

Secondary legislation revisited – Shareholder squeeze-out and sell-out rules

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The various provisions of Capital Markets Law numbered 6362 (the “**CML**”) were amended in February 2020 and some of the secondary legislation has been revisited by the Capital Markets Board of Turkey (the “**CMB**”) in order to make parallel changes with the CML under the secondary legislation and also to meet the needs of market participants. In line with this approach, Communiqué on Squeeze-Out and Sell-Out Rights numbered II-27.3 (the “**Communiqué**”) was published in the Official Gazette numbered 31351 and dated 31 December 2020 and came into effect upon its publication. With the Communiqué, the CMB retains some of the provisions that were already established with the previous legislation (i.e., the Communiqué on Squeeze-Out and Sell-Out Rights numbered II-27.2), introduces new procedures and principles regarding squeeze-out and sell-out processes/exercise price, and provides certain exceptions to the main rule of squeeze-out and sell-out threshold, which is retained as 98%.

The Squeeze-Out and Sell-Out Threshold

The threshold that may trigger the squeeze-out and sell-out rights is retained as 98% in parallel with the previous legislation. In other words, once a shareholder or shareholders acting in concert reaches 98% of the voting rights of a public company, such shareholder becomes the controlling shareholder and is entitled to squeeze-out the minority shareholders while the sell-out rights of the minority shareholders are also triggered. In contrast to the sequence in the name of the Communiqué, sell-out right is required to be exercised before the squeeze-out right. In other words, the squeeze-out kicks in afterwards to be exercised by the controlling shareholder against the minority shareholders.

Within the context of determining squeeze-out and sell-out rights, the definition of shareholders acting in concert is explicitly determined under the Communiqué and the persons deemed to be acting in concert are listed in line with the tender offer legislation. In this respect, the persons deemed to be acting in concert are as follows:

- The companies whose management control belongs to the same shareholders (either real person or legal entity) of a public company.

- The persons (either real person or legal entity) holding the management control of a legal entity shareholder of a public company and the companies whose management control belongs to such persons.

Exceptions

The exercise of squeeze-out and sell-out rights arising from capital increase was subject to certain exceptions as introduced through CMB's board decision in July 2020. Such exceptions are now recognised and adopted under the Communiqué by stating that the squeeze-out and sell-out rights are not triggered in cases of acquiring new shares by the existing shareholders via capital increase through bonus issue and/or rights issue. In addition, the squeeze-out and sell-out rights are not exercised in case the existing shareholder acquires shares through other ways such as inheritance, buy-back shares and freeze of voting rights.

Even though it is not determined as an exception to the squeeze-out and sell-out rights under the Communiqué, the Communiqué states that in the event that the shareholder acquires the management control of a public company simultaneously with the emergence of squeeze-out and sell-out rights, then the requirement on tender offer is not applicable. Whereas, in order for shareholders not to be effected negatively in such a scenario, the price that should be calculated based on tender offer legislation is included as a parameter in the principles for exercise price of the squeeze-out and sell-out rights.

Changes in the Sell-Out and Squeeze-Out Processes

- *Changes in the sell-out process:* In the exercise of the sell-out right, the period stipulated for the preparation of the valuation report to determine the share value of a public company shall be at least one month as of the date of the public disclosure to be made by the controlling shareholder and the period set forth for the exercise of the sell-out right is determined as two months as of the date of the public disclosure of the summary of the valuation report. In addition, the process regarding the payment to shareholders exercising their sell-out rights are shortened by stating that the payment is made on the following business day of the day the controlling shareholder pays the share value amounts to the account of the company. In order to facilitate the process, Central Registry Agency (i.e., MKK) is being made responsible to confirm the shareholder information for the dematerialized shares.
- *Changes in the squeeze-out process:* The board of directors shall decide on the cancellation of the shares of minority shareholders and issuance of new shares to be given to the controlling shareholder upon the cancellation of the existing shares of minority shareholders within five business days starting from the receipt of controlling shareholder's squeeze-out application and the application to the CMB for approval of the issuance certificate shall be made within 10 business days following the board of directors' decision. In addition, for companies whose shares are not listed on the stock exchange, the certificate for delivery of the share certificates is governed under the Communiqué and such certificates shall be destructed at least twice a year. On the other hand, the practice on blocking the squeeze-out amount under İstanbul Takas ve Saklama Bankası A.Ş. for a period of three years by way of letter of guarantee in lieu of cash has been abolished.

Exercise Price

The Communiqué introduces that the exercise price applicable for both the squeeze-out and sell-out rights is calculated based on the same formula, unlike the previous legislation.

For companies whose shares are traded on the stock exchange, the exercise price will be determined based on the highest of the following:

- In case the shares of the company are traded on Borsa İstanbul A.Ş.'s (the "BIST") Star Market, the arithmetic average of the daily corrected average price on the stock exchange for the last one month prior to the date of the public disclosure regarding the emergence of squeeze-out and sell-out rights,

and the average value determined in the valuation report prepared to determine the price for each share group.

- In case the shares of the company are traded on the market and platforms other than BIST Star Market, the arithmetic average of the daily corrected average prices on the stock exchange for the last six months prior to the date of the public disclosure on the trigger of squeeze-out and sell-out rights, and the average value determined in the valuation report prepared to determine the price for each share group.
- Mandatory tender offer price shall be calculated within the framework of tender offer legislation in case the acquisition of the controlling shareholder status leads to a change in management control of a public company simultaneously.

For companies whose shares are not traded on the stock exchange, the exercise price will be determined based on the highest of the following:

- The value determined in the valuation report prepared to determine the price for each share group.
- Mandatory tender offer price shall be calculated within the framework of tender offer legislation in case the acquisition of the controlling shareholder status leads to a change in management control of a public company simultaneously.

Transition Period

The Communiqué provides a transition period by stating that if it has been disclosed to the public that the controlling shareholder status has been acquired or additional shares have been acquired while having the controlling shareholder status prior to the effective date of the Communiqué, the exercise price for squeeze-out and sell-out rights shall be determined based on the principles of the abolished Communiqué on Squeeze-Out and Sell-Out Rights numbered II-27.2.



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