

## **NEW COMMUNIQUÉ ON MATERIAL TRANSACTIONS AND EXIT RIGHTS**

The new Communiqué on Material Transactions and Exit Rights No. II-23.3 was published in the Official Gazette and entered into force on 27 June 2020 (the "**Material Transactions Communiqué**"). The Material Transactions Communiqué tracks the recent amendments to the Capital Markets Law No. 6362 (the "**CML**").

### **WHAT ARE THE MATERIAL TRANSACTIONS?**

The Material Transactions Communiqué narrows down the scope of material transactions compared to the former communiqué. Among others, dissolution of publicly held companies, delisting from the stock exchange, changing the field of activity are no longer considered as material transactions. Under the Material Transactions Communiqué, material transactions include:

- certain merger and spin-off transactions, subject to certain materiality criteria and other qualifications set forth under the Material Transactions Communiqué;
- changing the company type;
- asset transfers, disposition transactions having the effect of asset transfer and establishing limited rights in rem in favour of third parties, subject to certain materiality criteria and other qualifications set forth under the Material Transactions Communiqué, and
- introducing a new privilege or changing the scope or subject of existing shareholder privileges.

Notwithstanding the materiality criteria under the Material Transactions Communiqué, all asset transactions of publicly held companies (whose free floating ratio of shares representing the share capital is more than 50%), which are identified as tier 3 under the Corporate Governance Communiqué No. II-17.1 will also be considered as material transactions, provided that such transactions would result in a change in the business objective of the publicly held company.

### **How does the corporate approval process work?**

The board must adopt a resolution and determine scope and other details of the contemplated material transaction. The board resolution is then publicly disclosed and submitted to the approval of the shareholders. The transaction must be approved by the shareholders within three months following the date of board resolution. However, if the transaction is subject to any regulatory approvals, the three-month-period runs from the date of the completion of the regulatory approvals.

### **Who is entitled to exercise the exit right?**

Unlike the former communiqué, the Material Transactions Communiqué limits shareholders who are entitled to exit rights. Only the shareholders holding shares as of the date of public disclosure of the material transaction are entitled to exercise exit right. Thus, the Material Transaction Communiqué takes a snap shot of the shareholding status as of the date of the public disclosure.

### **Can other shareholders be offered to buy the exiting shareholders' shares?**

The Material Transactions Communiqué allows the board to offer the shares of exiting shareholders to other shareholders or investors before those are acquired by the publicly held company. In such case, the shares of exiting shareholders are distributed on a pro rata basis to all shareholders or investors who wish to purchase such shares (unless otherwise is privately agreed among them), and the remaining shares are purchased by the publicly held company.

## How is the exit price calculated?

The exit price is calculated as follows:

- for publicly held companies whose shares are traded in the Star Market, the arithmetic average of daily adjusted weighted average trading prices during the 30-day-period before the public disclosure of the material transaction,
- for other publicly held companies, the arithmetic average of daily adjusted weighted average trading prices during the 180-day-period before the public disclosure of the material transaction.

The exit price for publicly held companies that are not listed on the stock exchange is calculated based on a valuation report. The valuation report assesses the share value as of the public disclosure date of the board resolution and may be supplemented by a second report in case of material changes in the share value until the shareholder approval.

## What are the exclusions and the exemptions?

The Material Transactions Communiqué revisits the list of transactions that do not trigger exit rights and transactions that may be granted an exemption by the Capital Markets Board. Most notably, the Material Transactions Communiqué extends the scope of the exemption that may be granted by the Capital Markets Board if the material transaction is carried out for the purpose of recovery from financial distress. Public companies seeking exemption based on such ground must prove the existence of the financial difficulty, and that such material transaction would provide a relief to the company and positively affect the financial condition (i.e. by providing independent assurance reports prepared by authorised independent audit firms).

Among others, rescue mergers (i.e. merger of an insolvent company), sale of the shares held in a subsidiary through public offering, and asset transfers between parent and its subsidiary whose shares are at least 90% held by the parent are added to the list of transactions that do not trigger exit rights. Furthermore, unlike the former communiqué, certain transactions (e.g., abolishing or limiting the privileges without consideration and mergers to which special purpose acquisition companies are party) will now trigger exit rights but may be granted with an exemption by the Capital Markets Board.

## Which rules will be applicable to Material Transactions disclosed before the new Material Transactions Communiqué?

The material transactions that were already publicly disclosed before the entry into force of the Material Transactions Communiqué will continue to be governed by the provisions of the former communiqué provided that they are not incompliant with the CML. On the other hand, following dates will apply for the purposes of determining the shareholders who are entitled to an exit right:

- for material transactions that were publicly disclosed before 25 February 2020, 25 February 2020 will be the date to determine shareholders entitled to the exit right and the number of shares subject to such right;
- for transactions that were publicly disclosed between 25 February 2020 and the entry into force of the Material Transactions Communiqué (i.e. 27 June 2020), the date of the public disclosure of the material transaction will be the date to determine shareholders entitled to the exit right and the number of shares subject to such right.

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