

Dear Colleagues and Friends,

Squeeze-out and sell-out rights in Turkish public companies are regulated by the Communiqué on Squeeze-Out and Sell-Out Rights (the "**Communiqué**") published in the Official Gazette dated 2 January 2014 effective as of 1 July 2014. The Communiqué was issued by the Capital Markets Board of Turkey (the "**CMB**") in accordance with the Capital Markets Law and regulates the right to squeeze-out minority shareholders by the controlling shareholder and the minority shareholders' rights to exit the public company by selling their shares to the majority shareholder.

You can find below our news alert providing the highlights of the Communiqué in relation to the squeeze-out right.

This article is not intended to be comprehensive or to provide legal advice. To receive advice on any matters stated above, please do not hesitate to contact us.

Kind regards,

**Omer Collak**  
Partner  
[ocollak@paksoy.av.tr](mailto:ocollak@paksoy.av.tr)

**Okkes Sahan**  
Senior Associate  
[osahan@paksoy.av.tr](mailto:osahan@paksoy.av.tr)

### Rules on Squeeze-Outs in Public Companies



#### A. SQUEEZE-OUT: Triggering Event

In the event that the amount of the shares acquired by the controlling shareholder reaches at least 95% of the voting rights of a public company (the "**Squeeze-out Threshold**") as a result of takeover bid or through any other means, including acting in concert with others, the controlling shareholder will have the right to squeeze-out the remaining minority shareholders.

The squeeze-out right is not automatic for any existing controlling shareholder as of 1 July 2014. Rather, a shareholder who is considered a controlling shareholder under the Communiqué as of 1 July 2014 must purchase additional shares to be entitled to exercise the squeeze-out right.

#### Time Limit and Application

If a controlling shareholder fails to apply to the public company within three months upon any of the triggering events mentioned above, the squeeze-out right is terminated. We believe, however, that the squeeze-out right is not terminated indefinitely, but rather the controlling shareholder is entitled to a new squeeze-out right upon the arising of a new triggering event.

A controlling shareholder must apply to the public company with the documents listed in the Communiqué to squeeze-out all of the remaining shareholders. This application must include, among other things, information on the squeeze-out price and a bank letter of guarantee. If a bank letter of guarantee is not provided, the funds to be used for the payment of the squeeze-out price must be blocked in a separate bank account.

### **Squeeze-out Price**

In listed public companies, the squeeze-out price for each group of shares listed on an exchange is equal to the arithmetic average of the daily weighted average price of the shares taken for the 30-day period preceding the date on which the reaching of the squeeze-out threshold was disclosed or the date on which additional shares purchased by the controlling shareholder was disclosed. This calculation also applies to the non-trading shares of a listed company. Accordingly, in case there are more than one group of trading listed shares, the arithmetic average of the listed shares' prices as calculated above is the squeeze-out price for the non-trading group(s) of shares. For non-listed public companies, a valuation report that is procured by the controlling shareholder must be prepared for the calculation of a fair squeeze-out price.

### **Squeeze-out Process**

Following a controlling shareholder's application, the board of directors of a public company must (i) review to confirm that the Squeeze-out Threshold has been reached, (ii) assess the purchase price and (iii) adopt a resolution for the cancellation of the minority shareholders' shares to issue new corresponding shares in lieu of the cancelled shares.

The public company shall apply to the CMB for the approval of the issuance certificate for the new shares along with other relevant documents, and if such public company is also listed, it shall simultaneously apply to the stock exchange for delisting.

The controlling shareholder must pay the squeeze-out price to the public company's bank account within three business days of the CMB's approval for the issuance certificate in relation to the new shares. The public company must increase its capital and allocate the newly issued shares to the controlling shareholder upon receiving payment of the squeeze-out price. The shares issued as part of the capital increase must be placed with the controlling shareholder in accordance with private placement rules, in which case the share price margins of the wholesale market do not apply. The squeeze-out price must be paid to the relevant shareholder in full and in cash. The cash payments must be TL denominated.

The controlling shareholder must also pay a fee to the CMB, which is calculated based on the squeeze-out price for the newly issued shares.

The issuance certificate approved by the CMB must be registered with the relevant trade registry within six business days of the CMB's approval and disclosed in the Trade Registry Gazette. The shares of the minority shareholders are deemed to be cancelled upon such registration.

The listed public companies, upon payment of the squeeze-out price by the controlling shareholder, must apply to the Central Registry Agency for the transfer of the squeeze-out price to the minority shareholders registered within the Central Registry Agency system, the cancellation of the minority shareholders' shares, and the transfer of the newly-issued corresponding shares to the controlling shareholder's account.

For those shareholders that are not registered with the Central Registry Agency system, an amount corresponding to the squeeze-out price of their shares must be put in a blocked account held with the Istanbul Settlement and Custody Bank for a three-year period. The controlling shareholder may provide a bank letter of guarantee to secure the payment to these shareholders instead of actually paying the total amount as mentioned above.

### **Legal Consequences of Squeeze-Out**

Upon the finalisation of the process before the Central Registry Agency, the board of the stock-exchange delists the listed public company.

Furthermore, while the controlling shareholder of a publicly listed company exercises its right to squeeze-out the minority shareholders, this action also constitutes a going-private transaction. In other words, the CMB, by adopting a resolution, classifies the company as a privately held company. Accordingly, the company will no longer fall under the scope of the Capital Markets Law.

## **B. DISCLOSURE REQUIREMENTS**

Once a controlling shareholder's total voting right reaches the Squeeze-out Threshold, or a current controlling shareholder purchases additional shares or the management control over a public company is lost, the related shareholder must make a public announcement. Furthermore, once the squeeze-out right is triggered and the controlling shareholder decides to exercise it, they must also be disclosed to the public.

Additionally, among others, the following cases must also be disclosed by a public company in accordance with related CMB regulations: (i) receiving the request by the controlling shareholder to squeeze-out the minority and the information regarding the process of the transaction, (ii) the information relating to the results of such process, (iii) the number of the minority shareholders that want to exercise their rights to sell-out and their shareholding ratios, respectively, on a daily basis, (iv) for non-listed public companies, the results of the valuation report prepared for the determination of a fair squeeze-out price and (v) results of the sell-out process, including the number of the minority shareholders that exercised the right to sell-out and their shareholding percentages, respectively, and also the shareholding ratio of the controlling shareholder.