SHAREHOLDERS AGREEMENTS IN TURKEY

Shareholders Agreements are used for regulating the rights and obligations of the shareholders and for the determination of corporate issues and the matters that are not regulated under the Articles of Association ("**Articles**") of the Company.

Turkish Commercial Code ("**TCC**") does not explicitly regulate Shareholders Agreements. Parties may enter into Shareholders Agreements with any terms within the framework of freedom of contract as long as provisions of the does not conflict the Articles of the Company or the provisions of TCC. As a consequence, Shareholders Agreements only create a binding contractual relationship between its parties and does not impose obligations or grant any rights to any third parties or future shareholders (unless they become parties to the Agreement), with the exception of provisions which may be freely reflected to Articles of the Company pursuant to TCC.

A Shareholder Agreement will usually govern the following matters: shareholding structure of the company and share groups, scope of business of the company, corporate governance matters including composition of the board, election of the chairman, meeting and decision quorums at shareholders and board level, reserved matters, veto rights, determination of budget annual business plans, financing, capital increases, distribution of dividends, share transfer restrictions and share options, deadlock and exit provisions, information rights, non-compete/non-solicitation provisions and representations and warranties.

One of the most controversial issue in this area is the enforceability of share options. Call/put options as well as tag/drag options and right of first refusal (all together the "**Options**") are valid and binding under Turkish law and options are contractual obligation of the obligor vis-à-vis the beneficiary of the Option. There are two crucial issues with the enforceability of such Options: (i) they will not as a general rule be enforceable against third parties acquiring the shares subject to an Option unless it can be proved that the third party acquired the shares with the intention of harming the beneficiary; and (ii) the Courts may tend to award monetary damages and be reluctant to impose a remedy of specific performance to require the transfer of shares.

Below are the widely used solutions to improve the enforceability of Options:

(i) *Inserting the Option provisions in the Articles:*

Articles are registered with the trade registry and are public. Inserting the terms of the Options in the Articles will put third parties on notice as a warning. However, if the beneficiary wished to issue proceedings against the third party it would have to prove the third party intended to cause harm in acquiring the shares.

(ii) *Inserting a provision into Articles which state that Board cannot register the transfer of shares to a third party:*

Pursuant to TCC, Board may refuse to approve the transfer of registered shares for "justifiable reasons". We believe Options may be incorporated in the Articles as a "justifiable reason" for the Board to approve or refuse a transfer of shares. Accordingly, if a third party acquires the shares in violation of Option provisions, the Board would not be permitted to register the acquirer as a shareholder of the Company and the holder of the shares may not benefit from its rights as a shareholder.

(iii) Inserting transfer restriction on share certificate:

Inserting a statement on registered share certificates that the shares are subject to transfer restrictions would put third parties on notice. A third party may validly acquire the shares despite such notice, since the contractual share restriction may not be asserted against a third party even if they are aware of the existence of such restriction.

(iv) Penalty provisions:

Penalty clauses are valid and binding unless payment of such penalty causes the obligor to go bankrupt, accordingly, a high penalty could be imposed for a sale to a third party in breach of the Options.

(v) Escrow arrangements:

Parties may enter into escrow arrangements and share certificates of the Company may be deposited with an escrow with blank endorsement. Escrow can release the Option shares with the written instruction of the beneficiary of the Option.

(vi) Establishing Holding Company outside Turkey:

Shareholders may establish a company in a jurisdiction where there is greater legal certainty on the enforcement of Options and shareholding arrangements would operate at this holding company level and this holding company can hold the shares of Turkish company.

Within this context, it is crucial to negotiate and discuss all the terms of the Shareholders Agreement and make sure that its provisions are enforceable before making an investment for both strategic and financial buyers.