

THE COMMUNIQUÉ ON COMMON PRINCIPLES REGARDING SIGNIFICANT TRANSACTIONS AND PUT OPTION RIGHTS AND THE RECENT AMENDMENTS THERETO

The Communiqué on Common Principles Regarding Significant Transactions and Put Option Rights which had entered into force upon its publication in the Official Gazette dated 24 December 2013 and numbered 28861 (the “**Communiqué**”) has been amended by the Capital Markets Board through the Communiqué Amending the Communiqué on Common Principles Regarding Significant Transactions and Put Option Right that was published in the Official Gazette dated 18 April 2018 and numbered 30395 (the “**Amending Communiqué**”).

The Communiqué principally covers the procedures and principles pertaining to publicly-held companies’ decision-making process with respect to their significant transactions and execution of such transactions, as well as the exercise of put option right as a consequence of significant transactions by the shareholders and the making of a mandatory take-over bid.

In line with its purpose, the Communiqué **(i)** describes and sorts the publicly-held companies’ significant transactions, including their significance criteria; **(ii)** regulates the procedures and principles for decision making and execution of such significant transactions; **(iii)** determines the use of the put option right with regard to significant transactions; and **(iv)** states the cases where such put option right does not arise; among others, such as the procedures and principles regarding calculation of the exercise price of the put option right, mandatory take-over bid arising from significant transactions etc. The Amending Communiqué basically amends the provision with regard to the cases which do not lead to put option right.

This Monthly Update aims to highlight the amendments introduced with the Amending Communiqué by associating with the basic principles of the Communiqué with respect to significant transactions, put option right of the shareholders and the exemptive cases in the context of the Communiqué.

Significant Transactions

In line with the Communiqué, the following transactions by publicly-held companies shall be deemed significant transactions, provided that they also meet significance criteria set forth within the scope of the Communiqué: **(i)** being a party to a merger, spin-off transactions or changing their type or deciding on termination; **(ii)** transferring whole or an important part of their assets or establishing a real right on them or renting the same to third parties; **(iii)** changing their field of activity totally or to a significant extent; **(iv)** creating privileges or changing the content or subject of existing privileges; **(v)** delisting; **(vi)** acquiring or leasing substantial properties from its related parties; **(vii)** accepting payment of capital contributions by shareholders through converting their receivables arising from the transfer of non-cash assets by such shareholders to such companies; or **(viii)** using the proceeds arisen as a result of a planned capital increase which exceeds total existing share capital of the publicly-held company, for the partial or full repayment of debts owed to the related parties as defined in the relevant regulations of the Capital Markets Board against the transfer of non-cash assets.

The Communiqué states that significant transactions shall be submitted to the approval of the general assembly and regulates the rules thereof such as the meeting and resolution quorum, restrictions with regard to right of vote etc.

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Put Option Right

As per the Communiqué, the shareholders (or their proxies) who **(i)** attend the general assembly on significant transactions; and **(ii)** record their dissenting votes to the minutes shall have the put option right by selling their shares to the company. The exercise of a shareholder's right to put its shares to the company shall commence within 6 business days (at most) starting from the date of the general assembly. The period for the exercise of such right shall not be less than 10 business days and more than 20 business days. The Communiqué also sets down the rules with regard to the put price, items to be included in the agenda of the general assembly thereof etc.

Cases which does not Lead to Put Option Right:

Some significant transactions shall not lead to any put option right within the frame of provisions of the Communiqué. In its last version, those were: **(i)** transactions required to be effected pursuant to other relevant laws and regulations applicable on publicly-held companies; **(ii)** transactions by companies whose control belongs to a governmental authority; **(iii)** removal of all of the privileges of the shareholders free of charge, or limitation on privileges in terms and scope; **(iv)** amendment of the status of the investment trusts, cessation of the status of such trusts and change in privileges in this regard; **(v)** transactions mandatory for takeover bids as a result of a significant transaction, or transactions approved by the Capital Markets Board for voluntary takeover bids; **(vi)** demerger transactions that establish a new partnership in which the shareholding structure of the demerged company is kept; merger and demerger transactions in simplified form; **(v)** the fact that the transaction is made by judicial authorities in accordance with a judgment decided under the Enforcement and Bankruptcy Code for the purposes of collection of a public debt, the immediate buy back of the assets subject to transaction through financial leasing; and asset transfer to issue a lease certificate, security based assets or a mortgage or warranted security; **(vi)** lease of assets in the portfolio of real estate investments trusts; forming rights in rem over the assets in the portfolio of real estate investment trusts in accordance with the Communiqué on Principles of Real Estate Investment Companies concerning real estate investment trusts; **(vii)** forming rights in rem over the assets of the companies consolidated in the financial statements in favor of such companies; **(viii)** provided that it is deemed acceptable by the Capital Markets Board, transactions where, as determined by a special-purpose independent audit report, transfer of ownership of no-economic-value properties that are included in assets of a publicly-held company which has lost at least half of its capital according to its financial statements issued in accordance with the pertinent regulations of the Capital Markets Board will eliminate such loss of capital status; **(ix)** merger and liquidation in transactions to which a special-purpose acquisition company is a party.

Introduction of the Amending Communiqué

The Amending Communiqué, adds another item to the list where no put option right shall arise. Accordingly, in case any asset transfer is not made to the related parties and the minimum 90% of the fund to be acquired as a result of such transfer is used for the payment of debts of the publicly-held company, arising from cash loans from banks or in connection with any debt instruments issued by such publicly-held companies, within one month as of the receipt of the fund, no put option right shall arise. It has been also stipulated that, in the event the fund collected is used for repayment of the whole of the cash bank credits and/or debts originate from the debt instruments, the percentage requirement shall not be applied.

Correspondingly, the Amending Communiqué also expands the scope of the obligation of public disclosure. Accordingly, the justification of such asset transfer transaction together with the resolution of the board of directors stipulating that cash bank credits and debts that originated from the issued debt instruments shall be covered within a month with the funds to be collected, and information regarding the payment amounts and realization of payments shall be disclosed to public.