



Turkey: Significant Amendments and Novelties to Turkish Capital Markets Legislation during the First Half of 2018

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I. Introduction

This article will address significant amendments and novelties introduced for Turkish capital markets legislation during the first half of 2018 as in line with specific needs and interests of public and private institutions, companies, shareholders and/or investors being subject to such legislation. In this respect, the following legislation will be examined in this article toward the past:

- Communiqué on Takeover Bids (Communiqué No. II-26.1)
- Communiqué on Real Estate Investment Trusts (Communiqué No. III-48.1)
- Istanbul Settlement and Custody Bank (Takasbank) - Central Clearing And Settlement Regulation
- Communiqué on Common Principles Regarding Significant Transactions and Appraisal Right (Communiqué No. II-23.1)
- Communiqué on Material Events Disclosure (Communiqué No. III-15.1)

II. Amendments and Novelties

1. Communiqué on Takeover Bids (Communiqué No. II-26.1)

The Communiqué No. II-26.1 mainly focuses on share takeover bids in companies. Within this scope, the communiqué stipulates that in case any person or persons acting in concert acquire(s) management control of a company through share transfer(s) partially or wholly, then such person(s) shall be liable to make a takeover bid to other shareholders of the target company by protecting their rights.

Article 18 of the Communiqué No. II-26.1 stipulates certain circumstances that the Capital Markets Board (“CMB”) may grant exemption for the foregoing takeover bid requirement, upon application of the relevant parties and as the case may be.

In accordance with the recent amendments published on the Official Gazette on June 5, 2018 which was entered into force on the same date, two new circumstances have been inserted to Article 18 of the Communiqué No. II-26.1. As per these changes, the CMB may grant exemption for the takeover bid requirement in case of the following circumstances as well:

- As a result of a default of repayment a loan which has been secured by the shares granted to the bank, transfer of those shares to a special purpose vehicles (SPV) incorporated by the bank; acquisition of those shares by third parties from the bank or SPV;
- Transfer of shares to fulfil a regulatory requirement which determines shareholding qualification.

2. Communiqué on Real Estate Investment Trusts (Communiqué No. III-48.1)

According to Article 45/2 of the Communiqué No. III-48.1, real estate investment companies are not allowed to distribute cash dividend before public offering or sale of the shares to qualified investors. However, in accordance with the recent amendment published on the Official Gazette on May 10, 2018 and which was entered into force on the same date, the foregoing limitation will not be applied for the real estate investment companies which operate a portfolio consisting of exclusively infrastructure investments and services until December 31, 2019. Before this amendment, the foregoing date was stipulating in the Communiqué No. III-48.1 for such real estate investment companies as December 31, 2017. The amendment has extended that term for 2 (two) years more.

3. Istanbul Settlement and Custody Bank (Takasbank) Central Clearing and Settlement Regulation (Central Clearing and Settlement Regulation)

As per the amendments published on the Official Gazette on May 8, 2018 which was entered into force on the same date, Central Bank of the Republic of Turkey (“Turkish Central Bank”) has been introduced as de facto member of central clearing and settlement institution and it has been ruled that the Turkish Central Bank is not subject to provisions of the Central Clearing and Settlement Regulation and relevant market directives and procedures.

Furthermore, two new transaction collateral types have been defined in Article 38 of the Central Clearing and Settlement Regulation. Within this scope, (i) publicly traded precious metals and (ii) electronic product securities are accepted as new types of transaction collaterals.

4. Communiqué on Common Principles regarding Significant Transactions and the Appraisal Right (Communiqué No. II-23.1)

In general, provisions of the Communiqué No. II-23.1 are related to types of significant transactions, obligatory procedures of those, concept of appraisal rights granted to the shareholders and mandatory takeover bids in companies.

This being the case, Article 12 of the Communiqué No. II-23.1 defines certain significant transactions which do not grant appraisal right to shareholders. In accordance with the amendments published on the Official Gazette on April 18, 2018 and which was entered into



force on the same date, a new significant transaction - which does not grant appraisal right to shareholders - has been inserted to Article 12 as follows:

- Asset transfers to third parties (other than related parties), on the condition that at least 90% of the funds arising from the asset transfer will be used for payment of the cash loans and/or other debts arising from the issued debt instruments within 1 (one) month, for the purpose of strengthening financial position of the company. However, if entire of funds will be used for payment of the cash loans and/or other debts arising from the issued debt instruments, the foregoing ratio (i.e. 90%) is not taken into consideration.

In parallel of said amendment, Article 12/3 of the Communiqué No. II-23.1 has been revised as stipulating that the board of directors of a company engaging a significant transaction as explained above shall adopt a board resolution and disclose that resolution together with details of payment(s) (i.e. payment amounts, realization of payments etc.) to the public.

5. Communiqué on Material Events Disclosure (Communiqué No. III-15.1)

According to the amendment published on the Official Gazette on February 13, 2018 and which was entered into force on the same date, it has been stipulated in Article 12/4 of the Communiqué No. III-15.1 that in case a real person or legal entity directly reaches or falls below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95% of shares representing share capital of a publicly traded company, the relevant disclosure liability is performed by the Central Registry Agency (MKK) without prejudice to other disclosure requirements of said real person or legal entity arising from other paragraphs of Article 12.

III. Conclusion

Capital markets have sensitivities and may rapidly be affected by economic circumstances. Therefore, as a consequence of global and/or domestic economic developments (i.e. economic turmoil, cash deficiency etc.), Turkey frequently amends and updates its capital markets legislation. While some of those amendments are related to internal functioning of capital markets institutions, many of them are related to direct interests and rights of the companies, shareholders and/or investors.

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