M&A PLAYBOOK

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DEAL MECHANICS

Practical Insights for Corporate Transactions

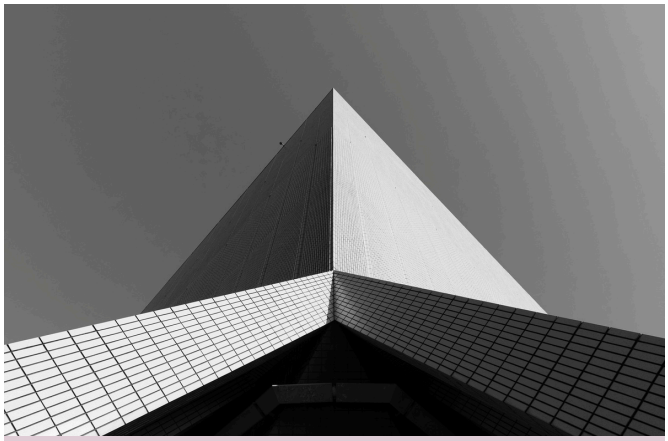
MATERIAL ADVERSE CHANGE

In mergers and acquisitions transactions, the period between the signing of the share purchase agreement and completion of the transaction entails various legal and commercial risks for the parties. In particular, material changes may occur in the target company's financial condition, operations, or business prospects while regulatory approvals are being obtained, financing conditions are being satisfied, or other closing conditions are being fulfilled.

In this context, provisions commonly referred to in practice as Material Adverse Change (the "**MAC**") clauses constitute important contractual mechanisms governing the allocation of risks between the parties arising from adverse developments that may occur between signing and closing.

These provisions may, under certain circumstances, entitle the buyer to decline to complete the transaction or terminate the agreement.

However, not every adverse economic development or decline in the target company's performance constitutes a MAC. In this regard, the nature of the change, the severity and duration of its impact on the target company, and the allocation of risks under the agreement are key considerations.



The MAC provisions generally define events or circumstances that have, or would reasonably be expected to have, a material adverse effect on the target company's business, assets, financial condition, or results of operations.

These provisions may serve different purposes in share purchase agreements. In particular, the absence of a MAC may be stipulated as a condition precedent to the buyer's obligation to complete the transaction. The MAC provisions may also serve as a standard for assessing the accuracy of the seller's representations and warranties.

The scope of the MAC provisions is determined by the nature of the transaction, the target company's business, and the allocation of risks agreed upon by the parties. In this context, while the buyer generally seeks to include events or circumstances that may materially adversely affect the target company's financial condition, operations, or future performance within the MAC definition, the seller aims to limit the scope of such definition and minimize uncertainty regarding completion of the transaction.

Accordingly, risks that are not specific to the target company, such as changes in general economic conditions, fluctuations in financial markets, changes in legislation, and industry developments, may be excluded from the MAC definition. However, the parties may agree that such exclusions will not apply to the extent that these developments disproportionately affect the target company compared to other businesses operating in similar circumstances. Furthermore, financial indicators, operating results, or specific business developments may be established as objective criteria under the agreement to determine when an adverse change is considered material.

Under Turkish law, although there is no specific statutory provision governing MAC clauses, the parties may contractually define the scope of material adverse changes and their legal consequences pursuant to the principle of freedom of contract set forth in Article 26 of the Turkish Code of Obligations (Law No. 6098) (the "**TCO**"). Accordingly, the MAC provisions may be structured as a condition precedent to closing, a contractual termination right, or a materiality standard for assessing representations and warranties.

Although the MAC provisions may serve a purpose similar to the doctrine of hardship under Article 138 of the TCO, they differ in their legal nature and conditions of application. While hardship allows for the adaptation of a contract to changed circumstances or, in certain cases, its termination where the statutory requirements are met, the MAC provisions enable the parties to contractually allocate transaction-related risks in advance and determine the consequences of their occurrence.

In this context, particularly in M&A transactions in Türkiye, it is important to expressly address how exchange rate fluctuations, inflation, changes in financing conditions, and regulatory developments will be treated under the MAC provisions. This allows the parties to reduce uncertainties arising between signing and closing and enhance legal certainty regarding completion of the transaction.

In conclusion, the MAC provisions constitute an important contractual mechanism for allocating risks associated with material adverse developments that may arise between signing and closing in M&A transactions. Clearly defining the scope and conditions of application of these provisions is essential to ensuring predictability as to the circumstances under which the buyer may decline to complete the transaction and preventing potential disputes between the parties.

The MAC definition, contractual exclusions, and closing conditions should be tailored to the nature of the transaction and the parties' commercial expectations. Particularly in light of the impact of economic uncertainties and changing market conditions on M&A transactions, structuring MAC provisions to address transaction-specific risks contributes to balancing the parties' interests and enhancing transaction certainty.

