Legal 500's Focus On Türkiye : Corporate and M&A in Turkey

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1. DEVELOPMENT OF M&A TRENDS IN TECHNOLOGY COMPANIES IN RECENT YEARS IN TÜRKIYE

a) Overview:

Technology start-ups in Türkiye have been around since the 1980s with e-mail and internet provider companies. However, it took several decades for the market to develop to a point where it could attract global-scale investments. The startup ecosystem has played a critical role in driving technological innovation, and its fostering owes much to the combined efforts of both individuals and the public sector.

In the early 2000s, Technology Development Zones were introduced, providing incentives for research and development ("**R&D**") efforts and granting tax benefits. Technology Transfer Offices were also introduced during this period, which further facilitate the cooperation between the universities and businesses and commercialization of technologies. By 2010s, the startup ecosystem have started to mature with the introduction of acceleration programs, incubation centers, angel networks and venture capitals ("**VCs**"). From 2012 to date, angel investors have become accredited, local VCs are formed, equity-based crowdfunding has been introduced, along with other governmental grants and funds supporting the start-up ecosystem.

In the last quarter of 2022, the Republic of Türkiye Ministry of Industry and Technology announced the "Turcorn 100 Program". It aims to support start-ups and promote the international recognition of the Turkish technology ecosystem, with goals to increase the number of "Turcorns" (i.e. Turkish unicorns).

It cannot be disregarded that the Covid-19 pandemic has resulted in a new reality, and technology companies were able to address the current dynamics and help mitigate the negative effects of the pandemic on our lives. Businesses have adopted methods to facilitate remote work, while individuals have increasingly relied on online platforms to work, socialize and access health and educational services. Despite the economic slowdown caused by the pandemic in 2021, the e-commerce sector experienced a surge and accounted for almost one-third of the total deal volume while technology, internet and mobile services were reported to comprise 37% of the total deal numbers in Türkiye[1].

In 2022, the global M&A market has faced numerous significant challenges, including geopolitical tensions, supply chain disruptions, energy crises, economic instability, high inflation and employee salary problems. In parallel with the global trend, the activity in Turkish M&A transactions gradually slowed down each quarter throughout the year. Overall, large transactions in telecommunications, financial services and e-commerce sectors are reported to have represented the bulk of the deal volumes, while technology, internet, and mobile services accounted for approximately one-third of the deals[2].

Despite the challenges in the M&A market, the growth of technology and its influence on the market leads to a positive outlook for the future. The projections for 2023 seem hopeful that tech M&As will continue to play a significant role, with tech companies' assets benefiting from high demand from investors. Given that this trend seems to continue to drive the market, it is essential to evaluate tech M&A deals in such a way to understand the fundamental components of this field, as a good roadmap would be one of the most crucial items in a tech deal.

b) Increase in cross border M&As and "flip-ups"

The tech sector in Türkiye has recently been experiencing a rise in cross border M&As. This trend can be attributed to several factors, including the fact that Türkiye boasts a growing technology ecosystem with a thriving startup culture which has made it an appealing target for foreign investment; that Türkiye has a significant pool of skilled and talented tech professionals which has attracted foreign companies seeking to expand their operations in the tech sector; and that Türkiye's strategic location provides access to several regional markets, including Europe and the Middle East. In addition, the Turkish government has been implementing policies to support the growth of the tech sector, such as tax incentives to attract foreign investment, including tax breaks and investment subsidies.

In addition to incoming investments to Türkiye, there have also been a rise in the number of Turkish borne start-ups seeking options to relocate their holding entities to foreign countries, while keeping their operations in Türkiye, which is referred to as a "flip-up". While there are various reasons to realize a flip-up in practice, the main drive for companies originated in Türkiye appear to be securing their position in markets with growth potential like Europe or the United States and potentially improve operational processes. Another goal of the flip-ups is to attract foreign investment from international angel investors and VCs at later funding stages. It is not uncommon that US based investors prefer to invest through familiar mechanisms (such as through "SAFE" agreements), so that the local start-ups may explore a flip-to US to potentially benefit from similar investment options.

In particular, a flip-up is usually completed through a share-for-share exchange of Turkish company shares with the foreign company shares and the ultimate structure would depend on the laws of the company where company will be relocated to. That said, for each flip-up process, there are many points to be carefully considered, including:

- Decision on the legal structure of the new company and procedures to complete a flip-up;
- Making a precise target market planning and business plan;
- Deciding on intellectual property ("IP") related matters, which requires evaluation on where the IP of the company will be generated and owned;
- Deciding on hiring of employees for foreign entity and relocation of local employees;
- Ensuring compliance with relevant regulations, including a careful tax planning.

2. KEY CONSIDERATIONS IN TECH M&AS IN TÜRKIYE

Tech company M&A deals can be complex and involve a number of factors that are unique to the tech industry. Depending on the deal type agreed, following key considerations need to be taken into account while constructing and negotiating a tech company related M&A deal:

a) Determining the corporate structure:

One of the first items to be considered during an M&A deal would be to determine a transaction structure fit for the needs of the parties to the deal. The rules governing M&As in Türkiye differ depending on the deal structure, which are usually construed through an acquisition, merger, demerger or joint venture:

- Acquisitions can be realized through share transfers, capital increases, asset transfers or business transfers.
- Mergers are regulated under the Turkish Commercial Code No. 6102 ("TCC") in two types (Article 136 onwards, TCC): establishment of a new company after merger of two or more companies; or takeover of one or more companies by another company. It is also possible to split a business-line from one company and merge it with another company by undertaking a demerger (Article 134, TCC).
- Joint ventures (JV) occur through execution of a joint venture agreement, which may include contractual business operation principles, or include provisions requiring incorporation of a special purpose vehicle

company (SPV) to carry out business operations.

Another key point during this stage would be to review the regulatory framework of the target company to decide if any changes in the structure would be necessary prior to investment, as many corporate investors seek to invest into a joint stock company (JSC) rather than a limited liability company (LLC) in Türkiye, since JSCs have a more bureaucratic and organic corporate governance structure. Share transfers are also easier and eligible for capital gains exemptions under certain conditions, which overall makes JSCs more compatible with M&A structures.

It is imperative to establish and finalize the post-investment corporate structure, particularly for tech firms that secure funding from VCs and PE investors, who may have specific regulatory and corporate actions and compliance requirements. This is especially relevant when it is preferred to relocate the company headquarters by way of a flip up. An exhaustive evaluation at this stage can proactively address potential disputes between the company's founders and investors, which may stem from cultural and business style related disparities.

b) Handling cross border issues and tax planning:

Given the high frequency of cross-border transactions in the tech M&A sector, parties to such deals must carefully consider a range of critical factors. These include: (i) compliance with local legal and regulatory requirements applicable to both the acquirer and target; (ii) tax implications in both the acquiring and target countries; and (iii) cultural differences and country-specific matters, such as currency exchange rate risks, that may influence the deal structure.

This is especially true in cases where the target company will be relocated to another country or the acquisition will be completed through a special purpose vehicle (SPV) located in another country, where restructuring the target and implementing effective tax planning measures becomes essential. Parties must work closely with legal, tax, and financial advisers to evaluate the tax-related risks for all stakeholders, including the shareholders, acquirer, and target company.

c) Financing of the Deal:

Investors may choose to obtain loans from financial institutions to raise funds for an acquisition. In such case, the financer (usually a bank) may also attend the due diligence phase or ask the buyer for additional securities in exchange for the loan. As granting by a target company any advance, loan, or security to finance the acquisition of its own shares is prohibited (Article 380, TCC), the financial assistance restrictions of TCC which prevents leveraged buyouts should be considered while structuring financing of the transaction.

Another issue worth mentioning is whether cryptocurrency can be an alternative for financing tech M&A transactions. In theory, cryptocurrency could be used to pay for the acquisition of a target company, with the payment being made directly to the seller's digital wallet, which could potentially offer advantages over traditional payment methods. In Turkish legislation, there is not any specific regulation on cryptocurrency payments in M&As. By virtue of the principle of freedom of contract which governs the Turkish legal practice, cryptocurrency can be used to finance the transaction in question with the mutual agreement of the parties. However, as the legal and regulatory status of cryptocurrencies is still uncertain, which could present legal and compliance risks for parties involved in M&A deals, it is yet to evolve into a much used practice in Türkiye.

d) Merger Control:

Merger control rules in Türkiye are akin to the ones stipulated in the European Union under the Council Regulation No. 139/2004 and are regulated within the scope of the Law No. 4054 on the Protection of Competition (the "**Competition Law**") as well as the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board ("**Communiqué**").

According to Article 7 of the Competition Law and the Communiqué, merger and acquisition transactions resulting in permanent change in the control structure of the parties which exceed the turnover thresholds are required to be mandatorily notified before and approved by the Competition Board ("**Board**") in order for the transactions to become legally valid.

With the amendment of the Communiqué by the Communiqué Amending the Communiqué Concerning the Mergers and Acquisitions Requiring the Approval of the Competition Board (the "**Communiqué No. 2022/2**") published in the Official Gazette on 4 March 2022 and entered into force as of 4 May 2022, the definition of "technology undertakings" is introduced for the first time into the Turkish competition law.

As in other jurisdictions, with the increasing interest in digital platforms and technology related markets, the Board through this amendment has aimed to prevent "killer acquisitions" and catch transactions involving acquisition of start-up companies (as target companies) whose turnover figures do not exceed the applicable thresholds required for the target, leading the transaction being off the Competition Authority's radar and review. Indeed, pursuant to the amendment, undertakings operating in digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies are considered within the scope of "technology undertaking" definition and regardless of the turnover thresholds for the target set forth under the Communiqué, transactions concerning the acquisition of technology undertakings (as target companies) operating in Turkish geographical market or having R&D activities or providing services to users in Türkiye will be subject to the approval of the Board. It should be noted that the obligation to exceed the turnover thresholds provided under the Communiqué is solely removed for the target company qualifying as technology undertaking and the acquirer is still required to meet the turnover thresholds for the transaction to be notifiable under merger control rules in Türkiye.

e) Deciding on future of key employees and founders:

Status of Key Employees

Employees are usually a key aspect of the M&A deals for companies operating in technology sector, as the businesses typically relies on key persons and product development carried out by those persons. Accordingly, it becomes a key matter to review the current status of the target's employees, including matter as to their financial rights, future covenants, bonus structures, stock options, IP rights, as well as their non-compete and confidentiality obligations.

It is also important to evaluate whether the employment agreements executed mainly with the key employees of the target company contains a non-compete provision. Under Turkish law, the non-compete obligation of an employee is regulation under Turkish Code of Obligations No. 6098 ("**Law No. 6098**"). Since this non-compete clauses restrict employees' freedom of labor, there are some requirements for the validity of the non-compete clauses and accordingly, the non-compete obligation must not unreasonably endanger employee's financial future and have certain restrictions in terms of time and geographical scope.

Employee Stock Option Plans

Tech companies are keen to recruit highly skilled key employees who can add value to their organization, but building a strong workforce remains a significant challenge for them. In the early stages of a startup, revenue streams are typically low, and the salary expectations of talented employees are high. To address this issue, stock option plans have been widely implemented, particularly in the United States since the 1970s, to satisfy the financial concerns of employees by providing them with a share option in the company.

In Türkiye, there is currently no specific legislation regulating stock option plans, but the concept is applicable in the light of existing legal regulations in accordance with the Law No. 6098 and the TCC. Historically, stock options have not been widely adopted, as many companies are not publicly traded and the legislation does not clearly define the conditions for benefiting from stock option plans. As a result, Turkish tech companies faced additional challenges in attracting and retaining key employees, particularly those who may be seeking financial incentives in the form of stock options. However, in the recent practice, Turkish start-ups, especially ones operating in tech sector, have widely started to use stock option plans, due to many advantages of the concept.

With stock option plans, the employees who meet certain conditions specified in the share option agreement, they either become shareholders in the company or they receive some of the benefits of the share ownership. Thus, stock option plans serve to increase the employees' loyalty and their performance and enables them to align their own interests with the company's future gains. In the employers' perspective, stock options allow the companies to provide an upside to key employees during the early phases of their organization.

Typically, there are two types of stock option plans used in Turkish legal practice:

- Phantom stock options: The employee does not become a shareholder of the company but benefits from certain economical rights and benefits attached to the shares, generally known as "phantom stock option plans".
- Direct share options: The employee becomes a direct shareholder of the company by way of a share transfer and the shareholding is recorded to the cap table.

Since non-voting shares are not available in Turkish companies, phantom stock option plans are more commonly preferred by investors. It gives the freedom to companies to custom-design their plans based on their organizational and shareholder structure, capital, volume, and other factors. For the same reason, direct share options are usually accompanied with additional mechanisms such as share pledges or usufruct rights, to ensure that the stock option plans do not directly interfere with the governance of the company or exit opportunities. However, tax consequences of each option is a matter for consideration for each type options and it needs to be carefully evaluated on a case-by-case basis.

f) Key aspects for due diligence phase:

While each M&A process usually involves similar elements, tech M&As have many different dynamics from other M&As as well. The findings revealed during the due diligence phase are crucial to shape the negotiations related with the potential transaction, particularly the seller's representations and warranties. An appropriate due diligence process for a tech M&A bears considerable importance to determine the decision to invest into or take-over a technology company.

Below is a summary of key points to be considered during a tech M&A:

Corporate maintenance: The corporate structure refers to the way a company is organized and managed, including its shareholding structure, management hierarchy, and the way it conducts its business operations. It is essential to review the target company's corporate documents (such as power of attorneys, share certificates of the transferring shareholders, internal directive (if any)), branch offices' documents (if any), articles of incorporation, signature circulars, commercial registry records, company books, company website, shareholders' agreements, related party agreements and parent / subsidiary relationship in order to determine and evaluate its management, shareholding and business structures.

Key business agreements: During the due diligence process of tech M&As, evaluation of how the business operates to determine whether there are any key customers or persons to the business would be of great significance. Accordingly, the first stage of the due diligence usually requires a keen focus on understanding how the company operates.

The buyer typically reviews at the stage, target company's key agreements including (i) software license agreements including open-source licenses agreements, commercial licenses agreements and custom licenses agreements, (ii) technology agreements including technology transfer agreements, joint development agreements and technology licensing agreements, (iii) IP licensing agreements related to intellectual property, including patents, trademarks and copyrights, (iv) service level agreements executed with customers, suppliers and service providers, (v) data processing agreements and (vi) cloud services agreements executed with cloud service providers are some of the key business agreements that are specific to technology companies. In addition to these agreements, the material agreements and financial agreements that are not specific to technology companies are also evaluated to understand the target company's obligations, liabilities and potential risks.

Intellectual Property ("IP"): Another significant distinction between tech M&As and other M&A transactions is the status of the target company's IP rights. It is vital for the buyer to check whether the target company has the ownership of all the IP rights related with the company's ordinary course of business. In addition, the target company's employees may have an extensive know-how of the company in general. These factors undoubtedly affect the financial value of the target company.

If the target company is involved in products with are subject to IP rights, such as software, patented products, inventions etc. within the scope of its business, determining how the IP development process works and identity of the persons involved is one of the most crucial points of a due diligence process, to ensure whether the target company duly holds the rights to its products. Accordingly, a qualified due diligence within the scope of the IP and IT used by the target company, is required to (i) determine the main products of the company; (ii) identify those who create such main products (founders, employees registered in payroll, independent employees, key employees or the company); and (iii) determine who will be the owner of such products or the intellectual rights on such products as a result of the transaction during the due diligence phase.

Under Turkish copyright laws, upon the presumption of the Code on Intellectual and Artistic Works, the employer may enjoy economic rights arising from copyrighted works created by the employee within the scope of his/her duties, the employees would still hold the moral IP rights unless there is a written assignment to company. Also, as the pre-contractual arrangements before creation of an artistic work are considered only an undertaking to transfer, even where the employment agreements include that the IP rights fully belong to the target company, validity of the agreements signed before the creation of the work shall also be evaluated.

Thus, depending on who is involved in the IP development (i.e. founders, employees, third party freelancers etc.), it needs to be ensured that the IP rights over the products are duly held by the target company, by duly reviewing the existing contracts of the company, including any employment agreements and freelance agreements.

In addition, it should be identified whether the IP has been developed within the scope of projects that received grants or funding from third-party organizations, such as TÜB?TAK (the Scientific and Technological Research Council of Türkiye) or universities. This concern is particularly relevant for early-stage companies which may need to access such funds and resources. The conditions of such project agreements should be carefully reviewed to ensure there are no third-party claims or conditions that could affect the company's ownership of the IP rights.

Furthermore, if the company uses third parties' software or other licensed products while creating its own software and other services, it is essential to *(i)* examine whether the company has the right to use third parties software while creating its own software or other services; *(ii)* examine the license agreements executed by and between the company and third parties and the intellectual property rights granted within the scope of such license agreements, during the due diligence phase.

IT and Cybersecurity: In terms of tech M&A, the inventory list regarding the hardware and other IT related devices of the target company including but not limited to servers, licenses, computers, laptops, tablets, telephones, mobile-phones, terminals, storage, networking and other physical devices, infrastructure must be provided to the purchaser during the due diligence phase. It should be examined whether the target company has the necessary hardware and other IT related devices to run its business, and whether such hardware and IT related devices belong to the target company, as well as cyber security measures taken by the target company. Moreover, the certificates of the target company with regards to sustainability and information security in relation to its field of activity as well as their validity shall also be examined during the due diligence.

Since the significant cybersecurity incidents continue to increase day by day, cyber security is an important issue for the tech M&A in order to protect the target company's computers, mobile devices, servers, electronic systems, networks, software, data and know-how and etc. Cyber security risks can be a major threat to the business of the target company and thus, cyber security risks should be evaluated during the due diligence phase. Moreover, the sellers' representations and warranties regarding cyber security should be added to the definitive agreements in order for the buyer to be protected from such cyber security incidents following the completion of the transaction.

Data Privacy: It is becoming increasingly critical for technology companies to prioritize the protection of personal data as data privacy awareness grows and local authorities adopt regulations to address raising concerns. Personal data violations can lead to significant legal liability, as well as reputational damage.

In Türkiye, the Law on the Protection of Personal Data No. 6698 ("**Law No. 6698**"), supplemented by its secondary legislation including the decisions of the Personal Data Protection Board, is the main inclusive regulation on personal data.

Law No. 6698 sets out various obligations for the processing, transfer and protection of personal data, including privacy notices, registering with the Data Controllers' Registry Information System (VERBIS), obtaining explicit consent when required, and addressing data subject complaints.

Moreover, companies, especially those provide online services, should be aware that they may be subject to data privacy laws in other jurisdictions where they collect personal data.

Compliance with data privacy obligations is critical, as failure to comply can result in accumulation of unlawfully processed personal data and associated risks. In addition to classic protections included in the definitive agreements, it is important to have an action plan to integrate strong data privacy policies that are compatible with the business model for future growth and success of a technology company.

Licenses, Regulatory Compliance and Incentives: Technology companies may be subject to various licensing, registration or notification obligations depending on their scope of activity. It is important to take into account the applicable rules of each sector, particularly as technology investments may involve hybrid operations in regulated sectors. For instance, in case the target's operations involve payment and e-money services, e-commerce, online broadcasting or hosting services, specific regulatory requirements may be applicable.

Additionally, review of incentives applicable to the target would be another key review point. Incentives are usually granted based on specific conditions. Therefore, it is crucial to identify whether the M&A transaction would trigger any procedural requirements and whether the target company's intended post-investment structure is fit to meet the conditions of such incentives.

Incentives provided to technology companies in Türkiye are provided through various government programs and tax subsidies. Depending on the type of activity, these incentives may include:

- R&D Incentives: In Türkiye, there are supports covering a portion of the expenses for R&D activities. These supports mean that a portion of the investments is covered by the government.
- KOSGEB Supports: KOSGEB (Small and Medium Sized Businesses Support and Development Agency) helps the development of micro, small and medium-sized enterprises ("SMEs") which are classified regarding their number of employees, annual net sales income and annual financial balance sheet under the Regulation on the Definition, Qualifications and Classification of Small and Medium-Sized Enterprises. KOSGEB provides various supports to technology companies being SMEs including certain benefits for obtaining loans, grants, training and support programs related with business development, cooperation, R&D studies, and consulting services.
- Technopark Incentives: Technoparks located in various cities of Türkiye provide a special environment for technology companies to operate. Law on Technology Development Zones No. 4691 covers the principles related with the establishment, operations, management and supervision of technology development zones (i.e. Technoparks). Companies are allocated a workplace in Technoparks based on R&D or design projects.

Various incentives and exemptions are offered to companies operating in Technoparks, including tax reductions and exemptions related with income and corporate tax and VAT, rent support, infrastructure support.
- TÜB?TAK Supports: TÜB?TAK (the Scientific and Technologic Research Council of Türkiye) offers incentives, such as grants, funding programs and trainings to support R&D activities and commercialization of technologies.
- Investment Incentives: Technology companies may benefit from incentives which include tax reductions, customs duty exemption, land allocation, and priority in selecting the investment site. According to the Decision on State Aids in Investments, medium-high technology investments may receive additional support depending on the region they are located in.
- Industrial Zone Incentives: Various incentives are also provided to companies in industrial zones located in different regions of Türkiye. These incentives include investment discounts, tax reductions, tax exemptions related with VAT and custom duty, and allocation of investment location.

As technology companies are driven by innovation, their business models may not always fit traditional descriptions. As a result, it is important to carefully evaluate the business model and review applicable regulations to determine which licensing or registration obligations may apply. Given the dynamic nature of the technology industry, it is important to continuously monitor regulatory developments to remain compliant with the applicable regulations.

ESG: As a regulatory standpoint, environmental, social and governance ("**ESG**") considerations are an important part of the due diligence phase of the M&As. In Türkiye, ESG component is not always regarded as a main concern for tech M&As. This is because, as workplaces of technology companies do not usually involve production, such companies do not usually have environment related material obligations under the Turkish laws. However, ESG involves other aspects and compliance requirements as to various environmental, social and other governance matters, and an ESG related review becomes highly important during the due diligence phase. It should also not be disregarded that ESG policies, while not always legally required, ensures that companies are managed in a responsible and ethical manner. Companies that prioritize strong governance frameworks can better address the stakeholder's demands for accountability and transparency.

Some of the main ESG obligations for Turkish companies include the following, which may vary depending on the company's size, industry, and geographical location:

- Environmental compliance obligations, especially if the company has production lines or a polluting activity.
- Companies are required to comply with labor laws and regulations, including providing safe and healthy working conditions, and protecting employees' rights. Workplace safety under the Occupational Health and Safety Law numbered 6331 and the relevant legislation must be reviewed, as there are certain obligations that companies must fulfill according to their hazard class (less dangerous, dangerous, very dangerous) and their number of employees, such as appointment of qualified individuals in occupational health and safety field and employment of a workplace doctor.
- Governance related review is also of significance, ensuring that the company's leadership and decision-making processes are transparent and accountable, and that the company is compliant with relevant regulations and laws. If the target is a publicly held entity, the Corporate Governance Principles published by the Capital Markets Board govern these obligations.

g) Representations and Warranties ("R&Ws") and Indemnities:

Based on the findings at the due diligence stage, various R&Ws and indemnity provisions are generally included in the share purchase agreements under Turkish Law, designed to allocate the risk associated with the transaction between the parties involved, and to provide the acquiring party with protection in the event of any future liabilities arising from the transaction.

The specific terms of each indemnity, such as the amount of compensation, the duration of the indemnity and the conditions for triggering the indemnity, will vary depending on the specifics of the transaction agreement.

One of the most significant R&Ws in the context of tech M&As are those related with IP and IT issues, as the buyer would seek to be assured by the seller that the target company is the sole and exclusive owner of the IP. During due diligence examination, it may not always be possible to examine every detail and the exact status of IP and IT infrastructure of the target company, and many times, the target is not fully compliant with the legal obligations. Thus, within the scope of tech M&As, the purchasers are likely to request seller's warranties for a certain period to mitigate such risks.

Tax related R&W and indemnities are also a key issue for M&A deals in Türkiye, considering a through due diligence is not carried out for each project.

h) Deciding on dispute resolution method:

Within the scope of the disputes arising from tech M&As, it is observed in practice that arbitration is predominantly preferred as is the case with other M&A transactions due to its speed, cost efficiency, and ability to utilize professionals among other factors. Although it is rare in practice, state courts can also be preferred by the parties in resolving disputes.

The method or methods to resolve disputes arising from M&A agreements should be specifically included in the agreements. If the disputes arising from the M&A agreements are resolved by the state courts, it is necessary to specify which state court has the exclusive jurisdiction to resolve the dispute in the M&A agreements. If the disputes arising from the M&A agreements are to be resolved through arbitration, it is necessary to specify *(i)* which rules will be applied in the arbitration procedure; *(ii)* the number of arbitrators to be appointed by the parties in the settlement of the dispute; *(iii)* the seat of arbitration; and *(iv)* the language in which the arbitration proceedings will be conducted in the M&A agreements.

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