



TOWARDS THE NEW RULES ON MANDATORY TENDER OFFERS

Capital Markets Board of Turkey [the "Board"] released a public press on February 1, 2021 regarding the issuance of the Draft Communiqué Amending the Communiqué on Tender Offers No. II-26.1 [the "Draft Amendment"] which envisages to make certain amendments to the Communiqué on Tender Offer No. II-26.1 [the "Communiqué"]. In this respect, while some existing provisions will be clarified with the Draft Amendment, the scope of the circumstances which do not trigger the tender offer obligation and the exceptions to mandatory offers will be expanded.

• 1: The Draft Amendment Defines Who Falls within the Ambit of Mandatory Tender Offer and the Methods for Calculating the Number of Shares.

Article 11 titled "Mandatory Tender Offer" of the Draft Amendment clarifies that 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 mandatory tender offer. The Draft Amendment further provides the date to be taken into account in determining the amount of shares subject to the mandatory tender offer. Accordingly:

- (i) If management control [whether directly or indirectly] is acquired voluntarily or through one of the other methods, the date of the acquisition of the shares or voting rights entitling to management control is disclosed to public;
- (ii) If management control is acquired through a specific written agreement concluded by and among the shareholders, the date on which this specific written agreement is disclosed to public

will be taken into account in determining the amount of shares subject to the mandatory tender offer.

• 2: The Principles regarding the Calculation of Mandatory Tender Offer Price Are Clarified, and the Board will have great discretion to cease the tender offer or recalculate the price.

Although the Draft Amendment does not amend the parameters for the determination of tender offer price, it removes the ambiguity as to the applicable mechanism under different scenarios, namely (i) acquiring the management control of the target company directly or indirectly, or (ii) whether the target company is listed on stock exchange or not. Hence, while the tender offer price remains unchanged for the shares of the companies listed on stock exchange, the Draft Amendment provides calculation mechanisms in determining the tender offer price for the shares or share classes of the companies that are not listed on stock exchange.

In case of a direct or indirect change in the management control of the target shares of which are not listed, the tender offer price shall not be lower than:

- (i) the price determined in the valuation report prepared by the Board 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 before the date on which the tender offer obligation arises.

Moreover, the Board 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: Scope of Circumstances which would not Give Rise the Mandatory Tender Offer and Exceptions to the Obligation to Launch a Tender Offer Are Expanded.

The Draft Amendment clarifies the circumstances which would not give rise the mandatory tender offer and introduces new exceptions to the obligation to launch a tender offer.

First, it is stated that the obligation to launch a tender offer will not arise in case of an acquisition of voting rights entitling management control as a result of the transaction concluded (i) by and among the legal entities being controlled by the same individual or legal entity or (ii) by and among those individuals or entities who possess management control and therefore, the statement of “*transactions concluded among the group which has management control*” will be removed from the text of article in order to prevent the uncertainty in practice.

Furthermore, the scope of circumstances which would not trigger the mandatory tender offer obligation is expanded. In this regard, the obligation to launch a tender offer will not arise in the following cases:

- (i) Squeeze-out and sell-out rights arising as a result of obtaining the management control;
- (ii) As regards public companies listed on stock exchange, changes to 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;
- (iii) 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 obtained management control of the company will be required to make a public disclosure within 2 [two] business days.

Furthermore, in addition to the existing cases, the Board will be entitled to grant exemption to the acquirer from the mandatory tender offer obligation, if the acquisition of shares triggering the change of management control results from (i) inheritance, (ii) partition of the inheritance or (iii) the legal matrimonial property between spouses.

• 4: Principles to be Specified in the Brokerage Agreement Are Regulated.

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

• 5: Brokerage Firm will be Liable for the Information stated on the Information Form.

The Draft Amendment also adds the brokerage firm on whose behalf the information form was signed to the list of persons liable for the mandatory tender offer information form if the information on the form appears to be incorrect, misleading or incomplete.

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