

# Material transactions and exit rights in Turkey

The Capital Markets Board ("**CMB**") issued Communiqué on Common Principles Regarding Material Transactions and Put Option (the "**Communiqué**") on 24 December 2013.

## General changes

The Communiqué clarifies concepts and practices previously regulated under the Turkish Capital Markets Law including material transactions, materiality criteria, delisting and exercise of exit rights. The Communiqué also introduces the concept of "Corporation for Merger Purposes" which is being practiced in the form of SPACs (Special Purpose Acquisition Companies) in foreign markets.

### Material transactions, materiality criteria

Material transactions are listed in Article 5 of the Communiqué whereas "Materiality Criteria" for some of these transactions are defined under Article 6. For instance, "acquiring or leasing a significant amount of property from related parties" is defined as a Material Transaction under Article 5 and under Article 6, the Materiality Criteria for such transaction is defined as "*a condition where the ratio of the transaction cost to the sum of the (active) assets as per the latest financial statements disclosed to the public or the value of the company to be calculated on the basis of the average of the weighted average daily prices for six months*

*prior to the board of directors meeting is more than 50%."*

The Communiqué lists material transactions as (i) merger, demerger, change in corporate status or dissolution; (ii) disposal or lease of, or the creation of a right *in rem* on, all or a material part of a public company's assets; (iii) material change in a public company's scope of activity; (iv) creation of new privileges or a change in the scope of existing privileges; (v) delisting; (vi) acquiring or leasing material assets from a related party; (vii) covering cash capital commitments arising from the right issue with set-off of debts arising from non-cash assets transfer; and (viii) if funds to be derived from right issue exceeds current capital of the company and be used to cover wholly or in part debts of a related party arising from non-cash asset transfer.

### General assembly

Material transactions can only be adopted through a general assembly decision and attendance of at least 50% of the shareholders to such general assembly meeting is required in order to be able to adopt resolutions with the majority of the attendants. Otherwise, affirmative votes of two-thirds of the attendants are needed in order to pass the resolutions. Shareholders may not vote in the General Assembly

meetings regarding the approval of material transactions which may have direct personal consequences on them.

### Delisting

- "*Holding directly or indirectly 95% or more voting rights of the company solely or together with persons acting in concert*" is stipulated as a prerequisite to apply to ISE for delisting the shares of a company.
- It is required to apply to the ISE for delisting and to the CMB to fulfil the mandatory tender offer obligation regulated in the Communiqué, within five days upon the adoption of the resolution by the general assembly.
- The Communiqué also regulates the timing and the contents of the material event disclosures to be made in relation to delisting.

### Exit rights

- Exit rights, previously regulated under the Law, are now governed in detail under the Communiqué.
- Shareholders who attend general assembly meetings and who vote against material transactions and record a statement of dissent in the meeting minutes are entitled to sell their shares and exit the company. Shareholders who are

willing to exercise their exit rights are required to exercise such right for all of their shares regardless of share groups.

- Companies are required to begin the procedure for exit rights within six business days from the general assembly meeting date. The period to exercise the exit right cannot be less than ten business days and more than 20 business days.
- The price for exercising the exit right for the shares of publicly traded companies is equal to “*the average of the weighted average prices formed in the stock exchange within 30 days prior to the date when the related material transaction has been*

*disclosed to the public (excluding the public disclosure date)”. The exit right price shall be paid in full and in cash.*

### Mandatory tender offer requirement

The Communiqué provides that actual or legal persons benefiting from the following material transactions are subject to mandatory tender offer requirement:

- (i) creation of new privileges or a change in the scope of existing privileges; (ii) delisting; (iii) covering cash capital commitments arising from the right issue with set-off of debts arising from non-cash assets transfer.

The specifics of the mandatory tender offer shall be included in the agenda for the general assembly meeting where the material transaction will be voted.

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