



GEN & TEMİZER | ÖZER

RECENT DEVELOPMENTS IN TURKISH CAPITAL MARKETS

September 2022

Voluntary and Mandatory Tender Offer

01 | General Overview

The rules and procedures regarding tender offers for public companies in Turkey are set forth in the Capital Markets Board's ("CMB") Communiqué on Tender Offers numbered II-26.1 ("Communiqué").

There are two types of tender offers available under the Communiqué:

(a) a mandatory tender offer, where the shareholders are required to offer to acquire the shares of the other shareholders if certain conditions are met

and

(b) a voluntary tender offer, where the shareholders voluntarily offer to acquire the shares of the other shareholders.

02 | Mandatory Tender Offer

Shareholders who acquire shares or voting rights that enable them to obtain, directly or indirectly, management control of a public company, solely or in concert with others through a voluntary tender offer or through block, or individual acquisitions, are required to make a tender offer to the other shareholders at the time of the share acquisition. This type of tender offer is defined as a mandatory tender offer in the Communiqué. Therefore, an obligation to make a tender offer arises when acquiring shares that ensure management control in a public company. Management control is defined under the Communiqué as either having:

(i) more than 50% of the voting rights, solely or in concert with others, directly or indirectly, in a public company;

or

(ii) preferred shares giving the right to appoint or nominate the majority of the Board in a public company, regardless of the percentage of the shares.

03 | When is a mandatory tender offer requirement not triggered?

There are certain circumstances where a mandatory tender offer requirement is not triggered under the Communiqué. These circumstances are listed in detail under the Communiqué; below are a few examples:

- Obtaining management control as a result of making a voluntary tender offer to all of the other shareholders.
- Obtaining management control by making private agreements without share acquisition and giving the other shareholders who cast a negative vote at the General Meeting and register such vote in the Meeting minutes the right to sell out.
- Triggering of the right to squeeze out and sell out upon the share acquisition.

In the occurrence of one of the circumstances where a mandatory tender offer is not triggered, the shareholders who obtain management control must make a public disclosure of such circumstance by indicating the reason why a mandatory tender is not triggered within at least two (2) business days from the date management control is obtained.

04 | Application for exemption

There are also circumstances where a shareholder can apply to the CMB to request an exemption from the mandatory tender offer requirement. Below are a few examples of such circumstances, which are listed in detail under the Communiqué.

- Acquiring the shares or the voting rights in order to strengthen the financial structure of a public company that is in financial distress.
- Transferring the shares in order to comply with regulatory requirements that determine the qualification to become a shareholder.
- Change of the management control in a public company due to inheritance or allocation of matrimonial property or other legal requirements.

In order to request an exemption, shareholders who are obliged to make a tender offer must make an application to the CMB within six business days as of the triggering date of the mandatory tender offer.

05 | Who may benefit from the mandatory tender offer?

Those who are shareholders in the company at the date of the public disclosure regarding the acquisition of the shares or voting rights that provide management control in the company or at the date of the public disclosure regarding the private agreement made between shareholders in order to obtain management control in the company will be able to benefit from a mandatory tender offer.

06

Mandatory tender offer process



An application must be made to the CMB together with the information and documents set forth in the Communiqué within six business days as of the acquisition of the management control. The actual mandatory tender offer process must be initiated within two months as of the triggering of the obligation to make a mandatory tender offer. The process must be initiated within six business days as of the approval of the tender offer form by the CMB, and the duration must be 10–20 business days.

07

Mandatory tender offer price



The mandatory tender offer price, which will be determined in the case of a direct change in the management control of a company, is regulated in the Communiqué separately for the shares or share groups of listed and non-listed companies. Accordingly:

The price for the listed companies cannot be less than (i) the arithmetic average of the daily adjusted weighted average stock prices that originate in the six-month period prior to the public disclosure of the management control; and (ii) the maximum price paid for the same group of shares of the company in the six-month period prior to the triggering of the obligation to make a mandatory tender offer.

The price for non-listed companies cannot be less than (i) the price determined in the valuation report prepared in line with the relevant regulations; and (ii) the maximum price paid for the same group of shares of the company in the six-month period prior to the triggering of the obligation to make a mandatory tender offer.

The mandatory tender offer price must be paid in cash and in Turkish Lira. If the price is determined in a foreign currency, the calculation must be made based on the buying rate of the Central Bank of the Republic of Turkey. The price to be paid in the tender offer may also be determined as a security with the approval of the shareholder. The security must be listed in the stock exchange.

08

Voluntary Tender Offer

A voluntary tender offer may be made to acquire a public company's shares in part or in whole. In order to make a voluntary tender offer, an application must be made to the CMB together with the information and the documents set forth in the Communiqué. The duration of the tender offer must be 10–20 business days. The actual tender offer process must be initiated within six business days as of the approval of the tender offer form by the CMB.

The offeror may increase the offer price up until one business day prior to the end of the tender offer process and/or change the price for the other, larger portion or all of the shares, if the initial offer was made for a part of the shares. The new offer must be notified to the CMB and disclosed to the public in order to be valid.

09 | Public disclosure requirements

The offeror must make public disclosure of certain matters. These matters are listed in detail under the Communiqué; below are a few examples:

- The decision to make a voluntary tender offer.
- The triggering of the obligation to make a mandatory tender offer, whether an exemption will be requested for the mandatory tender offer, and if so, an explanation for the basis of the exemption.
- The price for the tender offer or the information on how the price will be determined.
- The result of the application to make a tender offer or the application for an exemption.
- At the end of the tender offer process, the total number of shares, share groups and nominal value of shares acquired during the tender offer process and the total number of shareholders who agreed to sell their shares.

Issuances Approved by the Capital Markets Board of Türkiye – September 2022

SHARE ISSUANCES of PUBLIC COMPANIES		
COMPANY NAME	TYPE of SALE	SIZE of ISSUANCE
Derlüks Yatırım Holding A.Ş.	Issuance Through Internal Resources	TRY 43,087,500
ATP Ticari Bilgisayar Ağı ve Elektrik Güç Kaynakları Üretim Pazarlama ve Ticaret A.Ş.	Issuance Through Internal Resources	TRY 56,250,000
Seyitler Kimya Sanayi A.Ş.	Issuance Through Internal Resources and Dividend	TRY 18,000,000
Orçay Ortaköy Çay Sanayi ve Ticaret A.Ş.	Issuance Through Internal Resources	TRY 59,535,000
Lider Faktoring A.Ş.	Issuance Through Internal Resources	TRY 45,000,000
Ata Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 70,000,000
Sümer Faktoring A.Ş.	Qualified Investor	TRY 112,000,000

DEBT INSTRUMENTS ISSUANCES

COMPANY NAME	TYPE of SALE	ISSUANCE LIMIT
Akdeniz Faktoring A.Ş.	Qualified Investor	TRY 273,000,000
Garanti Faktoring A.Ş.	Qualified Investor	TRY 982,000,000
İnfo Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 1,000,000,000
Osmanlı Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 580,000,000
Ak Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 2.750.000.000
Arçelik A.Ş.	Private Placement / Qualified Investor	TRY 7,000,000,000
Pınar Süt Mamulleri Sanayii A.Ş.	Private Placement / Qualified Investor	TRY 500,000,000
Alnus Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 120,000,000
Şeker Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 300,000,000
Trive Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 300,000,000
Doğan Dış Ticaret ve Mümessillik A.Ş.	Qualified Investor	TRY 400,000,000
Karel Elektronik Sanayi ve Ticaret A.Ş.	Qualified Investor	TRY 1,000,000,000
Kent Faktoring A.Ş.	Private Placement / Qualified Investor	TRY 85,000,000
Tarkim Bitki Koruma Sanayi ve Ticaret A.Ş.	Private Placement / Qualified Investor	TRY 100,000,000
Lider Faktoring A.Ş.	Private Placement / Qualified Investor	TRY 145,000,000
Türkiye Şişe ve Cam Fabrikaları A.Ş.	Private Placement / Qualified Investor	TRY 10,000,000,000
İş Yatırım Menkul Değerler A.Ş.	Private Placement / Qualified Investor	TRY 12,500,000,000
Deniz Faktoring A.Ş.	Qualified Investor	TRY 660,000,000
Ünlü Menkul Değerler A.Ş.	Qualified Investor	TRY 200,000,000
Creditwest Faktoring A.Ş.	Qualified Investor	TRY 90,000,000
QNB Finans Faktoring A.Ş.	Private Placement / Qualified Investor	TRY 913,000,000
TEB Yatırım Menkul Değerler A.Ş.	Private Placement / Qualified Investor	TRY 750,000,000
Deva Holding A.Ş.	Private Placement / Qualified Investor	TRY 500,000,000
Denizbank A.Ş.	Public Offering / Private Placement / Qualified Investor	TRY 25,000,000,000
Enerjisa Enerji A.Ş.	Qualified Investor	TRY 1,500,000,000
Ereğli Demir ve Çelik Fabrikaları T.A.Ş.	Qualified Investor	TRY 2,000,000,000
Kopaş Kozmetik Pazarlama ve Sanayi A.Ş.	Private Placement	TRY 150,000,000
A1 Capital Yatırım Menkul Değerler A.Ş.	Private Placement / Qualified Investor	TRY 750,000,000
Tarım Kredi Birlik Tarım Ürünleri Hayvancılık Ambalaj Petrol Nakliyat İthalat İhracat Sanayi ve Ticaret A.Ş.	Private Placement / Qualified Investor	TRY 150,000,000
Aksa Akrilik Kimya Sanayii A.Ş.	Private Placement / Qualified Investor	TRY 1,200,000,000
Şeker Faktoring A.Ş.	Qualified Investor	TYR 320,000,000
MLP Sağlık Hizmetleri A.Ş.	Qualified Investor	TRY 750,000,000
Tacirler Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 950,000,000
Gedik Yatırım Menkul Değerler A.Ş.	Qualified Investor	TRY 2,000,000,000
Dünya Varlık Yönetim A.Ş.	Private Placement / Qualified Investor	TYR 500,000,000
Gelecek Varlık Yönetimi A.Ş.	Private Placement / Qualified Investor	TRY 1,500,000,000
Destek Yatırım Bankası A.Ş.	Overseas	USD 15,000,000

OTHER ISSUANCES

COMPANY NAME	ORIGINATOR / FUND USER	TYPE of CAPITAL MARKETS INSTRUMENT	TYPE of SALE
Halk Varlık Kiralama A.Ş.	Halk Gayrimenkul Yatırım Ortaklığı A.Ş.	Lease Certificate Based on Management Agreement	Qualified Investor
Nurol Yatırım Bankası A.Ş. İkinci Otorosor Varlık Finansman Fonu	Otosor Otomotiv A.Ş.	Asset Backed Security	Qualified Investor
İş Yatırım Menkul Değerler A.Ş.	-	Investment Firm Warrant and Certificate	Public Offering / Qualified Investor
Halk Varlık Kiralama A.Ş.	Turkcell Ödeme ve Elektronik Para Hizmetleri A.Ş.	Lease Certificate Based on Management Agreement	Qualified Investor
QNB Finans Varlık Kiralama A.Ş.	QNB Finans Finansal Kiralama A.Ş.	Lease Certificate Based on Management Agreement	Private Placement / Qualified Investor
Nurol Varlık Kiralama A.Ş.	HST Tarım A.Ş.	Lease Certificate Based on Management Agreement	Private Placement / Qualified Investor

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