

# COMMUNIQUÉ ON MERGER AND DEMERGER

(II-23.2)

(Published in the Official Gazette edition 28865 on 28.12.2013)

## List of Amendments:

- 1- Communiqué (II-23.2.a) Amending Communiqué II-23.2 on Merger and Demerger published in the Official Gazette edition 29280 on 27.02.2015.
- 2- Communiqué (II-23.2.b) Amending Communiqué II-23.2 on Merger and Demerger published in the Official Gazette edition 31140 on 30.05.2020.

## FIRST CHAPTER

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

#### Purpose

**ARTICLE 1** – (1) The purpose of this Communiqué is to regulate the procedures and principles to comply with merger and demerger transactions in which at least one of the parties is a publicly held corporation, according to the Capital Markets Law dated 6 December 2012 and numbered 6362.

#### Scope

**ARTICLE 2** – (1) This Communiqué covers merger transactions between publicly held corporations and stock corporations, merger transactions between publicly held corporations and private companies and cooperatives provided that the publicly held corporations are acquiring corporations, and demerger transactions to which publicly held corporations are party.

(2) Provisions of the Communiqué shall apply by comparison to the corporations and the cooperatives which are party to merger and demerger transactions with publicly held corporations.

#### Legal Basis

**ARTICLE 3**– (1) This Communiqué is based on Article 23 and the third paragraph of Article 130 of the Capital Markets Law numbered 6362.

#### Definitions

**ARTICLE 4** – (1) For the purpose of this Communiqué, following definitions shall apply:

- a) Merger: Merger through acquisition or establishment of a new company;
- b) Special purpose Acquisition Company: A corporation, bearing the phrase “special purpose acquisition company” in its title, which is established for the purpose of offering to public at least half of shares representing its post-public offering capital, and merging thereafter with a non-publicly held corporation, in line with a predetermined timing and investment strategy; and has no other activity than satisfaction of the aforementioned purpose; and

undertakes to use maximum ten percent of the proceeds of public offering for activities specified in its Articles of Association and/or in its prospectus issued on account of public offering and to return the balance thereof to non-founding partners in the case of failure of the intended merger within the predetermined period of time and to that end, to invest the balance in any one or more of such investment instruments as deposits, government debt securities and similar other investment instruments; and discloses its cash management policy required therefor to public in its prospectus issued due to public offering; and will execute within the frame of principles set forth in the prospectus the voluntary repurchase of shares owned by shareholders using negative vote in the general assembly meeting where the merger transaction is approved, and of shares owned by all shareholders other than founders in the case of dissolution of the special purpose acquisition company;

- c) Exchange: Systems and market places defined in Article 3 of the Law numbered 6362;
- ç) Demerger: Split-up and spin-off,
- d) Exchange rate: The rate demonstrating the share amount to be obtained by shareholders of corporations which are party to merger or demerger, corresponding to one share they own, as a result of merger or demerger,
- e) Merger through acquisition: Termination without liquidation of at least one corporation by way of transferring its assets and liabilities in whole to another corporation and granting of the shares of the acquiring corporation in an amount to be calculated as per a determined exchange rate to the shareholders of the acquired corporation,
- f) Financial reports: Reports consisting of financial statements, annual reports and statements of liability,
- g) Financial statements: statement of financial position, comprehensive income statement, cash flow statement and statement of changes in equity, together with footnotes thereof;
- ğ) Real estate appraisal corporation: Corporations the name of which are listed within the corporations to render appraisal service on real estate, rights on real estate and real estate projects in accordance with capital markets legislation,
- h) Publicly held corporations: Joint stock corporations the shares of which are offered to public or are deemed to be offered to public
- ı) Spin-off through share transfer to subsidiaries: Spin-off where the demerged corporation invests its assets subject to demerger to another corporation as capital in kind and the demerged corporation becomes a shareowner in the share capital of the acquired corporation in consideration of the transfer,
- i) Law: Capital Markets Law dated 6 December 2012 and numbered 6362,
- j) PDP: Public Disclosure Platform,
- k) Spin-off: Spin-off through share transfer to subsidiaries and shareholders,
- l) Board: Capital Markets Board,
- m) Securities: Securities defined in Article 3 of the Law,

- n) Spin-off through share transfer to shareholders: Spin-off in which one or more parts of the corporation assets are transferred to another corporation or corporations which are either existing or to be established, and the shareholders of the demerged corporation, which shall not terminate, become shareholders of the acquiring corporation or corporations in consideration of the transferred asset parts,
- o) Corporation: Commercial corporations,
- ö) Split-up: Transfer of all assets of the demerged corporation to at least two corporations either currently existing or to be established, upon termination of the demerged corporation, and the shareholders thereof become the shareholders of the acquiring corporation,
- p) TCC: Turkish Commercial Code dated 13 January 2011 and numbered 6102,
- r) Merger through new establishment: Termination without liquidation of two or more corporations by way of transferring the entirety of their assets and liabilities to a new company to be established and granting to shareholders of the terminated corporation of shares in the new company in an amount to be calculated as per an exchange rate corresponding to the shares they owned,
- s) Managing body: Board of directors in joint stock corporations and the cooperatives, manager or managers in limited liability corporations, manager in private corporations and limited partnerships divided into shares.
- ş) (Added: OG 30.05.2020 - 31140) Management control: Directly or indirectly holding over fifty percent of the voting rights in a publicly held corporation alone or with persons acting in concert, holding privileged shares giving the right to elect the simple majority of the members of the board of directors or to nominate said number of board of directors members at the general assembly.

## **SECOND CHAPTER**

### **General Principles**

#### **Application to the Board for approval of the announcement text and liability**

**ARTICLE 5 – (1)** It is mandatory to prepare the announcement text in merger and demerger transactions to which publicly held corporations are a party, the scope of which is disclosed to public by designation of the Board and to have it approved by the Board. Approval of the announcement text by the Board shall not be interpreted as a warranty by the Board confirming the information set forth in the announcement text, merger or demerger contract and demerger plan, merger or demerger report and opinion of expert institution which is the basis of the exchange rates. Provisions of liability in Article 32 of the Law shall apply for the announcement texts and other documentation required by the Board for the purpose of public disclosure.

**(2)** In order to start merger or demerger transactions, managing bodies of corporations party to such transactions must take resolutions in that respect.

**(3)** Following the resolution of the managing body, application to the Board for approval of the announcement text relating to the merger transaction shall be made with the documentation listed in Annex-1 of this Communiqué, and application to the Board for approval of the announcement text relating to the demerger transaction shall be made with the documentation

listed in Annex-2 of this Communiqué. Managing body resolutions regarding capital increase and amendment in articles of association, if any, shall also be submitted at the application to be made before the Board.

### **Financial statements to be taken as basis in merger and demerger transactions**

**ARTICLE 6 – (1)** In cases where the general assembly meeting in which the merger or demerger transaction shall be approved is made between the beginning of the fourth month following the end of the accounting period and the end of the eighth month, annual financial statements of the latest year shall be taken as basis in merger and demerger transactions. In cases where the general assembly meeting has been made on a date outside this period, interim financial statements to be drawn up to cover at least 6 months of period of operations and with a term between the date of financial statement and the general assembly not exceeding six months, shall be taken as basis.

**(2)** Financial statements to be taken as basis in merger or demerger transactions shall be drawn up in accordance with regulations of the Board on accounting standards, and special independent auditing shall be made thereon within the framework of independent auditing standards. However, in case that independent auditing on financial statements to be taken as basis in merger or demerger transactions has been made in accordance with the Board regulations, the condition of special independent auditing shall not be required. With respect to corporations being party to merger or demerger transactions which are liable to draw up consolidated financial statements, consolidated financial statements thereof; and in respect of the others, solo financial statements thereof, shall be taken as basis in merger or demerger transactions.

**(3)** In cases where an adverse opinion has been expressed or an opinion has been refrained from in the independent audit report regarding financial statements to be taken as basis in merger or demerger transactions, such financial statements shall not be taken as basis. In cases where matters which may affect the exchange rate have been detected as a result of the supervision made by the Board, despite the existence of an affirmative opinion in the independent audit report regarding the financial statements to be taken as basis in merger or demerger transactions, or where the independent audit report includes a conditional opinion with respect to matters which may affect the exchange rate, financial statements shall be corrected and independent audit report shall be drawn up again.

**(4)** In case of a material change in the financial positions and the value of assets of the corporations being party to merger or demerger transactions, which may affect the exchange rate appears between the date of the financial statements to be taken as basis in merger or demerger transactions and the date on which merger or demerger contract or demerger plan has been executed, an additional report shall be drawn up by the independent audit institution indicating the effect of such change on the financial statements to be taken as basis in merger or demerger transactions. In this context, documents which have been submitted to the Board and which are required to be updated shall be drawn up again and submitted to the Board.

### **Opinion of expert institution**

**ARTICLE 7 – (1)** An expert institution report shall be drawn up with the purpose of determining the value and the exchange rate of the corporations being party to merger or demerger transactions or of the assets thereof as at the date of the financial statement to be taken

as basis in the transaction. It is mandatory that the report includes an opinion that the exchange rate is fair and reasonable. With respect to preparation of the opinion of the expert institution, at least three valuation methods shall be considered by considering the qualifications of the related corporations.

**(2)** In valuation activities, regulations of the Board with regard to valuation shall be taken as basis.

**(3)** In case that current market values of the real estate shall be used in forming the expert institution opinion, current market values of such real estate shall be determined by the real estate appraisal corporations within the framework of relevant regulations of the Board. With respect to real estate, in cases where there is a real estate appraisal report drawn up by real estate appraisal corporations within the framework of the relevant regulations of the Board, it is mandatory to take this report into consideration during the preparation of the expert institution opinion.

### **Public disclosure**

**ARTICLE 8 – (1)** Matters set forth below, with respect to merger and demerger transactions, shall be disclosed to public, along with relevant information and documentation, in accordance with the regulations of the Board on disclosure of material events, at PDP and the corporate websites of relevant corporations in case where at least one of the parties of the transaction is a corporation the shares of which are admitted to trading in the exchange; and in the websites of the Board and of the relevant corporations, if any, for a publicly held corporation the shares of which are not admitted to trading in the exchange:

- a)** Resolution taken by the managing body with respect to merger or demerger,
- b)** Application to the Board regarding the merger or demerger transaction,
- c)** Execution of the opinion of expert institution,
- ç)** Execution of the contract on merger or demerger or the demerger plan,
- d)** Preparation of the report on merger or demerger.

**(2)** Following documents shall be disclosed to public, at least 30 days before the date of the general assembly meeting in which the merger or demerger transaction shall be approved, at PDP and the corporate websites of the relevant corporations in case where at least one of the parties of the transaction is a corporation the shares of which are admitted to trading on the exchange; and in the websites of the Board and of the relevant corporations, if any, for a publicly held corporation the shares of which are not admitted to trading on the exchange:

- a)** Announcement text approved by the Board,
- b)** Merger contract or demerger contract or demerger plan,
- c)** Merger report or demerger report,
- ç)** Financial reports of the last three years,
- d)** Expert institution report,
- e)** Estimated opening balance sheet after the merger,

f) Independent audit reports of the last three years, if any,

g) Interim financial statements, if any,

ğ) Real estate appraisal reports, if any.

(3) Information and documentation disclosed in accordance with the first and second paragraphs shall be kept at least for 5 years in the corporate websites of the relevant corporations.

### **THIRD CHAPTER**

#### **Principles on Merger**

##### **Merger contract and merger report**

**ARTICLE 9 – (1)** A merger contract consisting of the minimum conditions listed in Annex-3 shall be drawn up and executed by the managing bodies of the corporations participating the merger.

(2) A merger report consisting the minimum items listed in Annex-4 shall be drawn up by the managing bodies of the corporations participating the merger. Merger report may be drawn up together by the managing bodies of the corporations which are parties to the merger.

##### **Changes in financial position**

**ARTICLE 10 – (1)** In cases where a material change in the financial position of any of the corporations participating the merger occurs between the execution date of the merger contract and date on which such contract shall be submitted for the approval of the general assembly, the managing body of the relevant corporation shall notify this position in writing to its own general assembly, managing bodies of the corporations participating the merger and the Board. In this case, managing bodies of corporations participating the merger shall analyze as to whether the merger contract shall be amended or the merger shall be abandoned. In case that it is resolved to abandon the merger or amend the merger contract as a result of this analysis, the proposal to submit the merger contract for approval of the general assembly shall be withdrawn. In case that it has been resolved to amend the merger contract, the merger contract and the information and annexes thereto shall be drawn up over and an application shall be made to the Board. In case that it has been resolved that an update of the merger contract is not required, such resolution, together with its grounds, shall be submitted to the shareholders for information in the general assembly as a separate agenda item before the agenda item according to which the merger contract shall be discussed.

##### **Protection of shareholders**

**ARTICLE 11 – (1)** Shareholders of the acquired corporation shall have the right to request the shares and rights in the acquiring corporation in the value corresponding to the shares and rights they owned in the acquired corporation. The cases where corporations being party to the merger have cross shareholding, acquired corporation or acquiring corporation hold its own shares, acquired corporation is shareholder in the acquiring corporation or acquiring corporation is shareholder in the acquired corporation and similar cases shall be taken into account in calculation of the right of request.

(2) In designation of the exchange rates of the corporation shares, an adjustment payment may be required within the framework of Article 140 of the TCC, provided that corporation shares

allocated to the shareholders of the acquired corporation shall not exceed one tenth of their values which have been taken as basis in the merger transaction.

(3) In consideration of the privileged shares existing in the acquired corporation, a consideration shall be designated in the acquiring corporation by taking the rights in equivalent value or opinion of expert institution into account. In so far, it is possible to provide a different privilege or to provide consideration payment and a different privilege at once. In respect of the acquiring publicly held corporations, Board's regulations on appraisal right are reserved with regard to the transactions which cause to form new privileges or to change the scope and subject of the current privileges.

(4) Acquiring corporation shall be required to provide equivalent rights to holders of usufruct rights of the acquired corporation or to purchase the usufruct rights in consideration of their value designated considering the opinion of the expert institution.

### **Special events relevant to the merger**

**ARTICLE 12 – (1)** A corporation in liquidation may participate in the merger provided that the distribution of its assets have not been initiated and that it is the acquired corporation.

(2) A corporation which has losses in previous periods according to financial statements which are the basis in merger, may be merged only with a corporation the shareholder's equity of which shall cover such losses of previous periods.

(3) In case that appraisal allowance is stipulated in the merger contract within the framework of Article 141 of the TCC; it is possible to designate the appraisal allowance in Turkish Lira denominated cash, in securities or partially in cash and partially in securities. However, it is mandatory to pay the appraisal allowance in cash, upon request of the shareholders. In case that the appraisal allowance has been designated in securities either wholly or partially, these must be securities admitted to trading on the exchange. In respect of the unit price or exchange rate to be taken as basis for the securities proposed as appraisal allowance and the determination of this unit price or exchange rate, opinion of the expert institution shall be taken as basis and the calculated unit price or exchange rate shall be disclosed in the announcement text.

(4) In cases where number of the corporations being party to the merger is two, a publicly held corporation the shares of which have been admitted to trading on the exchange and a corporation the shares of which are not admitted to trading on the exchange shall not fulfill a merger transaction where;

a) The capital of a publicly held corporation shares of which have been admitted to trading on the exchange, increases by more than 100%, in a merger through acquisition;

b) The shares to be allocated to shareholders of the publicly held corporation the shares of which have been admitted to trading on the exchange constitutes less than half of the share capital of the new company to be established, in a merger through establishment.

(5) In cases where number of the corporations being party to the merger is more than two, a publicly held corporation the shares of which have been admitted to trading on the exchange and a corporation the shares of which are not admitted to trading on the exchange shall not fulfill a merger transaction where;

a) The capital increase amount to be fulfilled for each acquired corporation the shares of which are not admitted to trading on the exchange exceeds the share capital before merger of the publicly held corporation the shares of which have been admitted to trading on the exchange, in a merger through acquisition.

b) The shares to be allocated to the shareholders of the publicly held corporation the shares of which have been admitted to trading on the exchange constitute less than the share amount within the share capital of the new company, to be granted to the former shareholders of each corporation being party to the merger, in a merger through new establishment.

**(6) (As amended: OG 27.02.2015 – 29280)** In mergers where a corporation the shares of which are not admitted to trading on the exchange is the acquiring corporation, the acquiring corporation must not fulfill the conditions on exclusion from the scope of the Law listed in second paragraph of Article 5 of the Communiqué (VII-128.1) on Shares, published in the Official Gazette edition 28685 on 22.06.2013, except where the sum of its capital and its legal reserves are without provisions. Pre-merger shares of the company acquiring as a result of merger, may not be sold in the stock exchange within 6 months following the date the shares of the company have started to be traded in the stock exchange. Out of these shares, a portion corresponding to maximum half of the amount of shares in actual circulation of the acquired corporation the shares of which are admitted to trading on the exchange, as of the date of the announcement of the merger to the public, may be sold in the stock exchange during the period between the 6<sup>th</sup> and 12<sup>th</sup> months following the date the corporation's shares have started to be traded in the stock exchange, and again a portion of the same amount may be sold in the stock exchange during the period between the 12<sup>th</sup> and 24<sup>th</sup> months following the date the corporation's shares have started to be traded in the stock exchange. In accordance with this paragraph, the rates of shares owned and held in the company the shares of which are not admitted to trading in the stock exchange, as of the date of the general assembly meeting where the merger transaction is discussed, shall be taken into consideration in determining the amount of shares that may be sold in the stock exchange by each shareholder of a corporation the shares of which are not admitted to trading in the stock exchange.

**(7)** In cases where shares within the scope of the sixth paragraph of this Article have been sold outside the exchange within the relevant periods, the limitations set forth under the sixth paragraph regarding the sale of such shares at the exchange shall be applicable.

**(8)** Fourth, fifth, sixth and seventh paragraphs of this Article shall not apply to **(Additional phrase: OG 30.05.2020 – 31140)** corporations the shares of which are traded on the exchange where the state institutions and organizations hold management control, and special purpose acquisition companies.

### **Simplified Merger**

**ARTICLE 13 – (1)** Simplified merger procedure may apply in cases where, one or more share capital companies are acquired by a publicly held corporation which owns 95% or more their shares granting voting rights, and it is not required to grant shares of the publicly held corporation to the shareholders of the acquired corporation, or where it is required to grant shares of the publicly held corporation to the shareholders of the acquired corporation but cash equivalent of the shares of the publicly held corporation are offered to the shareholders of the acquired corporation as a right of choice.



(2) Independent audit report, merger report and opinion of expert institution shall not be required in simplified mergers . Further it shall not be mandatory to submit the merger contract to the approval of the general assembly.

(3) A separate announcement text, the content of which shall be designated by the Board, shall be prepared with respect to simplified merger transactions.

## **FOURTH CHAPTER**

### **Principles on Demerger**

#### **Demerger transactions**

**ARTICLE 14 – (1)** Joint stock corporations which acquire elements of assets of publicly held corporations in transactions of split up- or spin-off through share transfer to its shareholders shall be included within the scope of the Law. As to spin-off through share transfers to subsidiaries, the publicly held corporation which is demerged and the shares of which are not admitted to trading on the exchange, shall draw up its financial statements in accordance with financial reporting standards to which publicly held corporations the shares of which are admitted to trading on the exchange are subject and shall disclose them to public.

(2) Demerger transactions of publicly held corporations shall be made by way of disposing off a production facility or an enterprise in parts, in a way not to prevent the corporation from conducting its activities of production or service rendering.

#### **Demerger contract or plan and demerger report**

**ARTICLE 15 – (1)** In split-up or spin-off transactions, in case assets are transferred to existing corporations, a demerger contract which is executed by the managing bodies of all corporations that are party to the demerger, and which includes the minimum items set forth under Annex-5 shall be drawn up, and where assets are transferred to new a company or companies to be established, a demerger contract which is executed by the managing body of the demerged corporation and which includes the minimum items set forth under Annex-6 shall be drawn up.

(2) A demerger report including the minimum items stated under Annex-7 shall be drawn up by managing bodies of corporations that are party to the demerger. The demerger report may be drawn up together by the managing bodies of corporations being party to the demerger.

#### **Changes in financial position**

**ARTICLE 16 – (1)** In case that a material change occurs in the assets subject to transfer or in financial positions of corporations being party to demerger, between the execution date of the demerger contract or demerger plan and the date of submission to the approval of the general assembly, managing body of the relevant corporation shall notify this matter in writing to its own general assembly, to managing bodies of the other corporations being party to the demerger and to the Board. In this case, managing bodies of corporations being party to the demerger shall analyze as to whether demerger contract or demerger plan shall be amended or the demerger shall be abandoned. In case that it is resolved to abandon the demerger or amend the demerger contract or the demerger plan as a result of this analysis, the proposal to submit the demerger contract or demerger plan for approval of the general assembly shall be withdrawn.

In case that it has been resolved to amend the demerger contract or demerger plan, the demerger contract and the information and annexes thereto shall be drawn up again, and an application shall be made to the Board. In case that it has been resolved that the update of the demerger contract or demerger plan is not required, such resolution, together with its grounds, shall be submitted to the shareholders for information in the general assembly as a separate agenda item before the agenda item according to which the demerger contract or demerger plan shall be discussed.

### **Simplified Demerger**

**ARTICLE 17 – (1)** In spin-offs through share transfer to subsidiaries, simplified merger procedure may apply in cases where the demerged publicly held corporation owns, as a result of the transaction, at least 95% of the shares granting voting right of the acquiring corporation.

**(2)** Independent audit report and opinion of expert institution shall not be required in simplified demergers.

**(3)** In case the assets are transferred to an existing corporation within the framework of the first paragraph; the existing corporation must have been established within one year before the date of the application to the Board for demerger transaction and must not yet have initiated the production of goods and services.

**(4)** A separate announcement text, the content of which shall be designated by the Board, shall be prepared with respect to simplified demerger transactions.

### **Protection of shareholders**

**ARTICLE 18 – (1)** Shareholders of the demerged corporation shall have the right to request the shares and rights of the acquiring corporation in the value corresponding to the shares and rights they owned in the existing corporation.

**(2)** In split-up transactions or spin-off transactions through share transfer to shareholders; corporation shares may be allocated to shareholders of the demerged corporation;

**a)** Proportional to their shares existing in the demerged corporation, in all corporations being party to the demerger, or

**b)** At varying proportions according to the rate of their shares existing in the demerged corporation, in several or all corporations being party to demerger.

**(3)** Provisions of Article 11 of this Communiqué shall apply with respect to protection of shareholders in demerger transactions.

## **FIFTH CHAPTER**

### **Miscellaneous and Final Provisions**

#### **Notification to the Board**

**ARTICLE 19 – (1)** Publicly held corporations which are party to merger or demerger, shall submit to the Board within 6 business days, general assembly resolutions regarding the merger or demerger, resolutions of managing body regarding the simplified merger transactions, and as for the new company to be established in merger through capital increase and new

establishment, relevant announcements in Turkish Trade Registry Gazette regarding the registration and announcement thereof.

### **Being included within the scope of the Law and the issue document**

**ARTICLE 20 – (1)** Application to the Board shall be made in order to obtain the issue document, with the documentation stated under Annex-8 in cases set forth under the second paragraph of this Article, within 6 business days following the general assembly meetings in which merger contract or demerger contract or demerger plan have been approved, or following the Board approval on merger in simplified merger transactions.

(2) Information and documentation submitted to the Board shall be reviewed within the framework of the purposes and principles of the Law and issue document shall be granted for;

- a) The shares to be issued and the current shares representing share capital before merger in case that the acquiring corporation is not within the scope of the Law, in mergers through acquisition,
- b) The shares of the new company to be established as a result of the merger, in mergers through new establishment,
- c) Current shares of the corporation or corporations which acquire the elements of assets and their new shares to be issued, in a split-up to which publicly held corporations are party,
- ç) Current shares of the corporation or corporations which acquire the elements of assets and their new shares to be issued, in a spin-off through share transfer to shareholders, to which publicly held corporations are a party.

### **Board fee**

**ARTICLE 21 – (1)** In merger transactions, Board fee shall be charged at the rate designated in the Board’s regulations on share issues, within the framework of the principles set forth below.

a) In mergers through acquisition:

- 1) Over the closing price at the second session of the exchange on the date of the approval of the merger request by the Board, provided that it is not less than the nominal value of the shares to be issued representing the share capital increased due to the merger, in case that the shares of the acquiring publicly held corporation are admitted to trading on the exchange,
- 2) Over the nominal value of shares to be issued representing the share capital increased due to the merger, in case that the shares of the acquiring publicly held corporation are not admitted to trading on the exchange,
- 3) Over the market price to be calculated by considering the reference price to be announced by the exchange, provided that it is not less than the nominal value of the current share capital of the acquiring corporation and the nominal value of the shares to be issued representing the share capital increased, in case that the acquiring is not a publicly held corporation and the shares of the acquired publicly held corporation are admitted to trading on the exchange,

4) Over the nominal value of all shares of the acquiring corporation including those representing the increased share capital due to the acquisition, in case that the acquiring is not a publicly held corporation and the shares of the acquired publicly held corporation are not admitted to trading on the exchange.

**b)** In mergers through new establishment:

1) Over the market value to be calculated considering the reference price to be announced by the exchange, provided that it is not less than the nominal value of the shares representing share capital after merger, in case that the shares of the new company shall be admitted to trading on the exchange,

2) Over the nominal value of the shares representing share capital after merger, in case that the shares of the new company shall not be admitted to trading on the exchange.

**(2)** In demerger transactions, Board fee shall be taken at the rate designated in the Board regulations on share issues, within the framework of the principles set forth below. From corporations which acquire the elements of assets;

**a)** Over the closing price at the second session of exchange on the date of the approval of the demerger request by the Board, provided that it is not less than the nominal value of shares to be issued representing the share capital increased due to the assets acquired by the publicly held corporation the shares of which are admitted to trading on the exchange,

**b)** Over the market value to be calculated considering the reference price to be announced by the exchange, provided that it is not less than the nominal value of the current share capital of the corporations the shares of which are admitted to trading on the exchange and the nominal value of their shares to be issued representing the share capital increased due to the assets they have acquired,

**c)** Over the nominal value of shares to be issued to represent share capital increased due to the assets that corporations the shares of which are not admitted to trading on the exchange have acquired,

**ç)** Over the nominal value of the shares to be issued to represent the increased share capital due to the assets acquired by the corporations which shall become publicly held corporation as a result of the acquisition however the shares of which are not admitted to trading on the exchange.

**(3)** Board fee shall be deposited to the Board's account before the delivery of the approved announcement text.

**(4)** In respect of the Board fees to be taken over the reference price, payment shall be made over the nominal value of the shares before the delivery of the approved announcement text. The fee to be calculated over the difference between the reference fee and the nominal fee shall be deposited to the Board's account within 5 business days as of the date on which the reference fee has been announced by the exchange.

### **Repealed legislation**

**ARTICLE 22 – (1)** Communiqué on Principles on Merger Transactions (Serial: I, No: 31) of the Board published in the Official Gazette edition 25168 on 14 July 2003 has been repealed.

References made in other regulations of the Board to the Communiqué on Principles on Merger Transactions (Serial: I, No: 31) shall be deemed to be made to this Communiqué.

**Finalization of pending applications**

**TRANSITIONAL ARTICLE 1 – (1)** Applications which have not been resolved by the Board on the date of enactment of this Communiqué shall be finalized in accordance with the provisions of this Communiqué.

**Finalization of pending applications**

**TRANSITIONAL ARTICLE 2 – (1)** (Added: OG 27.02.2015 – 29280) Applications which have not been resolved by the Board on the date of enactment of this Article shall be finalized in accordance with the provisions of this Communiqué.

**Effective date**

**ARTICLE 23 – (1)** This Communiqué shall enter into force on the date of its publication.

**Enforcement**

**ARTICLE 24 – (1)** The provisions of this Communiqué shall be enforced by the Board.

## ANNEX/1

### INFORMATION AND DOCUMENTS REQUIRED IN APPLICATIONS ON MERGER TRANSACTION

1. Resolutions of the managing bodies regarding the merger,
2. Articles of association of the corporations being party to the merger,
3. Resolutions of the managing bodies regarding capital increase or amendment of articles of association,
4. Announcement text,
5. Issue document if any,
6. Merger contract,
7. Merger report which sets forth the legal and economic grounds of the merger,
8. Opinion of expert institution,
9. Financial statements and independent audit reports of the corporations being party to the merger, which are basis of the merger transaction,
10. Public accountant reports of the corporations being party to the merger transaction, which set forth that their share capital have been paid in,
11. In case where shareholders' equity has been valued with current value, appraisal reports which have been drawn up,
12. In case where appraisal allowance is required in the merger contract in accordance with Article 141 of the TCC, information on determination of the value of the appraisal allowance,
13. Information on determination of the equalization allowance planned to be paid in accordance with Article 140 of the TCC,
14. In cases where equal rights or an appropriate consideration have been granted in consideration of current privileged shares or usufruct rights, information consisting of the expert opinion on determination of such rights and considerations,
15. In mergers through new establishment, draft articles of association of the new company to be established,
16. In mergers through acquisition, information on the value of the shares to be granted to the shareholders of the acquired corporation or cash corresponding to the value of such shares,
17. Permission letter obtained from the Competition Authority if any, in case that the transaction is not a merger transaction in which the permission of Competition Authority is required, corporation's declaration thereon,
18. Approval letters to be obtained from other public authorities in accordance with the special legislations binding the corporations being party to the merger,
19. Other information and documents to be requested by the Board.

## ANNEX/2

### INFORMATION AND DOCUMENTS REQUIRED IN APPLICATIONS ON DEMERGER TRANSACTION

1. Resolutions of the managing bodies regarding the demerger,
2. Articles of association of the corporations being party to the demerger,
3. Resolutions of the managing bodies regarding capital increase or amendment of articles of association,
4. Announcement text,
5. Issue document if any,
6. Demerger contract or demerger plan,
7. Demerger report which sets forth the legal and economic grounds of the demerger,
8. Opinion of expert institution,
9. Financial statements and independent audit reports of the corporations being party to the demerger, which are basis of the demerger transaction,
10. Public accountant reports of the corporations being party to the demerger, which set forth that their share capital have been paid in,
11. In case where shareholders' equity has been valued with current value, appraisal reports which have been drawn up,
12. In split-ups or spin-offs through share transfer to the shareholders, draft articles of association drawn up for purposes of compliance with the regulations of the Board, and resolutions of the managing bodies on such draft, belonging to the corporation which acquired the assets of the publicly held corporations,
13. Information on determination of the equalization allowance planned to be paid in accordance with the TCC, if any,
14. In cases where equal rights or an appropriate consideration have been granted in consideration of current privileged shares or usufruct rights, information consisting the expert opinion on determination of such rights and considerations,
15. Permission letter obtained from the Competition Authority if any, in case that the transaction is not a demerger in which the permission of Competition Authority is required, corporation's declaration thereon,
16. Approval letters to be obtained from other public authorities in accordance with the provisions of special legislations,
17. Other information and documents to be requested by the Board.

## ANNEX/3

### MINIMUM ELEMENTS REQUIRED TO BE INCLUDED IN THE MERGER CONTRACT

1. Shareholding structures and members of managing bodies of the corporations being party to the merger and general information introducing the corporations,
2. Date and number of the resolutions of the managing bodies which have been taken as a basis in the merger transaction,
3. Dates of the financial statements according to which the merger shall be fulfilled,
4. Opinion of expert institution which shall be the basis of the merger,
5. Date and number of the Board approval on the announcement text drawn up with regard to the merger,
6. Information on the appraisal allowance required by the TCC if any,
7. Information on the equalization allowance required by the TCC if any,
8. In mergers through acquisition:
  - Share capital amount to be increased of the acquiring corporation, exchange rate and type and nominal value of the shares to be granted to the shareholders of the acquired corporation,
  - Provision that the acquiring corporation shall notify the tax office within the statutory period by way of a letter of undertaking that it shall pay the tax obligations of the corporations being party to the merger, accrued or to be accrued until the merger date and fulfill other liabilities thereof,
  - Provision that the debts of the acquired corporation to third parties shall be paid in whole and complete within the maturity term by the acquiring corporation,
  - Provision that actions shall be taken in accordance with Article 541 of the TCC with respect to the acquired corporation's due debts which have not been paid since the creditors have not applied, and debts which are undue and/or under dispute,
  - Provision on the date on which the acquired corporation shall terminate,
9. In mergers through new establishment:
  - Share capital amount of the new company to be established, exchange rate and type and nominal value of the shares to be granted to the shareholders of the terminated corporation,
  - Provision that the new company to be established shall notify the tax office within the statutory period by way of a letter of undertaking that it shall pay the tax obligations of the corporations being party to merger transaction accrued or to be accrued until the merger date, and fulfill other liabilities thereof,
  - Provision that the debts of the corporation to be terminated to third parties shall be paid in whole and complete within the maturity term by the new company to be established,



- Provision that actions shall be taken in accordance with Article 541 of the TCC with respect to the due debts which have not been paid since the creditors have not applied, and debts which are undue and/or under dispute, of the corporation to be terminated,
  - Provision on the date on which corporation to be terminated shall terminate,
- 10.** Provision which sets forth the rights or an appropriate consideration to be granted in consideration of the current privileged shares or usufruct rights,
  - 11.** Provision which sets forth the obligations and liabilities that the merger shall bind parties with and the consequences to be borne by parties in case that such liabilities are not fulfilled,
  - 12.** Provision which sets forth the maximum period in which the general assemblies shall be called for meeting by the managing bodies of the corporations being party to merger and that the merger contract shall be deemed invalid in case that the general assembly has not convened within this period,
  - 13.** Date and number of the approval letters to be obtained from other public authorities in accordance with the provisions of special legislations binding the corporations being party to the merger,
  - 14.** Special benefits, if any, provided for the managing bodies of the corporations being party to the merger and persons who have drawn up the opinion of expert institution with regard to the merger.

## **ANNEX/4**

### **MINIMUM ELEMENTS REQUIRED TO BE INCLUDED IN THE MERGER REPORT**

- 1.** General information introducing the corporations being party to the merger,
- 2.** Information regarding the main fields of activity of the corporations being party to the merger and on operating results thereof,
- 3.** Purpose, legal and economic grounds and possible consequences of the merger,
- 4.** Features regarding merger rate and assessment of the shares,
- 5.** Effects of the merger on staff and creditors of corporations being party to the merger,
- 6.** Possible risks which may prevent the achievement of the targets anticipated with the merger transaction.

## ANNEX/5

### MINIMUM ELEMENTS REQUIRED TO BE INCLUDED IN THE DEMERGER CONTRACT

1. Shareholding structures and members of managing bodies of corporations being party to the demerger and general information introducing the corporations,
2. Date and number of the resolutions of the managing bodies which have been taken as a basis in the demerger transaction,
3. Dates of the financial statements according to which the demerger shall be fulfilled,
4. Provision stating the date as of which the demerger shall be effective,
5. Opinion of expert institution which shall be the basis of the demerger transaction,
6. Date and number of the Board approval on the announcement text drawn up with regard to the demerger,
7. Information on the equalization allowance required by the TCC if any,
8. In transactions of split-up or spin-off through share transfer to shareholders:
  - Provision stating that joint stock corporations which acquire the elements of assets of publicly held corporations shall be included within the scope of the Law,
  - Provision stating the corporation shares to be allocated to the shareholders of the demerged corporation in the corporations participating to the demerger proportionally to their current shares or at a different rate,
9. In spin-offs through share transfers to subsidiaries:
  - Provision stating the share to be owned by the demerged corporation in the share capital of the acquiring corporation in consideration of the transfer of assets subject to demerger,
  - Provision stating the requirement that the publicly held corporation which is demerged and the shares of which are not admitted to trading on the exchange, shall draw up its financial statements in accordance with financial reporting standards which publicly held corporations the shares of which are admitted to trading on the exchange are subject to and shall disclose them to public.
10. Provision which sets forth the rights or an appropriate consideration to be granted in consideration of the current privileged shares or usufruct rights,
11. Provision which sets forth the obligations and liabilities that the demerger shall bind the parties with and the consequences to be borne by the parties in case that such liabilities are not fulfilled,
12. Provision which sets forth the maximum period in which the general assemblies shall be called for meeting by the managing bodies of the corporations being party to the demerger and that the demerger contract shall be deemed invalid in case that the general assembly has not convened within this period,
13. Date and number of the approval letters to be obtained from other public authorities in accordance with the provisions of special legislations binding the corporations being party to the demerger,

14. Special benefits provided for the managing bodies of the corporations being party to the demerger and the persons who have drawn up the opinion of expert institution with regard to the demerger, if any.

## **ANNEX/6**

### **MINIMUM ELEMENTS REQUIRED TO BE INCLUDED IN THE DEMERGER PLAN**

- 1.** Shareholding structures and members of managing bodies of the corporations being party to the demerger and general information introducing the corporations,
- 2.** Date and number of the resolutions of the managing bodies which have been taken as a basis in the demerger transaction,
- 3.** Dates of the financial statements according to which the demerger shall be fulfilled,
- 4.** Provision stating the date as of which the demerger shall be effective,
- 5.** Opinion of expert institution which shall be the basis of the demerger transaction,
- 6.** Date and number of the Board approval on the announcement text drawn up with regard to the demerger,
- 7.** Information on the equalization allowance required by the TCC if any,
- 8.** Provision which sets forth the rights or an appropriate consideration to be granted in consideration of the current privileged shares or usufruct rights,
- 9.** Provision which sets forth the obligations and liabilities that the demerger transaction shall bind the parties with and the consequences to be borne by the parties in case that such liabilities are not fulfilled,
- 10.** Provision which sets forth the maximum period in which the general assemblies shall be called for meeting by the managing bodies of the corporations being party to the demerger and that the demerger contract shall be deemed invalid in case that the general assembly has not convened within this period,
- 11.** Date and number of the approval letters to be obtained from other public authorities in accordance with the provisions of special legislations binding the corporations being party to the demerger,
- 12.** Special benefits provided for the managing bodies of the corporations being party to the demerger and the persons who have drawn up the opinion of expert institution with regard to the demerger, if any.

## **ANNEX/7**

### **MINIMUM ELEMENTS REQUIRED TO BE INCLUDED IN THE DEMERGER REPORT**

- 1.** General information introducing the corporations being party to the demerger,
- 2.** Information regarding the main fields of activity of the corporations being party to the demerger and operating results thereof,
- 3.** Purpose, legal and economic grounds and possible consequences of the demerger,
- 4.** Features regarding demerger rate and valuation of the shares,
- 5.** Effects of the demerger on staff and creditors of corporations being party to the demerger,
- 6.** Possible risks which may prevent the achievement of the targets anticipated with the demerger.

## **ANNEX/8**

### **INFORMATION AND DOCUMENTS REQUIRED FOR APPLICATION ON ISSUE DOCUMENT**

- 1.** A copy of each of the minutes of general assembly meetings in which merger or demerger transaction has been approved and attendance lists of corporations being party to the merger or demerger transaction,
- 2.** A notarized copy of the merger or demerger contract approved by the general assembly,
- 3.** With respect to simplified merger or simplified demerger , registration letter of the resolution of the managing body regarding the merger or demerger and the trade registry gazette in which such registration has been announced,
- 4.** Public accountant report which sets forth that the capital increase has been duly fulfilled, for corporations under the authorized capital system,
- 5.** In case that the capital increase resolution has not been resolved by the general assembly in corporations subject to authorized capital system, resolution of board of directors regarding the fulfillment of the capital increase transactions and the new form of the relevant clause of articles of association which sets forth the issued share capital to be registered and announced in accordance with Article 18 of the Law,
- 6.** Other information and documents to be requested by the Board.