

## II – 16.1 COMMUNIQUÉ ON PRINCIPLES PERTAINING TO REMOVAL OF CORPORATIONS FROM THE SCOPE OF LAW AND OBLIGATION OF TRADING OF SHARES ON EXCHANGE

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### PART ONE

#### Purpose, Scope, Legal Basis and Definitions

##### Purpose and scope

**ARTICLE 1** – (1) The purpose of this Communiqué is to set down the principles pertaining to the removal of corporations from the scope of Capital Market Law dated 6 December 2012 and numbered 6362, and trading of their shares on the exchange.

(2) The provisions of this Communiqué is not applicable for corporations traded on the exchange.

(3) The regulations of the Capital Markets Board pertaining to investment companies are reserved.

##### Legal basis

**ARTICLE 2** – (1) This Communiqué is prepared in reliance upon Articles 16 and 33 of Law numbered 6362.

##### Definitions

**ARTICLE 3** – (1) In the context of this Communiqué, following definitions shall apply:

- a. **Ministry:** Ministry of Customs and Trade,
- b. **Exchange:** Exchange defined in Article 3 of Law,
- c. **Emerging Companies Market:** The market defined in Exchange Regulations,
- ç. **Controlling shareholder:** Persons and legal entities bearing the control of management specified in Article 26 of Law,
- d. **Publicly-Held Joint Stock Corporation or Corporation:** Joint stock corporations, the shares of which are offered to public or are deemed to be offered to public,
- e. **Issuer:** Legal entities, who issue capital market instruments, who apply to the Board for issue or whose capital market instruments are offered to public,
- f. **Law:** Capital Market Law,

- g. **Public Disclosure Platform (KAP):** The electronic system where information that has to be publicly disclosed according to legislation is transmitted and disclosed to public with electronic signature,
- ğ. **Board:** Capital Markets Board,
- h. **CRA:** Central Registry Agency Incorporation,
  - 1. **Platform:** Platform or market to which corporations are obliged to apply for trading of their shares within the framework of Article 16 of the Law, which is established by the exchange, and whose procedures and principles are determined by the exchange,
- i. **TTSG:** Turkish Trade Registry Gazette,
- j. **Authorized firm:** Investment firms authorized by the Board to provide custody services.

## **PART TWO**

### **Removal from the Scope of Law**

#### **General provisions**

**ARTICLE 4 – (1)** Corporations are required to apply to the Board as per the relevant regulations after they become aware that they have gained a publicly-held corporation status pursuant to Article 16 of the Law.

**(2)** As for the corporations which fail to apply for trading of their shares on the exchange or to take a general assembly decision pursuant to and under article 5 of this Communiqué within maximum two years following the date of acquisition of a publicly-held corporation status, the Board will ex officio take necessary actions in accordance with the relevant articles of this Communiqué for trading of their shares on the exchange or for their removal from the scope of the Law, without any further demand of the corporation.

#### **Removal from the scope of Law by a general assembly decision:**

**ARTICLE 5 – (1)** Among corporations which are deemed to be publicly-held because of the number of shareholders, those which do not prefer that their shares be traded on the exchange, may be excluded from the scope of this Law with a general assembly decision.

**(2)** Corporations apply to the Board with the documents listed in Annex-1 prior to the date of announcement of the agenda of the general assembly meeting to be held for removal from the scope of the Law. Agenda of the general assembly meeting where the proposed decision of removal from the scope of the Law will be discussed is required to be announced within ten business days following the date of receipt by the corporation of the relevant decision of the Board, and the relevant general assembly meeting is required to be held within two months.

**(3)** Agenda of the general assembly meeting contains the following as a single agenda item:

- a) Removal from the scope of the Law on the ground that the corporation which does not prefer that their share be traded on the exchange; and
- b) That shareholders other than those who vote for the decision of removal from the scope of the Law, also including those who are not present in the relevant general assembly meeting, have the retirement right; and
- c) Price of use of the retirement right, duration of use, and modus operandi of the retirement right.

(4) The price of use of the retirement right is determined according to the appraisal report prepared in accordance with the relevant regulations of the Board and containing a statement that this price is fair and reasonable. The appraisal report is relied upon the financial statements of the corporation prepared in accordance with the relevant regulations of the Board as of a date not being earlier than nine months prior to the date of application to the Board, and audited by an independent auditor, or in the case of interim financial statements, specially audited by an independent auditor. The appraisal report is published in the corporation's internet site together with the general assembly meeting agenda, and is further published as an attachment of the general assembly meeting agenda within the regulations of the Board pertaining to public disclosure of material events. In the announcement of the general assembly meeting agenda in the TTSG, it is adequate to announce only where the appraisal report is published.

(5) In the said general assembly meeting, it is required to take a decision with affirmative vote of at least two-thirds of the total number of shareholders or with affirmative vote of three-fourths of total number of votes. The shareholders other than those who vote for the decision of removal from the scope of the Law are allowed to use their retirement right from the corporation without any further condition. Duration of use of the retirement right starts within maximum six business days following the date of the general assembly meeting, and lasts for at least two years. The regulations of the Board pertaining to the retirement are applicable by analogy on all matters pertaining to the use of the retirement right on which this Communiqué remains silent.

(6) Corporations submit to the Board their general assembly meeting minutes and the list of attendants thereof within six business days following the date of registration thereof. The notice of the Board as to removal of the corporation from the scope of the Law is separately registered in the trade registry and announced in TTSG by the corporation.

**Removal from the scope of the Law due to shareholder structure:**

**ARTICLE 6 – (1)** Corporations which demonstrate and prove by a list of attendees belongs to a general assembly meeting held within the last six months prior to the date of application:

- a) that more than ninety-five percent of their capital is owned and held by maximum fifty shareholders or
- b) that more than fifty percent of their capital is directly and/or indirectly owned and held by provincial administrations, municipalities or other public authorities and bodies

are excluded from the scope of the Law upon an application to the Board with the documents listed in Annex-1 with a claim of removal from the scope of the Law, on condition that their application is found acceptable by the Board.

(2) The application to be filed for removal from the scope of the Law as per the preceding first paragraph may also be made in reliance upon other information and documents besides the list of attendees. In this case, an expert report is required to be issued with respect to the determination to be made based on the relevant document. The provisions of Article 7 are applied by analogy on preparation of the expert report.

(3) Corporations which limits the shareholder status only with persons having certain characteristics and allows the transfer of shares only to the persons having such characteristic through their articles of association, are excluded from the scope of the Law upon an application to the Board with the documents listed in Annex-1 with a claim of removal from the scope of the Law, on condition that their application is found acceptable by the Board.

#### **Removal from the scope of the Law due to number of shareholders:**

**ARTICLE 7 – (1)** Corporations which have it determined that the total number of their shareholders is below five hundred through an expert report appointed by the competent court and in reliance upon:

- a) list of attendees;
- b) share register;
- c) accounting records and documents pertaining to distribution of dividends;
- ç) records and documents relating to shareholders who apply at the time of foundation and at the subsequent capital increases,

and similar other documents and transactions relating to relations of the corporation with its shareholders, if any, are excluded from the scope of the Law upon an application to the Board with the documents listed in Annex-1 with a claim of removal from the scope of the Law, on condition that their application is found acceptable by the Board.

(2) The list of attendees relied upon in the expert report is required to have been issued no later than one year before the date of application, and the share register is required to be updated.

(3) The expert report must have been prepared and issued within the last three months prior to the date of application, and in the result section thereof:

- a) it must be stated that as a result of review of all of the documents listed in the first paragraph hereof, it is determined that the number of shareholders of the corporation is less than five hundred as of the date of report; and
- b) the reasons of non-use of the documents not used in the review must be clarified.

#### **Removal from the scope of the Law due to size of financial statement items:**

**ARTICLE 8 – (1)** Corporations:

- a) total sum of assets of which is less than ten million Turkish Lira, or
- b) Total sum of other revenues, excluding net sales revenues, and net sales revenues both of which are less than five million Turkish Lira, or
- c) total sum of registered capital and legal reserves of which is completely unreciprocated

according to their financial statements of the last two years prior to the date of application, which are prepared in accordance with the pertinent regulations of the Board and subject to special independent audit, are excluded from the scope of the Law upon an application to the Board with the documents listed in Annex-1 with a claim of removal from the scope of the Law, on condition that their application is found acceptable by the Board.

(2) If the corporation's yearly financial statements have already been audited by an independent auditor, special independent audit is not required.

**Removal from the scope of the Law due to events regarding going-concern status:**

**ARTICLE 9 – (1)** As for the going-concern status, corporations:

- a) which are ex officio adjudged bankrupt or determined to be adjudged bankrupt by the relevant trade registry directorates within the frame of the Ministry's regulations and are announced so in TTSG; or
- b) which voluntarily or non-voluntarily go into liquidation, also including liquidation upon bankruptcy, or
- c) which are the subject of an adjudication order

are excluded from the scope of the Law upon an application to the Board with a copy of TTSG edition proving the above mentioned facts, and a copy of the court judgment pertaining thereto, and if any, a copy of the decision of the authorized body, and their application is found acceptable by the Board.

**Ex officio removal from the scope of the Law:**

**ARTICLE 10 - (1)** If and when it is determined by the Board that any one or more of the conditions of removal from the scope of the Law, as described in Articles 6, 7, 8 and 9 of this Communiqué have been satisfied in a particular case, then and in this case, the relevant corporation may be ex officio excluded by the Board from the scope of the Law, without seeking for an expert report, a special independent audit report or other information and documents.

(2) Corporations which do not meet any one of the conditions described in Articles 5, 6, 7, 8 and 9 of this Communiqué, but nevertheless fail to make a timely application for trading their shares on the exchange may also be ex officio excluded by the Board from the scope of the Law.

(3) Corporations the field of business of which is to perform a business of privilege, and such privilege of which is abolished, or corporations the operating license of which is repealed pursuant to the applicable laws, may also be ex officio excluded by the Board from the scope of the Law, if they fail to change their fields of business within one year following the date of abolishment of the relevant privilege or repeal of the relevant operating license.

(4) Corporations which fail to receive the notices of the Board twice in succession due to “not found at address” will, if determined to be absent at the principal office address registered in the trade registry as a result of site survey to be conducted by the Board, be deemed inactive, and may be ex officio excluded by the Board from the scope of the Law.

(5) Corporations, the shares of which are permanently banned from trading and are decided to be delisted from the market or markets by the exchange, will also be ex officio excluded by the Board from the scope of the Law, if the exchange does not decide to re-list their shares within one year following the relevant decision of the exchange.

(6) Corporations which are delisted from the exchange with their own volition are excluded by the Board from the scope of the Law ex officio or upon their own demand, following completion of take-over-bidding process. Rights of the shareholders who do not respond to the bid within the validity time of take-over-bid arising out of the relevant regulations of the Board are, however, reserved.

(7) Corporations which are deleted from the trade registry due to merger, split-up or other reasons are deemed to have excluded from the scope of the Law as of the date of announcement of this event in TTSG.

(8) If the right of removal from the corporation or sell out right pursuant to the relevant regulations of the Board are arised, an application for removal from scope of the Law cannot be filed before the end of the periods of use of these rights.

(9) Before the corporations are ex officio excluded by the Board from the scope of the Law, the Board may hold the controlling shareholders of corporation obliged to make a take-over

bid for other shares of the corporation. In such take-over bids, the price is determined according to the appraisal report to be issued as per the relevant regulations of the Board. Financial statements to be relied upon in the appraisal report cannot be dated earlier than nine months prior to the date of decision of the Board. The regulations of the Board pertaining to take-over-bids are applicable by analogy on all and any matters relating to take-over-bids on which this Communiqué remains silent.

### **Regaining the publicly-held corporation status:**

**ARTICLE 11 – (1)** Corporations, the number of shareholders of which is above five hundred, but which are nevertheless excluded from the scope of the Law due to satisfaction of any one of the conditions described in Articles 6, 8 and 9 of this Communiqué, are not deemed to have regained their publicly-held corporation status as long as they continue to satisfy any one of the conditions of removal from the scope of the Law as listed in the said articles. Within ten business days after they become aware of the fact that they satisfy none of the conditions of removal from the scope of the Law as listed in the said articles, such corporations are obliged to apply to the Board with the documents listed in Annex-2.

(2) Corporations which are excluded from the scope of the Law pursuant to Article 7 of this Communiqué are obliged to apply to the Board in accordance with the relevant regulations of the Board, if and when it is determined that the number of their shareholders has re-exceeded five hundred.

(3) Corporations which are excluded from the scope of the Law pursuant to Article 5 of this Communiqué are not deemed to have regained their publicly-held corporation status as long as they do not re-offer their shares to public within the frame of the relevant regulations of the Board. The right of these corporations to apply for re-inclusion in the scope of the Law is, however, reserved.

### **Removal of other Issuers from the scope of the Law:**

**ARTICLE 12 – (1)** Issuers which have issued capital market securities other than shares, are deemed to have been excluded from the scope of the Law upon completion of redemption or mandatory transactions that substitute redemption relating to the relevant capital market securities.

**PART THREE**  
**Obligation of Trading on the Exchange**

**Obligation of trading on the exchange:**

**ARTICLE 13 – (1)** Corporations which have not applied to the exchange for trading of their shares pursuant to second paragraph of Article 4 of this Communiqué and which do not meet any one of the conditions listed in Articles 5, 6, 7, 8 and 9 of this Communiqué are obliged to apply to the exchange for trading of their shares in the Platform before the end of two years as specified in Article 4 of this Communiqué. If any such corporation does not make a timely application to the exchange, the Board may ex officio decide that their shares will be traded in the Platform without any demand of them.

**(2)** Even if a corporation meets any one of the conditions of removal from the scope of the Law as listed in Articles 6, 7, 8 and 9 of this Communiqué, the Board may ex officio decide that its shares will be traded in the Platform upon an application or without any demand.

**(3)** The rights of the corporations mentioned in the first and second paragraphs to apply for trading of their shares in another market are, however, reserved.

**(4)** Corporations the shares of which will be traded in the Platform:

- a)** are required to ensure that their articles of association does not contain any clause restricting the transfer or circulation of their shares to be traded on the exchange or precluding the shareholder to use their rights; and
- b)** are required to be registered in CRA as an issuing member, and their shares are required to be dematerialized on book-entry basis; and
- c)** are required to complete their membership process in KAP.

**(5)** Following completion of the process mentioned in subparagraph (a) of fourth paragraph, the corporations apply to the exchange for trading of their shares and to the Board for approval of their prospectus prepared in accordance with the relevant regulations of the Board. The prospectus required to be issued by corporations the shares of which will be traded in the Platform is required to be prepared as one single document.

**(6)** Prospectus approved by the Board, last version of the articles of association, and information about completion of membership process in CRA will, within fifteen business days following the date of receipt of the prospectus, be announced within the frame of the regulations of the Board pertaining to prospectus.

**(7)** The provisions valid and enforceable for corporations the shares of which are traded on the Emerging Companies Market will be applied by analogy on all and any matters on which

the capital markets legislation remains silent with respect to corporations the shares of which are traded in the Platform.

**(8)** The Board is authorized to permanently ban the trading of shares of corporations the shares of which are traded in the Platform, and to exclude them from the Platform. The relevant exchange permanently excludes the corporation's shares from the Platform upon demand of the Board.

**(9)** Shares may be started to be traded on the exchange only if and when they are fully or partially dematerialized on book-entry basis by the corporation and/or the authorized institution in the status of trading on the exchange in the account of beneficiaries thereof within the frame of principles to be determined by the exchange.

**(10)** The corporation's board of directors is responsible for performance of transactions required under this Article.

#### **PART FOUR**

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

**Coefficient:**

**ARTICLE 14 – (1)** Amounts given in Article 8 of this Communiqué may be re-determined by using the revaluation coefficient published by the Ministry of Finance every year.

**Repealed legislation:**

**ARTICLE 15 – (1)** The Communiqué on Principles Regarding Issuers' Exemption Conditions and Deregistration from the Board published in the Official Gazette edition 26810 dated 8/3/2008 (Serial IV, No. 39) and the Communiqué on Principles of Publicly-held Corporations to be Traded on Free Trade Platform of the Board published in the Official Gazette edition 28201 dated 11/2/2012 (Serial IV, No. 58) are hereby repealed.

**(2)** All references made to the Communiqué on Principles Regarding Issuers' Exemption Conditions and Deregistration from the Board (Serial IV, No. 39) and the Communiqué on Principles of Publicly-held Corporations to be Traded on the Free Trade Platform (Serial IV, No. 58) in other regulations of the Board will be deemed to have been made to this Communiqué.

**Finalization of current applications:**

**TEMPORARY ARTICLE 1 – (1)** Applications for removal from the scope of the Law, which not yet determined by the Board as of the effective date of this Communiqué, will be finalized and responded according to the provisions of this Communiqué.

**Corporations publicly held as of the date of publication of the Law:**

**TEMPORARY ARTICLE 2 – (1)** For the corporations which are publicly held as of the date of publication of the Law, but the shares of which are not traded on the exchange, the period of time mentioned in second paragraph of Article 4 of this Communiqué starts as of 30/12/2012.

**Corporations the number of shareholders of which is between two hundred and fifty and five hundred:**

**TEMPORARY ARTICLE 3 – (1)** Corporations which are deemed to be publicly held due to the number of their shareholders being between two hundred and fifty and five hundred pursuant to the repealed Capital Market Law no. 2499 dated 28/7/1981 apply to the Board for removal from the scope of the Law due to the number of shareholders being below five hundred within the frame of the principles set forth in Article 7 of this Communiqué. The rights of these corporations to apply pursuant to other conditions listed in this Communiqué pertaining to removal from the scope of the Law are, however, reserved.

**(2)** The Board may, within the frame of principles listed in Article 10 of this Communiqué, decide ex officio to exclude the corporations as described in first paragraph hereof from the scope of the Law. Before the corporations are ex officio excluded from the scope of the Law, the Board may hold the controlling shareholders of these corporations obliged to make a take-over bid for other shares.

**(3)** The rights of these corporations to apply to the exchange for trading of their shares are, however, reserved.

**Corporations excluded from exchange markets:**

**TEMPORARY ARTICLE 4 – (1)** Corporations the shares of which are permanently banned from trading on the exchange and are excluded from the exchange markets prior to the effective date of this Communiqué and are still banned and excluded are excluded from the scope of the Law by the Board ex officio at the end of one year following the effective date of this Communiqué.

**Effective date:**

**ARTICLE 16 - (1)** This Communiqué will become effective as of the date of publication.

**Enforcement:**

**ARTICLE 17 – (1)** The provisions of this Communiqué will be enforced by the Board.

**Documents To Be Submitted In Attachment to  
The Application To Be Made For Removal  
From the Scope of the Law**

- (1) Informations introducing the issuer;
- (2) Articles of association, containing all amendments and additions made thereto, combined in the form of a single text, signed by authorized signatories of the corporation;
- (3) Original copy or notary-certified copy of the decision of the board of directors relating to removal from the scope of the Law;
- (4)
  - a) For applications for removal from the scope of the Law by a decision of the general assembly of shareholders within the frame of Article 5 of this Communiqué, the appraisal report determining the price of use of the retirement right, and the draft agenda of meeting of the general assembly of shareholders relating thereto; and
  - b) For applications for removal from the scope of the Law due to the shareholder structure within the frame of Article 6 of this Communiqué, the list of attendants of the relevant meeting of the general assembly of shareholders or the expert report relating thereto; and
  - c) For applications for removal from the scope of the Law due to the number of shareholders within the frame of Article 7 of this Communiqué, the expert report relating thereto; and
  - d) For applications for removal from the scope of the Law due to size of financial statement items within the frame of Article 8 of this Communiqué, financial statements of the last two years prior to the date of application, prepared in accordance with the pertinent regulations of the Board and audited by an independent audit firm; and
- (5) If deemed necessary by the Board, documents confirming the information supplied, and other information and documents that may be requested by the Board; and
- (6) A notary-certified signature circular.

**Documents To Be Submitted In Attachment to  
The Application To Be Made For Regaining of  
Publicly-held Corporation Status**

- (1)** Corporation's:
  - a)** Name;
  - b)** Central Registry System number;
  - c)** Date of foundation;
  - d)** Fields of business and actual activities;
  - e)** Whether it is subject to registered capital system or not, and its paid/issued capital;
  - f)** Number of known shareholders, and documents substantiating the determination of the number of shareholders;
  - g)** Name and surname or title, percentages and amounts of shares, and if any, privileges granted to share groups, of the shareholders known to hold five percent or more of the capital of the corporation;
  - h)** Information on members of the board of directors (Name and surname; for legal entities, title and person registered in the name of that legal entity; percentage of shares, if any; date of election and term of office); and
  - i)** Notary-certified signature circular; and
- (2)** Articles of association, containing all amendments and additions made thereto, combined in the form of a single text, signed by authorized signatories of the corporation; and
- (3)** Statement as to determination of regaining of the publicly-held corporation status, and information and documents substantiating this status; and
- (4)** Meeting minutes and lists of attendants of general assembly meeting of the last two years; and
- (5)** Financial statements of the last two years; and
- (6)** If deemed necessary by the Board, documents confirming the information supplied, and other information and documents that may be requested by the Board.