

Turkey: Special Purpose Acquisition Companies

Authors: Gönenç Gürkaynak, Esq., Damla Doğançalı and Defne Kahveci, ELIG Gürkaynak Attorneys-at-Law

I. Introduction

Special Purpose Acquisition Companies (“**SPAC**”), which are incorporated to achieve the purpose of investing and merging with a non-public company, were first introduced in the United States in 1990s and recently increased its popularity globally. Unlike other countries, SPACs entered into Turkish legal system relatively late with the Communiqué on Common Principles Regarding Significant Transactions and Appraisal Right (Communiqué No. II-23.1) of the Capital Markets Board (“**CMB**”), published in the Official Gazette dated 24.12.2013 numbered 28861 (“**Appraisal Right Communiqué**”). Currently, there is no SPAC listed under Borsa Istanbul (“**BIST**”) in Turkey. SPACs are very similar to venture capital structure and can be considered as a strong alternative for investors and shareholders in Turkey as well.

II. Characteristics of SPACs

Article 4/1(a) of the Appraisal Right Communiqué defines SPACs as well as the exemptions and limitations that will apply. In general, Article 4/1(a) describes SPACs as joint stock companies bearing the phrase “special-purpose acquisition company” in their title, incorporated for the purpose of publicly offering at least half of their shares which will represent the capital after going public and merging thereafter with a non-public company in which SPACs intend to invest, in line with a timing and investment strategy predetermined by the prospectus filed during initial public offering (“**Prospectus**”). In this respect, characteristics of SPACs inferred from Article 4/1(a) could be listed as follows:

- SPACs ultimate purpose is to merge with a non-public company (“**Target Company**”) after going public. To achieve this purpose, SPACs can determine potential Target Companies, negotiate with them, conduct legal, financial and tax due diligence and hire consultants for such purposes.¹
- SPACs can use up to ten percent of the proceeds from the public offering for their activities. It is important to note that the activities should be specified in SPACs’ articles of association and/or in the Prospectus.
- SPACs undertake, until the merger is completed, to utilize the proceeds of the initial public offering by investing in investment instruments such as deposits, government debt securities and similar instruments. Accordingly, SPACs are required to explain their cash management policies to the public with the Prospectus.

¹ Derin Altan & Nil Acar, Yeni Bir Alternatif Yatırım Aracı: Birleşme Amaçlı Ortaklıklar, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi vol.16, 1, 251-268 (2014)

- SPACs are required to return any remaining amount from the proceeds to the non-founding shareholders in the event the intended merger is not completed within the predetermined time period.
- SPAC shareholders might benefit from voluntary buy back provisions instead of appraisal rights.

As it can be ascertained from their characteristics, SPACs, when compared with other types of public companies, have many advantages. For example, unlike private equities, SPACs do not have to spend much time and effort to find financing since they can use the money collected through going public instead of searching for investors.² Additionally, from the perspective of the Target Company, SPACs offer a cheaper and simplified public offering process and allow the Target Company to become public (indirectly) even if it does not satisfy initial public offering criteria defined under relevant capital markets law regulations.³

In accordance with the principles above and the provisions contained in Turkish Commercial Code numbered 6102 (“TCC”), SPAC will be incorporated as non-public joint stock company. Subsequently, SPAC will offer its shares to the public as per CMB regulations. The regulations, for instance, require all of SPAC’s capital to be paid, SPAC to use authorized institutions when going public, amend its articles of association and obtain approval of CMB etc. Different from such rules, Article 4/1 (a) of the Appraisal Right Communiqué also requires SPAC to publicly offer at least half of its shares that will represent its capital after going public. When calculating such percentage, total capital of SPAC including the shares offered to the public will be taken into consideration.⁴

Lastly, SPACs will have to apply to BIST within two years after going public, provided that they do not merge with the Target Company or dissolve as a result of not merging within the intended time period. In order to get listed, SPACs will have to satisfy the conditions stated under Article 11 of the Quotation Regulation of BIST. According to Article 11, (i) market value of SPACs’ publicly offered shares must be minimum TRY 200 million and the ratio of its offered shares to paid-in or issued capital after public offering must be at least 50%, (ii) at least 80% of SPACs’ shares offered to public must have been sold to institutional investors, (iii) the ratio of total shares held by SPACs’ founders, board members and authorized managers to the capital of SPAC must be at least 10%; and (iv) SPACs’ founders, board members and authorized managers should undertake not to sell the shares they held before public offering inside or outside BIST from the date of public offering until the merger and for 12 (twelve) months following the merger. However, the new company will have to apply to BIST instead of SPAC and satisfy other conditions under the Quotation Regulation if the merger occurs within the two year period since SPAC will either dissolve or lose its status as a special acquisition company following the merger.⁵

² Nilsson, Gül Okutan, *Sermaye Piyasası Hukukunda Birleşme Amaçlı Ortaklık* 58 (1st ed. 2016)

³ Id. at 68

⁴ Id. at 75

⁵ Id. at 219

III. SPAC Mergers

Mergers of public companies are mainly regulated with the Communiqué on Mergers and Demergers (Communiqué No. II-23.2) published in the Official Gazette dated 28.12.2013 numbered 28865 (“**Merger Communiqué**”). Although there are several exemptions under CMB regulations, general rules of the Merger Communiqué are applicable to SPACs and the Target Company. As a result, both companies will take board of director and general assembly resolutions, apply to CMB, obtain opinion of expert institution, prepare merger agreement/report and make public announcement. In this context, exemptions granted to the SPACs with the CMB regulations could be briefly explained as follows:

- Restrictions regarding mergers that could result in change of control will not apply to SPACs. According to Article 12/4 and Article 12/5 of the Merger Communiqué, mergers where public company’s shareholders end up as minority shareholders are prohibited. However, SPACs will be able to merge with companies with greater net assets and end up being the minority since they fall into the exemption.⁶
- Pursuant to Article 4/1 (b) of the Merger Communiqué SPACs will acquire, within the scope of the price and other terms defined under the Prospectus, the shares of (i) the shareholders who voted against the merger in the general assembly meeting and (ii) the non-founding shareholders in case of dissolution of SPAC, instead of acquiring shares in line with appraisal right provisions.
- In the event where the SPAC is the acquirer and a change of control happens as a result of the merger, SPAC can be exempted from making tender offer to the shareholders who have voted against the merger as per Article 18/1 (d) of the Communiqué on Takeover Bids (Communiqué No. II-26.1), as long as SPAC buys such shares in accordance with the buy-back provisions. Unlike the other exemptions, an application has to be made to CMB in order to benefit from this exemption.
- Share sale restrictions will not apply to mergers where SPACs are a party. According to Article 6 and Article 7 of the Merger Communiqué, if the acquiring company’s shares were not traded in the exchange before the merger, such shares cannot be sold in the exchange in 6 the (six) month period after the date the acquiring company’s shares began to be traded in the exchange. As a result of the exemption, SPACs will be able to trade such shares in the exchange.

On the other hand, it is important to note that SPACs can only become the acquired company if the Target Company is a joint stock company since only shares of joint stock companies can be publicly traded in the capital markets.

Finally, SPACs will dissolve and enter into liquidation process in accordance with the TCC if they cannot find the Target Company or complete the merger transaction due to other reasons (e.g. shareholders reject the proposed company in the general assembly meeting) within the intended time

⁶ Id. at 190



period. In such case, SPACs will buy shares of the non-founding shareholders before liquidation process as per the voluntary buy back provisions.

IV. Conclusion

While the SPACs have been introduced to the Turkish legal system with the Appraisal Right Communiqué in 2013, it is still not a preferred option in Turkey, regardless of the easier merger structure and advantages provided by the CMB. However, with the rising trend of incorporating SPACs in other countries, it is likely that Turkish investors will be inclined to use SPACs as an investment tool in the future.

Article contact: Gönenç Gürkaynak, Esq.

Email: gonenc.gurkaynak@elig.com

(First published by Mondaq on October 15, 2019)