

## COMMUNIQUÉ ON AUTHORISED CAPITAL SYSTEM (II-18.1)

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### FIRST PART

#### Purpose, Scope, Grounds, Definitions and Abbreviations

##### **Purpose:**

**ARTICLE 1 – (1)** The purpose of this Communiqué is to set down the principles to be followed by corporations for inclusion in the authorised capital system and while they are within the system, as well as the principles regarding the exit from authorised capital system or expulsion by the Board.

##### **Scope:**

**ARTICLE 2 – (1)** Corporations which have applied to the Board for offering their shares to public and publicly-held corporations, whether they have previously entered to the authorised capital system or not, are governed by and subject to provisions of this Communiqué.

##### **Grounds:**

**ARTICLE 3 – (1)** This Communiqué has been prepared and issued in reliance upon Article 18 of the Capital Markets Law no. 6362.

##### **Definitions and Abbreviations:**

**ARTICLE 4 – (1)** For the purposes and in the context of this Communiqué:

- (a) **“Initial Capital”** refers to minimum issued capital required to be held by joint-stock companies with authorised capital; and
- (b) **“Issued Capital”** refers to capital representing the sold shares of joint-stock corporations with authorised capital; and
- (c) **“Law”** refers to the Capital Markets Law no. 6362 dated 6/12/2012; and
- (ç) **“PDP”** refers to and stands for the Public Disclosure Platform; and
- (d) **“Authorised capital”** (**“Upper limit of authorised capital”, “Upper limit”**) refers to capital of corporations registered in and announced via trade registry, indicating the maximum amount of shares that may be issued by them by a decision of the board of

directors and without being subject to provisions of the Turkish Commercial Code no. 6102 dated 13/1/2011 pertaining to increase of share capital, providing that it is regulated in their articles of association; and

- (e) **“Board”** refers to the Capital Markets Board; and
- (f) **“Corporation”** refers to publicly held corporations, as well as corporations which have applied to the Board for public offering of their shares; and
- (g) **“TCC”** refers to and stands for the Turkish Commercial Code no. 6102 dated 13/1/2011; and
- (ğ) **“TTRG”** refers to and stands for the Turkish Trade Registry Gazette; and
- (h) **“Investment firm”** refers to and stands for intermediary institutions as well as other capital market institutions established to perform investment services and activities, the establishment and operation principles of which are designated by the Board, and banks.

## **SECOND PART**

### **Principles and Procedures on Authorised Capital System**

#### **Acceptance to Authorised Capital System, and Determination of Upper Limit:**

**ARTICLE 5 – (1)** Corporations may accept the authorised capital system with a prior consent of the Board. Provided, however, that the Board consent is not separately sought for the corporations which have already entered to this system pursuant to TCC.

**(2)** Corporations wishing to enter to the authorised capital system are, pursuant to the provisions of first paragraph of Article 18 of the Law and after getting a prior consent of the Board, required to incorporate a clause relating thereto in their articles of association and to this end, are required to amend the relevant sections of their articles of association in such manner to be eligible for this system. The corporations which have entered to this system pursuant to TCC without a consent of the Board are also liable to adapt their articles of association to the provisions of this Communiqué.

**(3)** Initial capital of corporations to be entered to the authorised capital system cannot be less than TL 100,000.

**(4)** The upper limit of authorised capital to be permitted by the Board for a validity period of five years can in no case exceed five times the higher of the corporation’s paid/issued capital or its shareholders’ equity. Maximum amount of the upper limit of authorised capital is determined on the basis of financial statements issued in accordance with the Board regulations and reviewed through independent audit / limited inspection as of a date closest to the date of

application. If a corporation has consolidated financial statements, maximum amount of the upper limit of authorised capital is determined on the basis of total shareholders' equity of the parent company named in the consolidated financial statements.

(5) In case the paid/issued capital is increased after the end of the period of financial statements to be taken as a basis in determination of upper limit relating to the authorised capital system, and after the increase, the paid/issued capital is higher than total shareholders' equity shown in the financial statements mentioned in fourth paragraph, the upper limit of the authorised capital is calculated on the basis of the corporation's current paid / issued capital.

(6) In case financial statements reviewed through independent audit / limited inspection within one year prior to the date of application do not exist or are not submitted to the Board after the date of application as well, the upper limit of authorised capital is determined on the basis of the corporation's paid/issued capital.

### **Principles on Application of Authorised Capital System:**

**ARTICLE 6 – (1)** In authorised capital system, the board of directors is entitled to increase the capital up to the upper limit of authorised capital shown in the articles of association, regardless of the provisions of TCC pertaining to increase of share capital.

(2) The upper limit of authorised capital permitted by the Board will be valid for a period of five years, including the year of permission. This period of time is required to be specified in the corporation's articles of association and is calculated on calendar year basis. Even if the permitted upper limit of authorised capital could not be reached by the end of the specified period of time, the board of directors can take a capital increase decision only if and when it receives an authorisation for a new period of time in the next meeting of the general assembly of shareholders to be held with a prior consent of the Board for the previously permitted upper limit or for a new upper limit amount. Term of this authorisation may be extended by a decision of the general assembly of shareholders for five years at each time. Unless such authorisation is received, these corporations cannot make a capital increase by a decision of the board of directors.

(3) The Board may determine a period shorter than the five years' period mentioned in the second paragraph hereinabove by corporations or particular sectors.

(4) Both the determination of a new upper limit before the predetermined upper limit of authorised capital is reached, and the determination of a new higher upper limit of authorised capital upon reaching the predetermined authorised capital are subject to prior consent of the Board. Increase of upper limit is also subject to the same principles as applied for shifting into the authorised capital system.

(5) In authorised capital system, new shares cannot be issued unless and until all of the issued shares are entirely sold and paid, or the unsold shares are cancelled.

(6) Upper limit of authorised capital may be exceeded for only once in each upper limit, through capitalization of all kinds of internal sources and profit shares, and as a result of merger, split-up and similar other processes requiring a decision of the general assembly of shareholders. However, upper limit of authorised capital cannot be exceeded by cash capital increases.

(7) In cases where corporations which are in the authorised capital system issue a convertible bond or a derivative instrument convertible to share, sum of the shares to be assigned as a result of the replacement or conversion and the issued capital of the corporation shall not exceed the upper limit of authorised capital.

(8) Regulations pertaining to investment institutions, investment partnerships and portfolio management companies are, however, reserved.

#### **Application to Board For Permission and Required Submittals:**

**ARTICLE 7 – (1)** An application to be filed to the Board for entering to the authorised capital system and for determination of an upper limit is required to be supported by the following submittals:

- a) Currently valid articles of association, together with all and any amendments made therein so far, documented in a single text, and approved and signed by authorised signatories of the corporation; and
  - b) Decision of the board of directors relating to shifting into authorised capital system; and
  - c) Draft text of authorised capital article prepared by the corporation’s board of directors, and draft texts of amendments required in other articles of the articles of association for the sake of harmonization with the authorised capital system and the Law; and
  - ç) A financial advisor’s report evidencing that the capital is fully paid; and
  - d) If it is intended to authorise the board of directors to take decisions on issuance of privileged shares or shares above or below the nominal value per share, or on restriction of preemptive rights of shareholders, or on restriction of rights of privileged shareholders, the reasons and justification of such authorisation; and
  - e) Information introducing the directors and the corporation; and
  - f) Recent shareholding structure of the corporation showing its shareholders holding five percent or more of capital shares; and
  - g) Comparative yearly financial statements issued as of a date closest to the date of application, and if any, recent interim period financial statements and independent audit report; and
  - ğ) Other information and documents that may be deemed necessary by the Board.
- (2) Applications to be filed by the corporations in authorised capital system to the Board with regard to increase of upper limit of the authorised capital will be accompanied by a

decision of the board of directors regarding increase of upper limit, and the documents mentioned in subparagraphs (a) and (c) of first paragraph of this Article.

(3) If and to the extent the documents requested by the Board have already been disclosed to public in PDP or sent to the Board, such information is not required to be separately sent or submitted to the Board.

#### **Inspection and Consent of Board:**

**ARTICLE 8 – (1)** Upper limit of authorised capital of each corporation is determined by considering the corporation's proposal and the purpose of authorised capital system so as not to exceed the upper limit set forth in Article 5 of this Communiqué, and as a result of inspection to be made by the Board, the Board gives its consent and permission for the corporation's inclusion in the authorised capital system and/or for determination of a upper limit of authorised capital.

#### **Actions To Be Taken After Consent of Board:**

**ARTICLE 9 – (1)** Together with a letter of consent received from the Board, and a Board-approved draft note of amendments to articles of association, an application is filed to the Ministry of Customs and Trade for its permission for amendments in articles of association pursuant to provisions of Article 333 of TCC.

(2) In order for the decision authorising the board of directors of the publicly held corporations included in authorised capital system pursuant to Article 29 of the Law to restrict the preemptive rights of shareholders to be acceptable by the general assembly of shareholders, unless heavier quorums are required with clear reference to a rate in their articles of association, affirmative votes of two-thirds of shares with voting rights represented in the corporation's general assembly meeting are sought for, regardless of the existing meeting quorum. However, if at least half of shares with voting rights representing the capital is present in the meeting, unless heavier quorums are required in the articles of association, decisions are taken by majority of shares with voting rights present in the meeting. Provisions of articles of association diminishing the quorums stipulated in this paragraph are invalid and void.

(3) In the case of existence of privileged shares in capital, the general assembly decisions regarding amendments to articles of association pursuant to this communiqué are presented to and approved by the general assembly of privileged shareholders to be convened according to the principles set forth in Article 454 of TCC. Provided, however, that a decision of the general assembly of privileged shareholders is not separately sought for in capital increases of corporations within the upper limit of authorised capital.

(4) Following approval of amendments to the articles of association by the general assembly of shareholders, the amendments are registered in the relevant trade registry and announced in TTRG.

**Exit and Expulsion From Authorised Capital System:**

**ARTICLE 10 – (1)** Corporations may exit from authorised capital system with a prior consent of the Board.

**(2)** Corporations detected to have used the authorised capital system for non-intended purposes and in such manner to cause abuse of partners and other savors or to have lost other qualifications sought for in inclusion in this system may be expelled from the system by the Board.

**THIRD PART**

**Principles on Decisions of Board of Directors**

**Powers That May Be Granted to Board of Directors, and Decisions of Board of Directors:**

**ARTICLE 11 – (1)** In corporations wishing to accept and inclusion in the authorised capital system, if and when it is intended to authorise the board of directors to take decisions on issuance of privileged shares or shares above or below the nominal value per share, or on restriction of preemptive rights of shareholders, or on restriction of rights of privileged shareholders, then and in this case, the articles of association should contain clear provisions verifying that such powers are granted to the board of directors.

**(2)** Even if the upper limit of authorised capital is reached before the end of the five-years' time granted to the board of directors for use of the powers referred to in the first paragraph hereof, these powers may be continued to be used until the end of the said period.

**(3)** The board of directors cannot use its power to restrict the preemptive rights of shareholders in such manner to cause inequality between shareholders. Provisions of second and third paragraphs of Article 461 of TCC are not enforceable for publicly held corporations.

**(4)** Decisions to be taken by the board of directors as per this Article contain such information as the amount of capital increase, nominal value and number of new shares to be issued, whether they are premium, discounted and/or privileged or not, sales price or principles of determination of price, whether pre-emptive right is limited or not, and conditions and duration of use thereof.

**Announcement of Decisions of Board of Directors, and Amendments to Articles of Association:**

**ARTICLE 12 – (1)** Increase of upper limit of authorised capital, extension of the period of consent or permission given, capital increase and other decisions of the board of directors taken as per Article 11 of this Communiqué are disclosed to public within the frame of regulations of

the Board pertaining to public disclosure of material events. In addition, decisions of the board of directors taken as per Article 11 of this Communiqué are registered in the relevant trade registry within ten business days following the date of decision.

(2) Following completion of capital increase in accordance with legislation, an application is filed to the Board with a decision of the board of directors verifying that the capital increase is completed. Within ten days following receipt of consent of the Board about new version of “capital” article of the articles of association, new version of that article is registered by the board of directors in the relevant trade registry.

#### **Cancellation of Decisions of Board of Directors:**

**ARTICLE 13 – (1)** Against the decisions of the board of directors taken pursuant to the principles set forth in this Communiqué, and subject to the provisions of TCC pertaining to cancellation of decisions of general assembly of shareholders, the directors or if their rights are violated, the shareholders may bring forward a suit of nullity in the commercial court of first instances of the city of headquarters of the corporation within thirty days following the announcement of such decisions.

(2) Against the decisions of the board of directors taken pursuant to the principles set forth in this Communiqué, and subject to the provisions of Article 93 of the Law, the Board may bring forward a lawsuit of nullity in the commercial court of first instances of the city of headquarters of the corporation within thirty days following the date of registration of such decisions in trade registry, and may claim stay of execution of these decisions without being liable to post any guarantee for court fees and costs.

(3) All and any matters regarding cancellation of decisions of the board of directors on which this Communiqué remains silent shall be governed by and subject to the relevant provisions of TCC.

#### **Notifications to Board, and Public Disclosures of Material Events:**

**ARTICLE 14 – (1)** In case a lawsuit of nullity is brought forward against the decisions of the board of directors taken pursuant to the principles set forth in this Communiqué, the corporation is under obligation to inform the Board thereof within five business days following the date it becomes aware of commencement of the lawsuit. If the competent court orders a stay of execution of the decision of board of directors, being the subject matter of the lawsuit of nullity, the sides thereto are obliged to inform the Board thereof within maximum five business days following the date of learning of the judgment by them. As long as the competent court does not order a stay of execution or give a verdict of cancellation, the process of application to the Board regarding the capital increase is continued.

(2) Within five business days following the date of notification of the court judgment relating to the lawsuit of nullity, the corporations are under obligation to inform the Board thereabout.

(3) Within five business days following the date the court judgment ordering cancellation of the board decision in dispute becomes final, the board of directors is required to delete the said board decision from the board decisions book, and to have this deletion duly registered and announced in accordance with the provisions of Article 12 hereof.

(4) In the case of commencement of a lawsuit of nullity, the fact that the said lawsuit of nullity has been brought forward, and if the competent court orders a stay of execution of the decision of board of directors, being the subject matter of the lawsuit of nullity, such judgment of the competent court, and the final court judgment taken in the lawsuit of nullity, and finalization of such court judgment will be disclosed to public, within the frame of regulations of the Board pertaining to public disclosure of material events.

#### **FOURTH PART**

##### **Miscellaneous and Final Provisions**

#### **Revaluation:**

**ARTICLE 15 – (1)** The amount specified in Article 5 of this communiqué is, if and when deemed necessary, re-determined by the Board by considering the revaluation coefficient announced by the Ministry of Finance every year.

#### **Repealed Communiqué, and References Thereto:**

**ARTICLE 16 – (1)** The Communiqué on Principles of Authorised Capital System published in the Official Gazette edition 26765 on 23/1/2008 (Serial IV, No. 38) is hereby repealed and abolished.

(2) References made in other regulations of the Board to the Communiqué on Principles of Authorised Capital System (Serial IV, No. 38) will hereafter be deemed to have been made to this Communiqué.

#### **Transitory Provisions:**

**TEMPORARY ARTICLE 1 – (1)** For the corporations which are already in the authorised capital system as of the effective date of this Communiqué, the provisions of Article 5 of this Communiqué are not applied until receipt of a new upper limit permission from the Board.

(2) Applications relating to the inclusion in the authorised capital system, increase of upper limit, etc. which have not been resolved by the Board as of the effective date of this Communiqué will be handled and responded in accordance with the provisions of this Communiqué.



**Effective Date:**

**ARTICLE 17 – (1)** This Communiqué becomes effective as of the date of publishing.

**Execution:**

**ARTICLE 18 – (1)** The provisions of this Communiqué will be enforced and executed by the Board.