



Turkish Rules on Mandatory Tender Offer Have Been Amended Substantially

The new Communiqué amending the Capital Market Board's ["CMB"] Communiqué on Tender Offers No. II-26.1 ["**Amendment Communiqué**"] entered into force upon its publication in the Official Gazette dated October 16, 2021.

In this respect, within the framework of secondary regulation preparations and considering the recent amendments made to the Capital Market Law No. 6362, the CMB had previously submitted a draft version of the Communiqué Amending the Communiqué on Tender Offers No. II-26.1 ["**Draft Communiqué**"] to public opinion on February 1, 2021 by releasing a public press in its official website. [You can reach here our alert on the amendments introduced in the Draft Communiqué]. Now, with the Amendment Communiqué, new rules proposed in the Draft Communiqué entered into force as of October 16, 2021. These new rules can be summarized as follows:

1: Amendment Communiqué Defines Those Who Fall within the Ambit of Mandatory Tender Offer ["MTO"] and the Methods for Calculating the Number of Shares.

As per the Amendment Communiqué, only those who are shareholders as of the date on which the acquisition of the management control is disclosed to public will participate in the MTO. Moreover, the list to be provided by the Central Securities Depository ["CSD"] will be taken into account in the determination of the shareholders who can benefit from the MTO and their shares subject to the offer. Such list will be shared with the brokerage firm by the CSD on the business day preceding the launch of Court's Assessment

2: The Principles regarding the Calculation of MTO Price Are Clarified, and the CMB will have great discretion to cease the tender offer or recalculate the price.

While the tender offer price remains unchanged for the shares of the companies listed on stock exchange, the Amendment Communiqué clarifies calculation of the tender offer price for the shares or share classes of the companies that are not listed on stock exchange. As such, the tender offer price for such shares and share classes shall not be lower than:

- (i) the price determined in the valuation report prepared by the CMB by taking into account the privileges attached to the share classes if any, and

- (ii) the highest price paid for the same share classes of the target within the 6 [six] months' period before the date on which the tender offer obligation arises.

Moreover, the CMB will be entitled to cease the tender offer or recalculate the tender offer price if it decides on existence of developments affecting the economy or the relevant industry.

3: Interest Rate-Related Principles to be applicable for Turkish Lira are Updated.

According to the Amendment Communiqué, if the offeror has no fault due to the delay in launching the tender offer, no interest will accrue on the tender offer price. Furthermore, the CMB replaced TRLIBOR, the reference rate applicable to Turkish Lira, with TLREF.

4: Scope of Circumstances which would not Give Rise to the MTO are Expanded.

The Amendment Communiqué envisages new exceptions to the obligation to launch a tender offer. In this regard, the obligation to launch a tender offer will not arise in the following cases:

- (i) A shareholder who participated in the capital increase and acquired %50 or less of the voting rights of the public company sharing the public company's control with the existing controlling shareholders, equally or to a lesser extent, and for the first time through a written agreement;
- (ii) Squeeze-out and sell-out rights arising as a result of obtaining the management control;
- (iii) As regards public companies listed on stock exchange, changes in management control as a result of new share acquisitions by existing shareholders through participating in share capital increases in which their pre-emptive rights have not been restricted;
- (iv) Unintended changes to management control as a result of events such as the suspension of voting rights of certain shareholders, capital decrease through share redemptions, amendments to the privileges attached to the shares, or share buy-backs by the company.

Also, in case of occurrence of any of the foregoing events, those who acquired management control of the company will be required to make a public disclosure within 2 [two] business days.

5: Scope of Exemptions are also Broaden.

According to the Amendment Communiqué, the CMB will be entitled to grant exemption to the acquirer from the MTO obligation, if the acquisition of shares triggering change in management control results from [i.] inheritance, [ii.] partition of the inheritance or [iii.] the legal matrimonial property between spouses.

6: Content of the Brokerage Agreement are Regulated.

Pursuant to the Amendment Communiqué, it is possible not to exclude shares banned from transactions, subject to legal disputes or other third-party claims from the mandatory offer, by way of incorporating a clause into the brokerage agreement. If there are such shares within the offer, their purchase price will need to be reserved under a separate and interest-bearing account, until the ban is lifted, or legal claims are solved.

7: Brokerage Firms can be Held Liable for the Information Form.

The Amendment Communiqué states that the brokerage firms who sign the information form are among those who are liable for the information provided therein. Accordingly, in addition to the offerors, brokerage firms and the authorized signatories

of these firms can be held liable for the MTO information form, should the information on the form appear to be incorrect, misleading or incomplete.

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