

**THE DRAFT COMMUNIQUÉ REGARDING AMENDMENTS  
TO THE COMMUNIQUÉ ON TAKEOVER BIDS**

By the Law No. 7222 on Amendments to the Banking Law and Certain Laws, some important changes have been introduced in the Capital Market Law (“**Law**”) numbered 6362 and these amendments have been entered into force upon being published in the Official Gazette on 25.02.2020.

In parallel with the secondary regulations and harmonization efforts of Capital Markets Board of Turkey (“**SPK**” or “**Board**”) to the amendments introduced to the Law, the Draft Communiqué regarding amendment to the Communiqué on the Takeover bids (II.-26.1.ç), (“**Draft Amendment**”) numbered II-26.1, was prepared and made available to the industry on 01.02.2021 on the Board's website.

**1. The Shareholders who are eligible to benefit from the Mandatory Takeover Bid and the Amounts of Shares have been regulated.**

To determine the shareholders who can benefit from the mandatory takeover bid within the scope of the Draft Amendment, the following dates need to be considered;

- (i) The date on which the acquisition of the shares or voting rights providing the management control of the corporation is disclosed to the public; and
- (ii) The date of the public disclosure of the private written agreement between the partners to take over the management control of the corporation.

In addition, the amount of shares that would be subject to a mandatory takeover bid shall be calculated regarding the sales made, if any, from the shares owned as of the date specified above until the commencement date of the actual takeover bid, in accordance with the “last in first out basis” and by deducting from the end of day net balances.

As of the date of public disclosure, matched orders shall be considered in determining the shareholders of the corporation and their share amounts in the corporation, regardless of the completion of the set-off. The list illustrating the shareholders to whom a takeover bid shall be made, and their share amounts is provided by Central Registry Agency in accordance with the principles set forth under this Article and the actual takeover bid shall be submitted to the target corporation on the business day before the commencement date.

## **2. The Situations where there is no obligation to make a Takeover Bid and Exemptions have been extended.**

Within the scope of the Draft Amendment, the cases where the obligation to make a takeover bid shall not arise have been clarified and new situations have been added to the Communiqué.

In this context, it has been clearly stated that there is no obligation to make a takeover bid regarding the voting rights that provide management in case these rights have been acquired by transactions made between the legal persons in which the same natural or legal person has the management control, and between these persons who has the management control.

In addition, the following cases where there is no obligation to make a takeover bid has been added to the Communiqué;

- (i) Having the right to exclude and sell, upon the acquisition of management control,
- (ii) Change in control of the management in publicly held companies whose shares are traded on the stock exchange due to the shares purchased by existing shareholders during capital increases in which the right to purchase new shares is not restricted,
- (iii) Having the control of management due to the reasons beyond the shareholders will, such as, freezing of the voting rights of some shareholders other than himself, the reduction of the capital through the redemption method, the amendment of the privileges through the articles of association, or the acquisition of shares by the corporation itself.

Through the Draft Amendment; in case of any of the situations where the obligation to make a takeover bid arises, those who have obtained the management control shall be obliged to make a public disclosure within two business days as of this situation, at latest.

On the other hand, it is foreseen that, upon application, the Board may grant an exemption from the obligation to make a takeover bid in the acquisition of shares leading to the control of the management due to the inheritance, sharing of inheritance and property regime between spouses.

## **3. The Procedures and Principles Regarding the Determination of the Mandatory Takeover Bid Price have been simplified.**

Within the scope of the provisions of the Communiqué, which is aimed to be simplified through the Draft Amendment, to determine the takeover share purchase price, direct or indirect changes in management control and whether the target corporation is traded on the stock exchange shall need to be considered.

In case of a direct change in the control of the management of the target corporation,

- a.** For target corporation shares or groups of shares traded on the stock exchange, the price of the shares shall not be less than,
  - (i)** The arithmetic average of the daily adjusted weighted average stock market prices in the six-month period before the date when the agreement regarding the sale of shares or the special written agreement to take over the management control without making any change in the shareholding structure of the corporation or the acquisition of management control without concluding any agreement was made public and,
  - (ii)** The highest price paid by the target corporation to the same group shares within the six-month period preceding the date on which the takeover bid obligation arises, including the persons offering the takeover bids and purchasing the shares leading to the takeover bids by the others whom the person act together.
- b.** Shares and share groups of target corporations whose shares are not traded on an exchange shall not be lower than;
  - (i)** The price specified in the assessment report prepared within the frame of regulations of the Board pertaining to assessment by also considering differences in privileges between share groups, if any, and;
  - (ii)** The highest price paid by the offeror or persons acting in concert with them for the same group of shares of the target corporation within six months prior to the date the liability of takeover bid has arisen, including direct share purchases leading to the takeover bid.

In the case of an indirect change in control of the target corporation, the takeover bid price is determined so as not to be less than the highest one of:

- a.** For target companies whose shares are not traded on exchange, the price specified in the assessment report prepared within the frame of regulations of the Board pertaining to assessment by also considering differences in privileges between share groups;
- b.** The highest price paid by the offeror or persons acting in concert with them for the same group of shares of the target corporation within six months prior to the arising of obligation of mandatory takeover bid,

c. If the shares of the target corporation are traded in stock exchange; if any, special written agreement regarding indirect change of control through acquisition of shares or special written agreement leading to the indirect change in control exists, the arithmetical average of daily adjusted weighted average stock prices occurring during the six month period prior to the date of disclosure to public of the agreement relating to sales of shares of the target corporation; or in absence of such agreement, the arithmetical average of daily adjusted weighted average stock prices occurring during the six month period prior to the date of disclosure to public of the change of control relating to sales of shares of the target corporation.

**4. Persons Responsible of Information under Takeover Bid Information Form have changed.**

Pursuant to the Communiqué, in applications of a takeover bid to the Board, it is required to fill in and issue the takeover bid information form provided as an annex to the Communiqué.

Prior to the Amendment Proposal, it was stated that if and when it is detected after approval of the information form that the information contained therein are untrue, misleading or incomplete, the offerors and the officials of investment firm signing the information form were to be responsible. With the amendments made through Amendment Proposal, investment firms that have the information form signed on the account of themselves shall be liable in case the information contained in the information form are untrue, misleading or incomplete.

**5. Amendments have been made to the provisions regarding Brokerage Contract.**

Pursuant to the Communiqué it is mandatory that a brokerage contract is signed between the offeror and the investment firm and that such brokerage contract should at least contain the items specified under the Communiqué.

The uncertainties regarding whether the participation of shares with a transaction ban, legal dispute or other claim of rights can be restricted by a brokerage agreement, prior to the Amendment Draft were eliminated with the Draft Amendment. With the clause regarding Brokerage Contract inserted to the Communiqué through the Amendment Draft; it has been clearly stated that shares with transaction ban, legal dispute or other claim of rights cannot be restricted from participating in the takeover bid. In case these shares participate in the takeover bid, the sales price shall be accrued interest under a blocked account until the transaction ban expires or legal disputes or claims are removed.

**6. Information to be Disclosed to Public in Relation to the Takeover Bid.**

It has been stated that the material event disclosures by corporations whose shares are traded on the stock exchange shall be conducted at times outside the stock market share market trading hours.

For more information and support, please contact us at [info@lbfpartners.com](mailto:info@lbfpartners.com)

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