

GEDİK & ERAKSOY

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CMB raises the squeeze-out threshold

On 12 November 2014, the Capital Market Board (CMB) issued a new Communiqué on Squeeze-out and Sell-out Rights Serial No. II-27.2 (Squeeze-out Communiqué) and replaced the previous squeeze-out regime introduced on July 2014. The new piece of legislation seems like an effort from the CMB to respond to criticism by the investors on squeeze-out prices. The CMB also seems willing to prevent more entities getting delisted by squeeze-out in an effort to preserve the Borsa Istanbul A.Ş.'s (BIST) value, ahead of its anticipated public offering. Since July 2014, squeeze-out procedures have been initiated for at least four entities listed on the BIST (e.g. PTOFS, TEBNK, ALNTF, MUTLU).

The most important change is the gradual increase in the required shareholding for triggering the squeeze-out right for controlling shareholders and the sell-out right for minority shareholders; 95% until the end of 2014, 97% until the end of 2017 and 98% from 1 January 2018 and onwards. Note that the lowest possible threshold of 95% may no longer be enjoyed as of 1 January 2015.

However, the 95% ownership threshold remains applicable for the delisting via tender offer process regulated under the CMB's material transactions legislation. The CMB should be expected to align that legislation with the new thresholds in the coming months.

Highlights from the Communiqué

Squeeze-out & Sell-out rights: Triggered simultaneously, exercised consecutively

Once the shareholding threshold is reached, both squeeze-out right and sell-out rights become exercisable by the controlling shareholder and the minority shareholders, respectively. However, for squeeze-out, the controlling shareholder shall first wait a three months' period, during which minority shareholders may exercise their sell-out rights. At the end of this period, controlling shareholder can exercise its squeeze-out right for any remaining shares of the minority shareholders.

Mandatory valuation report

The Communiqué sets out that upon receiving the sell-out request of a minority shareholder, the listed entity shall have a valuation report prepared to determine the price of its shares. Such report shall be prepared within one month of the first sell-out request received by the listed entity.

*Prices differ for squeeze-out and sell-out***

Previously the squeeze-out and the sell-out prices were subject to the same formula for listed entities: the 30-day weighted average of the stock price, such 30-days ending on the day preceding the date, on which the disclosure of triggering the shareholding threshold was made by the controlling shareholder (**Triggering Date**).

Now, the Squeeze-out Communiqué keeps the above formula for squeeze-out prices of listed entities but introduces a different price formula for sell-out rights. Accordingly, the sell-out price shall be the higher of:

- (i) the price determined under the mandatory valuation report;

- (ii) the price applied for a mandatory tender offer which was conducted within the one year period preceding the Triggering Date;
- (iii) the squeeze-out price;
- (iv) the six months' weighted average of the stock price, such six months ending on the Triggering Date;
- (v) the one year weighted average of the stock price, such one year ending on the Triggering Date; and,
- (vi) the five years' weighted average of the stock price, such five years ending on the Triggering Date.

****** *For unlisted public entities the sell-out price shall be the higher of (i) the price determined under the mandatory valuation report; and (ii) the price applied for a mandatory tender offer which was conducted within the one year period preceding the Triggering Date. The squeeze out fee shall be determined under the mandatory valuation report.*

What it means?

For minority shareholders: The new Squeeze-out Communiqué will serve to protect the interests of the minority shareholders. There is a possibility that the sell-out price may turn out higher than the squeeze-out price. In order to kick-off the sell-out price determination, a minority shareholder is required to exercise its sell-out right.

For listed entities & controlling shareholders: The increased threshold may well prove to be an obstacle for entities, which are considering delisting from the BIST. Further, it may have a negative impact on potential IPOs, since the way out of the capital markets and the BIST seems to have narrowed down.

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