

Global Rewards Update: Turkey – Securities law – changes to clearance applications

April 2014

Background

In Turkey, an employee share plan does not normally give rise to any prospectus implications, on the basis that it would not qualify as a 'public offering'. However, it became common practice for companies to notify the Turkish Capital Markets Board (the "CMB") about any employee incentive plans and obtain clearance from the CMB that it did not qualify as a 'public offering'.

This notification clearance procedure was not a legal requirement but it became an established practice of the CMB. The process usually took between 15 to 30 days and required assistance from Turkish lawyers.

If the CMB decided that the employee share plan qualified as a 'public offering', then it would require the registration of the shares subject to the employee share plan with the CMB. If the CMB decided that the employee share plan did not qualify as a 'public offering', then it issued an 'affirmative opinion' in relation to the employee share plan and stated that the shares subject to the plan did not need to be registered with the CMB.

Changes to the process in Turkey

The Foreign Capital Market Instruments, Depository Certificates and Foreign Investment Funds Communiqué (No.VII – 128.4) repealed the previous Communiqué regarding Registration and Sale of Foreign Capital Market Instruments and Depository Receipts (No.III/44).

The result is that companies offering employee share plans in Turkey need to decide for themselves whether their plan constitutes a public offer as the CMB does not want to receive applications on this matter. Although it is unlikely in most cases that an employee share plan would constitute a public offer (because it is not a 'general invitation'), if you are in any doubt as the position in relation to your plan, you should seek professional advice.

Action

This is a welcome development as the application to the CMB could be a costly and time consuming process. It does mean that the responsibility for determining whether an offer under an employee share plan is a 'public offer' rests with the company, although for most employee share plans this should not be the case.

In the case of uncertainty, we recommend that companies obtain professional advice in respect of their plan before making any offers to employees in Turkey.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte adviser or email us at globalequity@deloitte.com, and we will contact you.

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