

REGULATORY UPDATES IN TURKISH CAPITAL MARKETS

This Legal Alert seeks to provide information regarding the recent amendments to the “Communiqué on Takeover Bids numbered II-26.1”.

Communiqué regarding the Amendment of the Communiqué on Takeover Bids numbered II-26.1.b. (“**Amendment Communiqué**”) which amends the Communiqué on Takeover Bids numbered II-26.1 (“**Communiqué**”) has been published in the Official Gazette on June 5, 2018. The Communiqué regulates the procedures and principles relating to voluntary and mandatory takeover bids in publicly held joint stock companies.

As per Article 5 of the Communiqué, in case the Management Control of a publicly held joint stock company (“**Corporation**”) gets acquired by way of its shares being fully or partially acquired, the acquiring shareholder shall make a takeover bid to the remaining shareholders.

In the Communiqué, “*Management Control*” is defined as hereinbelow;

Directly or indirectly, individually or jointly owning:

- a) more than 50% of voting rights of the Corporation,
- b) privileged shares that would enable election of simple majority of the Corporation’s Board of Directors members;

c) privileged shares that would enable nomination for the simple majority of the Corporation's Board of Directors members in general assembly meetings.

Besides, Article 18 of the Communiqué presents the circumstances which may be granted as exemptions from this requirement by the Capital Markets Board upon request. With the entry into force of the Amendment Communiqué, the following exceptions have been added. In this respect; if a shareholder gains the Management Control as a result of the following cases, such shareholder will not be obliged to make a mandatory takeover bid to the remaining shareholders.

1. Transfer of the title of the shares to the Bank¹, in case of default in loan repayment, which were given as collateral of loans utilized from the Bank in accordance with Article 47², paragraph 4 of the Capital Markets Law No. 6362 ("CML"),
2. Transfer of the above-mentioned shares to a Special Purpose Vehicle³ where a Bank is also a founder,

¹ **Bank:** For determining the scope of the banks that will be included herein, it is referred to the definition under Banking Law numbered 5411.

² **Article 47 of the CML** regulates Collateral Agreements that include capital market instruments that are dematerialized under Central Registry Agency. As per this article, the ownership of the capital market instruments subject to Collateral Agreements may be transferred to the Beneficiary or be retained by the Guarantor, a matter to be determined under Collateral Agreements. In case of default or due to other reasons stated under the law or other articles of the Collateral Agreement and the receivables of the Warrantee are to be sustained from the collateralized capital markets instruments and where the ownership is retained by the Guarantor, the Beneficiary would be allowed to transfer the collateralized capital markets instruments to its ownership and to set off the instruments' value from its receivables.

³ **Special Purpose Vehicle:** The Communiqué refers to Turkish Accounting Standards for the definition of Special Purpose Entities.

3. The purchase of such shares by third persons after the transfer of ownership to a Bank or Special Purpose Entity,
 4. Transfer of the shares to third parties to comply with certain legislation that bring special regulations pertaining to the shareholders.
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