

# GEDİK & ERAKSOY

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## *Amendments to the Communiqué on Shares and Sale of Capital Market Instruments*

*The Communiqué on Shares (the Communiqué) is one of the main pieces of legislation setting out the procedures and principles for initial and secondary public offerings within the scope of the Capital Markets Law no. 6362. In accordance with the amendments made in February 2015, June 2016 and January 2018, pre-requisites for public offerings and listing requirements for public companies have been expanded (the Amendment). Additionally, offering and sale periods and mandatory domestic allocation ratios of public offerings under the Communiqué on Sale of Capital Market Instruments were amended on 1 December 2017.*

Under the Amendment, an additional pre-requisite was introduced for companies which would pursue an initial public offering (IPO) or an initial listing on Borsa Istanbul A.Ş. (BIST). Accordingly, companies pursuing an IPO or listing their shares on the BIST for the first time must not be eligible for deregistration from the Capital Market Board's records.

Accordingly, companies, whose (i) total sum of assets are less than ten million Turkish Lira; or (ii) net sales revenues are less than five million Turkish Lira (together **Deregistration Conditions**) cannot apply for an IPO or an initial listing on the BIST. However, this pre-requisite is not applicable to investment partnerships, public administrations, special budgeted administrations, corporations within the scope of privatisation and corporations which have public partnership.

As per the Amendment, the Capital Markets Board may request companies that meet one or more of the Deregistration Conditions set out above to sell their shares through private allotment. The private allotment option may also be applied by the Capital Markets Board, when it deems necessary, to companies that do not qualify for deregistration. This discretionary power granted with the Amendment has considerably expanded the scope of the Capital Markets Board's authority. The last major amendment is related to the secondary offerings by way of share capital increase. In practice, it is common for shareholders to make deductions from their existing cash or non-cash receivables from the company instead of subscribing to the share capital increase. Prior to the relevant Amendment, although it was stipulated that the capital injunction liability of shareholders shall not be fulfilled through deduction of existing debts arising from non-monetary asset transfers, it was still possible to increase share capital by deducting receivables of shareholders arising from non-monetary asset transfers. In most cases this has resulted in the increase in the shareholding ratio of shareholders that have not subscribed in cash, which evoked inequality between those shareholders and holders of the "free float". In order to ensure the equal treatment principle between holders of the free float and the majority shareholder, the Amendment requires that when share capital increases occur, shareholders must subscribe and pay their subscription amounts only in cash (or, if proved by accountant's report, the subscribed amount may be deducted from due debts arising from funds provided in cash by the shareholder). Therefore it is no longer possible for shareholders of public companies to fulfil their share capital subscription liabilities by deducting existing debts arising from non-monetary asset transfers.

As per the amendment made to the Communiqué on 30 June 2016, the Capital Markets Board is allowed to alter the registration fee at its discretion, provided that such registration fee does not exceed the ceiling (which is 0.003 of the issuance value) determined under the Capital Markets Law.

Another change in the legislation regarding public offerings was made on 1 December 2017 with the amendments made to the Communiqué on Sale of Capital Market Instruments numbered II-5.2. According to the recent changes, downward revisions to (i) the public offering price, (ii) the price range in case of book building; or (iii) the interest or discount rates of capital market instruments, can be made by issuing a public disclosure, without amending the prospectus before commencement of sale and/or book building period or within these periods. In the event that the price is revised before the commencement of sale and/or book building period, a public offering may commence at the earliest on the second day following the public disclosure. If the price revision is made within the sale and/or book building period, the offering period will be prolonged for a minimum of two business days.

According to the recent amendment regarding the allocation ratios, the obligation to allocate at least 20% of the nominal value of the public offering of capital market instruments to domestic corporate investors has been reduced to 10%. Additionally, with the amendment, the Capital Markets Board is authorised to reduce to zero or increase by doubling the minimum allocation ratio for individual and corporate domestic investors in public offerings of capital market instruments.

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