

Squeeze-out Mergers in Turkey – An Overview

Squeeze-outs are regulated under the Commercial Code (6102) for private companies and the Capital Markets Law (6362) for publicly held companies.

Squeeze-out process in private companies

The Commercial Code sets out two different mechanisms for the squeeze-out process in private companies:

- squeeze-out by controlling shareholders;[\(1\)](#) and
- squeeze-out mergers.

Squeeze-outs by controlling shareholders

Squeeze-out rights are available to controlling shareholders that directly or indirectly hold at least 90% of a private company's shares and voting rights. Controlling shareholders may exercise this right in cases where minority shareholders:

- obstruct the company's activities;
- act against the principle of good faith;
- cause major trouble for the company; or
- act recklessly.

In such cases, pursuant to Article 208 of the Commercial Code, majority shareholders can apply to the commercial courts to request that the minority shareholders sell their shares. The purchase price of the shares would be the actual value or the amount determined by the courts in accordance with a generally accepted method.

The wording of the requirements set out in Article 208 of the Commercial Code is quite vague. It is generally accepted that where minority shareholders, without any just cause, file a lawsuit for the annulment of general assemblies, request an audit or the postponement of general assemblies or damage a company's reputation in the sector, or similar events that fulfil the requirements set out in Article 208, this will trigger the controlling shareholders' squeeze-out rights.

Squeeze-out mergers

Pursuant to Article 141 of the Commercial Code, in case of a merger, the parties involved may request that the shareholders of the dissolving company sell their shares by providing a compensation payment under the merger agreement instead of participating in the merger process and obtaining shares in the acquiring company. The compensation payment can be made in cash or in kind, such as assets, or by the transfer of shares in other companies. Pursuant to Article 151 of the Commercial Code, the acquirer must hold a minimum of 90% of the dissolving company's voting rights and approve the merger agreement at least with such quorum. In such event, the dissolving entity's minority shareholders will not be entitled to acquire new shares in the acquiring company. If the parties choose this method, they must indicate their reasoning and the amount of compensation payment under the merger report.

Squeeze-out process in publicly held companies

Pursuant to Article 27 of the Capital Markets Law and its secondary legislation (the Communiqué on Squeeze-out and Sell-out Rights II-27.2), if the number of shares acquired reaches at least 98% of a public company's voting rights as a result of a takeover bid or using any means including but not limited to acting in concert with others, the controlling shareholder will have the right to squeeze-out the remaining minority shareholders while the remaining minority shareholders will have the right to sell their shares to the controlling shareholder.

For listed public companies, the price for each group of shares is the average of the daily weighted average price of traded shares on the stock exchange in the 30 days before the disclosure date for reaching the squeeze-out threshold. The same method is used to calculate the price of unquoted shares in the listed company. For non-listed public companies, a valuation report will be prepared to calculate the squeeze-out price for each group of shares. The consideration must be paid in full and in cash in Turkish lira.

For further information on this topic please contact [Kaan Demir](mailto:kaan.demir@kayumdemir.av.tr) at Kayum & Demir by telephone (+90 212 291 1002) or email (kaan.demir@kayumdemir.av.tr). The Kayum & Demir website can be accessed at www.kayumdemir.av.tr.

Endnotes

(1) The Commercial Code defines a 'controlling shareholder' as follows:

(i) the trading company that directly, or indirectly, holds the majority of the voting rights of another trading companies, or is entitled to appoint members to the management organ of another trading company who constitute the majority and who may adopt a resolution with the necessary quorum, or that holds the majority of the voting rights on its own, or together with other shareholders on the basis of an agreement; or (ii) the trading company that achieves dominance over another trading company through of an agreement or any other method.

A 'squeeze-out right' is a right exercisable in group company concept and in order to exercise the squeeze-out rights, the controlling shareholder has to "control" two different companies.