



THE COMMUNIQUE ON TENDER OFFER HAS BEEN AMENDED

The Communiqué on Tender Offer (II-26.1) (“**Communiqué**”) has been amended through the Communiqué Regarding Amendments of the Communiqué on Tender Offer Numbered II-26.1.ç (“**Amending Communiqué**”) which was published in the Official Gazette dated 16 October 2021 and numbered 31630 in line with the amendments made on the Capital Market Law with the Law Amending Banking Law and Some Laws dated 20 February 2020 and numbered 7222.

EXECUTIVE SUMMARY

The Amending Communiqué introduces amendments regarding the determination of the shareholders subject to the mandatory tender offer, tender offer price, tender offer process, cases where obligation to make a tender offer will not arise and exemptions.

The significant amendments made to the Communiqué are stated here below:

- (i) **Entitlement.** *The shareholders who can benefit from the mandatory tender offer (“Offer”) and the number of shares that can be subject to the Offer have been determined. In this context, only the shareholders as of the date of the announcement of the agreement regarding the change in the management control of the partnership will be able to benefit from the Offer.*
- (ii) **Tender Offer Price.** *The provision regarding the determination of the Offer price has been simplified and it has been regulated that in certain cases the Offer price can be calculated by changing the calculation periods.*
- (iii) **Exemption from Tender Offer Obligation.** *An exemption from the tender offer obligation has been introduced with respect to the cases where the change in control will arise from inheritance, the sharing of inheritance, the provisions of the matrimonial property and other regulatory obligations.*
- (iv) **Cases Where Obligation To Make a Tender Offer Will Not Arise.** *The new cases where the obligation to make the Offer will not arise have been introduced. Moreover, a public disclosure regarding the exception, if applicable, is required to be made within 2 business days.*
- (v) **Tender Offer Process.** *In cases where the Capital Market Board (“Board”) determines ex officio that the tender offer obligation arises, an application must be made within six business days following the date of notification of the Board’s decision to the obliged parties.*

AMENDMENTS UNDER THE COMMUNIQUE

I. Amendments Made With Respect To Determination of the Shareholders Who Can Benefit From the Mandatory Tender Offer

New provisions have been introduced with respect to determination of the shareholders who can sell their shares by participating in the Offer and the number of shares that can be subject to the Offer. The date of the agreement or transaction regarding the change in management control disclosed to the public will be taken into account for determining the shareholders who can participate in the Offer and the amount of shares that will be subject to sale.

The amount of shares that can be subject to the Offer will be calculated by deducting the sales made until the start date of the actual Offer (if any) from the shares owned as of the above-mentioned date, on the last-in, first-out basis and over the end-of-day net balances.

It has been added that the participation of the shares subject to a transaction prohibition, legal dispute or other claim cannot be restricted from the tender offer by including a provision in the contract and/or the information form. Moreover, if the aforementioned shares participate in the tender offer, the share prices will be accrued interest in a blocked account until the foregoing prohibitions or claims will be removed or disputes will be resolved.

II. Amendments With Respect to Determination of Tender Offer Price

Provisions regarding the Offer price have been simplified and made more systematic. Within the new systematic, in parallel with the former version of the Communiqué; various mechanisms have been envisaged depending on (a) a direct or indirect change in the management control of the target partnership, and (b) whether different group shares are subject to the Offer or not.

The Offer price will be determined by taking into account of the followings:

- (i) the arithmetic mean of the weighted average stock prices of the 6 month period (**“Calculation Period”**) preceding the date in which the Offer obligation of the publicly traded shares of the target company arises;
- (ii) the highest price paid for the same group shares of the target company in the Calculation Period (if any); and
- (iii) the price determined in the assessment report which takes into account the privilege differences among the share groups, if any.

In addition to calculation mechanisms; some amendments have been introduced regarding the determination of the Calculation Period. In the former version of the Communiqué, in the event that the Board decides to take action in accordance with Article 101 (*Measures to be applied in the investigations of insider trading and manipulation*) and Article 107 (*Manipulation*) of the Capital Market Law regarding the transactions carried out during the Calculation Period, the Offer process was to be suspended or the Offer price was to be re-determined.

With the amendments made to the Article 15/5 of the Communiqué, if the Board adopts a decision regarding

- (i) an action to be taken pursuant to Articles 101 and 107 of the Law, or
- (ii) the existence of extraordinary developments affecting the economy or the sector,

the periods subject to decision will not be included in the calculation of the Offer price. It is foreseen that the relevant periods will be completed and calculated by adding the main periods to the beginning of the Calculation Period.

In accordance with the amendments stated above, it has been regulated that in case of the extraordinary developments affecting the economy or the sector, these periods will be added to the beginning of the relevant calculation period of the exit price under the Communiqué on Material Transactions and Exit Right (II-23.3) published on Official Gazette dated 27 June 2020 numbered 31168.

III. Amendments With Respect To Cases Where Obligations To Make a Tender Offer Will Not Arise and Exemptions

Cases where obligation to make a tender offer does not arise and exemptions from obligation to make a tender offer have been amended with the Amending Communiqué as follows:

Cases Where Obligation to Make a Takeover Bid Will Not Arise

- The exception regarding the acquisition of management control as a result of intragroup share transfers has been clarified;
- The emergence of the right to squeeze-out and sell-out by the acquisition of management control partnership is introduced as a new exception;
- Change of control in capital increases of publicly traded companies where the right to purchase new shares is not restricted, as a result of share acquisitions by existing partners is introduced as a new exception.
- It has been regulated as a new exception that a shareholder acquires management control due to reasons beyond its own will such as the target company's repurchasing some of its shares and the freezing of voting rights of some the shareholders.

In addition, in the event that any of the exceptions will be applied, it is required to make a public disclosure within two business days following the acquisition of management control.

Exemptions from Obligation to Make a Tender Offer:

The Amending Communiqué has brought some explanatory changes to current exemption provisions and has introduced a new exemption from obligation to make a tender offer, may be granted by the Board for cases where the change of management control results from inheritance, the sharing of inheritance, the provisions of the matrimonial property and other regulatory obligations upon application.

IV. Ex Officio Determination of the Tender Offer Obligation by the Board

In addition to the provision already stipulated under the Communiqué, which stating that it is obligatory to file an application to the Board for a tender offer within six business days following the acquisition of the shares giving control, in cases where the Board determines ex officio that the tender offer obligation arises, an application is to be made within six business days following the date of notification of the Board decision to the obliged parties.

V. Other Amendments

The legal entity of the investment firm has been added to the list of persons who are responsible for the wrong, misleading or incomplete information in the tender offer information form, in addition to the offerors and the signatories of the investment firm.

The disclosure of material events of publicly traded companies which are listed in Article 10 of the Communiqué is to be made outside the regular trading hours of the stock market according to the new provision.

Under the former Communiqué, it was stated that the actual Offer process will begin within 2 months, and that the Offer price would be calculated over 50% more than the annual TRLIBOR rate for every day exceeding 2 months.

With the Amending Communiqué, it has been regulated that TLREF will be used instead of TRLIBOR in parallel with current developments. In addition, it is regulated that if the deadline for commencing the Offer within 2 months or (if any) additional time given by the Board is exceeded due to the fault of the offeror, the interest will accrue.

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This newsletter has been prepared as of November 3, 2021 for informative purposes regarding the Communiqué Regarding Amendments of the Communiqué on Tender Offer (II-26.1.ç) which published in the Official Gazette dated 16 October 2021 and numbered 31630. Our assessments in this newsletter do not constitute legal recommendation or legal opinion and Aksu Çalışkan Beygo Attorney Partnership may not be hold responsible depending on these assessments. It is recommended to obtain legal opinion for your inquiries within the scope of this memorandum.