedure Law is related to the determination of tax returns. Tax-payers must add or subtract valuation differences to their income in trade balance sheet and consider exemptions and non-deductible expenses in reaching corporate tax return.

Entities will measure goodwill in their balance sheet in accordance with the principles in TFRS 3. Amortization amount related to goodwill will be deducted from income before tax figure to reach corporate tax return.

According to TFRS 3, impairment in goodwill is deducted from income before tax. However, Tax Procedure Law considers impairment of goodwill as a non-deductible expense, as goodwill is measured with book value according to Article 282 of TPL. Taxpayers must add the impairment in goodwill to their income before tax figure to reach corporate tax return.

10.2.5. Comparison of TFRS 3 and TCCT Clauses

All business combinations must be accounted for by applying the purchase method according to Paragraph 14 of TFRS 3. The cost of business combination is allocated to identifible assets, liabilities and contingent liabilities based on their fair values as of the date for business combinations. In other words, acquiree entity's assets, liabilities and contingent liabilities

are transferred to acquirer entity with their fair values. If the cost of combination is more than the fair value of assets, liabilities and contingent liabilities, then excess amount is accounted as goodwill in the balance sheet of acquirer entity. In fair value of assets, liabilities and contingent liabilities is more than the cost of busines combination, then the difference is accounted as extraordinary income according to Paragraph 56 of Standard.

Article 18 of TCCT numbered 5520 cites that acquirer entity will transfer acquiree entity's assets with their current values. Current value and fair value will probably be equal to each other although their names differ. In case a difference exists between fair value and current value, that difference must be considered in calculating the merger profit subject to corporate tax.

Article 19 of TCCT considers the transfer of acquiree's assets to acquirer entity as a whole and with their book values as a pre-condition for tax-free transaction. Similar arrangement is also valid for full division and partial division. Tax-free nature of those transactions depends on assets' transfer to acquirer entity with their book values.

As seen, Article 19 of TCCT and TFRS 3 are contradictory in terms of tranferring value of acquiree entity's assets. TFRS 3 requires assets, liabilities and contingent liabilities to be transferred with fair values, while Article 19 sets the transfer with book value as a pre-condition for tax-free transaction.

As mentioned beforehand, TFRSs are the main accounting standards for all banking institutions and public companies for the time being. After Draft TCC is legitimized, TFRSs will be the main accounting standard for all entities in Turkey. Consequently, it will not be possible to apply accounting procedures other than TFRSs due to the taxation reasons or any other reason. In this case, the question will be how to satisfy the condition for transferring acquiree company assets with their book values according to TCCT.

At this point, we must examine the TAS 12, which is called Income Tax", to get answer to above question.

10.2.6. The Results of Turkish Accounting Standard No:12 for Business Combinations

TAS 12 has become effective on 28.03.2006 through publication in Official Gazzette. The aim for TAS 12 is to prescribe the accounting treatment for income taxes. According to TAS 12, there could exist differences between the values of assets in financial tables prepared according to TFRSs and the values of assets in tax treatment. That brings deferred tax assets and deferred tax liabilities to our agenda. As mentioned in previous section, there exists a contradiction between TCCT numbered 5520 and TFRS 3 in terms of the accounting of business combinations. That contradiction is reflected in acquirer entity balance sheet with respect to TAS 12 principles.

11. CONCLUSION

There is no doubt that merger, acquisition, division and exchange of shares transactions are among the most effective tools in reaching the capital allocation goal of finance theory. However, there will be no need to discuss the aims and results of transactions as long as the legislation surrounding them are not carefully arranged and do not support the applicability of transactions. As management literature discussing the results of transactions are limited in Turkey, we have discussed the legislation surrounding transactions at first and have highlighted the deficiencies, which prevent the applicability of transactions in practice.

The main legislative arrangement regarding those transactions has been Turkish Code of Commerce numbered 6762. TCC numbered 6762 sets clauses regarding merger and acquisition transactions of share capital companies, while it does not contain any arrangement regarding division and exchange of shares transactions. Lack of legal root in TCC numbered 6762 prevent the application of division and exchange of shares transaction in practice. Draft TCC, which is expected to be legitimized by the end of 2009, brings in a legal ground to division transaction through defining transaction in its related section. That means that we will see more division transaction after Draft TCC is legitimized. However, we donot foresee the same result for exchange of shares transaction, because Draft TCC neither include any definition for exchange of shares transaction nor make any reference to another legal arrangements. Some authorities consider exchange of shares transaction as putting capital in kind in TCC application and proposes that capital increase clauses must be valid for the transaction.

Capital Market Board has also interfered with merger and acquisition transactions in parallel to its mission of protecting the rights of shareholders. CMB has propogated the Communique Serial:1 No:31 and set some rules and regulations for the realization of merger and acquisition transactions. Existing CMB arrangements donot propose any ruling or make any

reference for the application of division and exchange of shares transactions. That is most probably due to the limited application of those transactions in practice. As mentioned above, division transaction will gain momentum after legal roots are set in Draft TCC and specific CMB arrangements regarding division transaction will be a certain requirement at that time.

Turkish Competition Authority also interferes with merger and acquisition transactions. Article 7 of TAPC makes the authorization of Tukish Competition Board mandatory for certain merger and acquisition transactions. Communique numbered 1997/1 makes explanations regarding TCB approval in merger and acquisition transactions. On the other hand, there exists no explicit referral to the approval requirement for division and exchange of shares transactions in TAPC and its related Communique numbered 1997/1.

Taxation rules regarding merger, acquisition, division and exchange of shares transactions are regulated between Article 18 and Article 20 of TCCT numbered 5520. TCCT numbered 5520 considers appreciation income realized in merger transaction as an income subject to corporate tax, while acquisition, division and exchange of shares are considered tax-free provided that certain conditions listed in Article 19 and Article 20 are satisfied.

There exists ambiquities regarding the calculation method of merger profit, taxation results of acquired party shareholders in merger transaction, VAT tax base for merger transaction, loss deduction in merger transactions due to the inadequate explanation regarding transactions. Required explanations regarding those issues must be done in the secondary legislation.

According to TCCT numbered 5520, the most important condition for tax-free transaction is transfering the assets of acquired or divised company to acquiring company with their book values. However, TFRS 3, which explains accounting rules regarding business combinations, requires the transfer of acquired or divised company assets to acquiring company

with their fair values. The contradiction is due to the difference between the core aims of two legal arrangements. TFRSs holds the aim for protecting shareholder rights and providing 3rd parties with true and reliable information, while tax legislation is concentrated on quaranteing the collection of tax deferred due to tax-free transaction.

The contradiction between TCCT numbered 5520 and TFRS 3 will be solved when Draft TCC is legitimized. Draft TCC considers the application of TFRSs mandatory for all entities, which means that the assets transferred in an acquisition or division transaction will be valued with their fair values rather than book values. In that case, there must be some amendments or additional explanations in TCCT numbered 5520 for the true application of tax-free transactions like merger, acquisition and exchange of shares.

To sum up, business restructurings like merger, acquisition, division and exchange of shares are transactions having reference to various legislations and disciplines. The harmonization between those various legislations and disciplines are crucial for the widespread and successful application of those transactions in practice.

Although Turkish legislation have some legal gaps for the application of some business restructuring transactions for the time being, Draft TCC, expected to be legitimized by the end of 2009, will fill much of those legal gaps. After Draft TCC is legitimized, required amendments and explanations must be made for the related legislations immediately so that transactions are implemented successfully in practice.

References

Books

Andrew SHERMAN, *"Mergers and Acquisitions from A to Z 2nd Edition"*, Amacom USA, 2005

Andrei SHLEİFER and Lawrence H. SUMMERS, ***"Breach of Trust in Hostile Takeovers," in A. Auerbached., Corporate Takeovers and Their Consequences"***, Chicago: University of Chicago Press, 1988

BREALEY, RICHARD, MYERS, STEWART C. and MARCUS, ALAN J., ***"Fundementals of Corporate Finance International Edition"***, Mc Graw Hill, 1995

Cevat SARIKAMIŞ, ***"Şirket Birleşmeleri"***, Avcıol Basım Yayın, Istanbul 2003

David ALEXANDER, ***"Fair Values in IAS GAAP"***, Birmingham Business School, United Kingdom 2003

Debra JETER, Paul CHANEY, ***"Advanced Accounting"***, John Wiley&Sons. Inc, 2001

Deloitte, ***"Business Combinations:A Guide to IFRS 3"***, London 2004

Doğan ŞENYÜZ, ***"Türk Vergi Sistemi"***, Beta Yayınları, Bursa 2003

Don HANSEN, Maryanne MOWENI, ***"Management Accounting 7th Edition"***, Thomson Learning, Ohio 2005

Dr. Ahmet KAVAK, ***"Sermaye Şirketlerinin Tasfiye, Birleşme, Devir ve Bölünme İşlemleri",*** Maliye ve Hukuk Yayınları**,** Ankara 2005

Halil SEYİDOĞLU, ***"Ekonomik Terimler Ansiklopedik Sözlük"***, Güzem Yayınları, 1992

Hamdi YASAMAN, ***"Anonim Ortaklıkların Birleşmesi"***, Banka ve Ticaret Hukuku Araştırma Enstitüsü Yayını, Ankara 1987

Hasan ULU, ***"Birleşme ve Devralmalarda Ortaya Çıkan Rekabet Sorunları ve Koşullu İzin"***, Rekabet Kurumu Uzmanlık Tezleri, Ankara 2004

Helmut PERNSTEINER-Haluk SUMER**,** ***"Şirket Birleşmeleri",*** Alfa Yayınları, İstanbul 2003

Hızır TARAKÇI, "*Kurumlarda Sona Erme*", Polaris Yayınları, İstanbul 2003

Hikmet Sami TÜRK, "*Ticaret Ortaklıklarının Birleşmesi*", Banka ve Ticaret Hukuku Araştırma Enstitüsü Yayın No.185, Ankara 1986

Hüseyin AKAY, ***"İşletme Birleşmeleri ve Muhasebesi"***, Yaylim Matbaası, İstanbul 1997

M. Ali CANOĞLU - Rüstem HACIRÜSTEMOĞLU, ***"Vergi Uygulamaları ve Muhasebe"***, Beta Basın Yayım, İstanbul 1990

Mehmet AKUGUR, "*Türk Ticaret Kanunu Tasarısı*", Vedat Yayınevi, İstanbul 2005

Mehmet MAÇ, ***"Kurumlar Vergisi 3. Baskı",*** Denet Yayıncılık, İstanbul, 1999

Nevin İMAMOĞLU, ***"Birleşme ve Devralmalarda Sermaye Piyasası Mevzuatı ve Uygulamaları"***, Sermaye Piyasası Kurulu, Ankara 1999

Nurhan AYDIN, ***"İşletme Birleşmesinde Finansal Analiz ve Bir Uygulama Örneği"***, TOBB Yayını, Ankara 1990

Orhan ALTUĞ, ***" Muhasebe-Hukuk İlişkileri"***, Türkmen Yayınları, İstanbul 1999

Orhan Nuri ÇEVİK, ***"Anonim Şirketler 4.Baskı"***, Seçkin Yayınları, Ankara 2002

Öztin AKGÜÇ, "***Finansal Yönetim 7. Baskı"***, Muhasebe Enstitüsü Yayın No: 65, İstanbul, 1998

Paul FISCHER, William TAYLOR, Rita CHENG, ***"Advanced Accounting 7th Edition",*** SWTL Publishings, 1998

Reha POROY, Ünal TEKİNALP, Ersin ÇAMOĞLU, ***"Ortaklıklar ve Kooperatifler Hukuku 8. Baskı"***, İstanbul 2000

Robert F. BRUNER – Joseph PERELL, ***"Applied Mergers and Acquisitions"***, Wiley Finance, 2004

Robert FEINSCHREIBER-Margaret KENT, ***"International Mergers and Acquisitions"***, John Wiley & Sons, 2002

ROSS, WESTERFIELD, RADOLPH,JAFFE and JEFFREY, ***"Corporate Finance 7nd Edition"***, McGraw Hill, 2002

Serhat KUTLAN, ***"Birleşme ve Devir Almalarda Due Diligence"***, Yaklaşım Yayınları, Ankara 2004

Şerafettin ŞİRİN, *"**Ticaret Hukukunda Şirketler ve Özel Statülü Kurumlar"***, İstanbul 1992

Şükrü KIZILOT - Saygın EYÜPGİLLER, "***Şirketler Muhasebesi Vergilendirilmesi Hukuku ve Mevzuatı***", Yaklaşım Yayıncılık, Ankara 1999

Şükrü KIZILOT, ***"Danıştay Kararları ve Özelgeler 7.Cilt"***, Yaklaşım Yayınları, Ankara 2005

Therese MAYNARD, ***"Mergers and Acquisitions: Cases, Materials and Problems"***, Aspen Publishers, 2005

THOMPSON-STRICKLAND, ***"Strategy and Policy, Concepts and Cases"***, Business Publications Inc., Dallas 1978

Ümit ATAMAN, ***"Şirketler Muhasebesi"***, Türkmen Kitabevi, İstanbul 1996

Yılmaz ASLAN, ***"Türk Rekabet Hukukunun Temel İlkeleri"***, Ezgi Kitabevi, Bursa 1992

Yılmaz ÖZBALCI, ***"Kurumlar Vergisi Yorum ve Açıklamaları"***, Oluş Yayıncılık, Ankara 2007

Yüksel Koç YALKIN, ***"Şirketler Muhasebesi: İlkeler ve Uygulama"***, Turhan Kitabevi, Ankara 1992

Articles

Abdulkadir GÖKTAŞ, ***"Dünyada ve Türkiye'de Şirket Birleşmeleri ve Hukuksal Boyutu"***, Yaklaşım, No.108, December 2001

Adnan NAS, ***"Şirketler birleşiyor ama bölünemiyor"***,www.malihaber.com, April 10, 2007

Aydın KARAPINAR, ***"Şirket Birleşmelerinin Uluslararası Muhasebe Standartlarına Göre Değerlendirilmesi"***, Muhasebe ve Denetime Bakış, 2003

Ayşe Gül YILGÖR, *"**Şirket Birleşme, Ele Geçirme ve Satın Alma İşlemlerinin Finansal Çerçevesi"***, Şirket Birleşmeleri, Alfa Yayınları,, 2004, p.381.

Başak Ataman AKGÜL, ***"Maddi Olmayan Duran Varlıkların İtfasına İlişkin IAS 38 ve IFRS 3 Standardında Yer Alan Düzenlemeler ve Türk Vergi Mevzuatıyla Karşılaştırması"***, Muhasebe ve Bilim Dünyası, No.25, January 2005, pp. 41-45

Bumin DOĞRUSÖZ, ***"Türk Vergi Hukukunda Şirket Bölünmesi (1-Tam Bölünme"***, Yaklaşım, No.107, November 2001, pp.38-49

Bumin DOĞRUSÖZ, ***"Türk Vergi Hukukunda Şirket Bölünmesi (1-Tam Bölünme"***, Yaklaşım, No.108, December 2001, pp.31-40

Bülent TAŞ, ***"Şirket Yeniden Yapılandırmalarıyla İlgili Olarak Yapılan Yeni Vergi Düzenlemeleri"***, Vergi Dünyası, No.247, March 2002, pp. 54-68

Elazar BERKOVITCH; M. P. NARAYANAN, ***"Motives for Takeovers: An Empirical Investigation",*** The Journal of Financial and Quantitative Analysis, Vol. 28, No.3, September 1993, pp. 347-362.

Friedrich TRAUTWEIN, ***"Merger Motives and Merger Prescriptions",*** Strategic Management Journal, Vol. 11, No.4, May - June 1990, pp. 283-295.

Hikmet KURNAZ, ***"Sermaye Şirketlerinde Birleşmenin İktisadi ve Hukuki Sonuçları ile Yükümlülükleri" ,*** Yaklaşım, October 2006

J. Keith BUTTERS - John LINTNER, ***"Tax and Non-Tax Motivations for Mergers",*** The Journal of Finance, Vol. 6, No. 4, December 1951, pp. 361-382.

Mehmet BAHTİYAR, ***"Türk Ticaret Kanunu ile Avrupa Birliği'nin Üçüncü Konsey Yönergesi Açısından Anonim Ortaklık Birleşmeleri ve Denetimi"***, Şirket Birleşmeleri, Polaris Yayınları, 2004

Michael FİRTH, ***"Synergism in Mergers: Some British Results"***, The Journal of Finance, Vol. 33 No. 2., May 1978, pp. 670-672.

Nalan AKDOĞAN, ***"Uluslararası Finansal Raporlama Standartlarının Türkiye Muhasebe Uygulamalarına Getireceği Değişiklikler ve Vergi İlişkisi"***, Muhasebe ve Bilim Dünyası, Vol.6, No.3, September 2004, pp.19-59

Nevzat TÜFEKÇİOĞLU, ***"Şirket Birleşmeleri ve İştirak İlişkisi"***, Vergi Dünyası, No.225, November 2002, p.4

Patricia ANSLINGER-Thomas COPELAND, ***"Growth Through Acquisitions: A Fresh Look"***, Harvard Business Review, January-February 1996, pp. 126-155

Paul LEVINE-Sam AARONOVITCH, *“The Financial Characteristics of Firms and Theories of Merger Activity”,* The Journal of Industrial Economics, Vol. 30, No. 2, December 1981, pp. 149-172.

P. H. Malatesta, ***“The Wealth Effect of Merger Activity and the Objective Functions of Merging Firms.”,*** Journal of Financial Economics, 1983, p.155-182.

R. Morck, A. Shleifer and R. Vishny (1990), ***"Do Managerial Motives Drive Bad Acquisitions?"***, Journal of Finance, 1990, pp. 31-48.

Roberta ROMANO , ***"A Guide to Takeovers: Theory, Evidence, and Regulation"***, Yale Journal of Regulation, 1992, pp.119-180.

Stanley SIEGEL, ***“When Corporations Divide: A Statutory and Financial Analysis”,*** Harvard Law Review, Vol. 79, No.3, January 1966, pp. 534-570.

Veliye YANLI**, *“Sermaye Piyasası Kanunu Açısından Anonim Şirket Birleşmeleri”,*** Şirket Birleşmeleri, Polaris Yayınları, 2004

W.G. LEWELLEN, C. LODERER, A. ROSENFELD, ***"Merger Decisions And Executive Stock Ownership İn Acquiring Firms"***, Journal of Accounting and Economics, Vol. 7, pp.209 - 231.

Master and Doctoral Thesis

Ali İhsan ÇETİN, *“**Şirket Birleşmelerinde Örgütsel Değişim”,*** Karadeniz Teknik Üniversitesi, Yüksek Lisans Tezi, 1998

Bilge YELKENCİ, ***“Ulusal ve Uluslararası Muhasebe Standartlarına Göre Şirket Birleşmeleri ve Bir Uygulama”***, Onsekiz Mart Üniversitesi, 2006

Celalettin ÖZDEN, *“**Türkiye’de İşletme Birleşmelerinin Muhasebeleştirilmesi ve Eğitimine İlişkin Öneriler”***, Gazi Üniversitesi, Yüksek Lisans Tezi, 2006

Devrim TOPUZ, ***“Ülkemizde Anonim Şirketlerin Birleşmesi ve Birleşmenin Muhasebeleştirilmesi”***, İzzet Baysal Üniversitesi, Yüksek Lisans Tezi, 2005

Dilek ÖZDÜLGER, ***“Valuation in Mergers”***, Marmara Üniversitesi, Yüksek Lisans Tezi, 1998

Ebru ARPACIK, *“**Şirket Birleşmeleri”,*** Yıldız Teknik Üniversitesi, Yüksek Lisans Tezi, 1998

İsmail KÜÇÜK, ***"İşletmeler Arası Birleşme Yoluyla Büyümelerde Değerleme ve Muhasebe İşlemleri"***, Marmara Üniversitesi, Yüksek Lisans Tezi, 1999

M. Murat ÜNLÜ, ***"Şirket Birleşmeleri ve Finansal Analizi"***, İstanbul Üniversitesi, Yüksek Lisans Tezi, 1996

Mehtap CİVİR, ***"Mergers and Acquisitions in EU and Turkey"***, Marmara Üniversitesi, Yüksek Lisans Tezi, 2002

Osman Kürşat ONAT, ***"Devralma Yoluyla Şirket Birleşmelerinde Birleşme Sonrası Mali Perfomansın Oranlar Yöntemiyle Belirlenmesi",*** Süleyman Demirel Üniversitesi, Yüksek Lisans Tezi, 2006

Yılmaz GÜZEY, ***"Şirket Birleşmeleri Örgütsel Yapı Değişiklikleri ve Getirebileceği Sorunlar ve Önlemler"***, İstanbul Üniversitesi, Yayınlanmamış Doktora Tezi, 1998

Sayime BALABAN, ***"Türkiye'de Sermaye Şirketlerinde Tasfiye, Birleşme ve Devir İşlemlerinin Vergi Uygulaması Açısından Değerlendirilmesi"***, Dokuz Eylül Üniversitesi, 2002

Legal Documents

Capital Market Law

CMB Communique numbered Serial:1 No:31

Draft Turkish Code of Commerce

International Financial Reporting Standards, IFRS 3

TAPC Communique numbered 1997/1

The Act of Protecting Competition numbered 4054

Turkish Code of Commerce numbered 6762

Turkish Code of Obligation

Turkish Code of Corporate Tax numbered 5520

Turkish Code of Corporate Tax numbered 5422

Turkish Code of Tax Procedure

Turkish Code of Value Added Tax

Turkish Financial Reporting Standards

TFRS 3, IFRS 3, FAS 141