

REGULATORY UPDATES IN TURKISH CAPITAL MARKETS

This Legal Alert seeks to provide information regarding the recent amendments to the “Guide to Investment Funds”, “Guide to Retirement Investment Funds”, “Communiqué on Principles of Venture Capital and Private Equity Investment Companies No. III-48.3” and “Communiqué on Principles of Venture Capital Investment Funds No. III-52.4”.

On March 1, 2018, Capital Markets Board (“CMB”) published its weekly Bulletin which comprises of 4 (four) decisions that have amended certain rules and principles regarding investment funds, retirement investment funds, venture capital investment funds and venture capital companies.

We may categorize the amendments below under 3 (three) subtitles according to the abovementioned decisions.

- 1) The amendments applicable to “*Guide to Investment Funds*” can be summarized as follows:
 - A new article has been added into this Guide in relation to the debt securities which are being held in the portfolio of an investment fund. In accordance with this, any expenditure arising from the

default or restructuring of the issuer of the afore-mentioned debt securities, shall be covered by the investment fund founder¹ (“**Founder**”).

- The provision titled as *Promotions* conducted for providing additional benefits to the fund’s investors by the investment companies eligible for distribution of fund contribution amounts is amended. In accordance with this,
 - ✓ the principles governing any promotion are no longer required to be included in the prospectus as it is removed from the Guide. However, the Founder and the fund distributor shall issue an announcement text covering the conditions and principles of such *promotion* (“**Announcement Text**”). The Announcement Text then shall be submitted to CMB for the approval. Following the approval, the Announcement Text shall be announced on Public Disclosure Platform (“**PDP**”) and on the official web sites of the Founder and the fund distributor within 10 (ten) business days following the date on which the approval is received by the Founder. In the case of *promotions* for funds sold only to qualified investors and for special funds, the Announcement Text approved by the CMB shall be transmitted to the investor through the most appropriate means of communication before the *promotion* begins.
 - ✓ the Announcement Text shall include the implementation principles concerning the *promotion* method, provided that the principles must be fully and accurately presented in a way that is not exaggerated and misleading.

¹ Investment funds in Turkey may be founded by portfolio management companies which are established according to the Turkish capital market regulations.

- ✓ During the term of the *promotion*, the Founder may not increase the management fee to be collected from the fund and the costs arising from the *promotion* may not be charged to the fund.
- ✓ The *promotion* shall contain the following information at minimum level; *i.e.*, investment strategy of the fund, disclaimer that the income from the funds may change depending on the investment strategy and market conditions, management fee and ratio of total expenses, references to the Announcement Text, prospectus and investor information forms.
- Results exceeding the thresholds given under this Guide during retrospective risk tests shall be reported to CMB within 5 (five) business days and certain corrections and measures shall be adopted for improving the risk management models. However, in the presence of extraordinary market conditions which cause retrospective test results to exceed the thresholds, the results exceeding such thresholds may be dismissed. In this case, the board of directors' resolution for the dismissal and documents constituting grounds for this resolution shall be submitted to CMB within 5 (five) business days.
- When classifying the type of an umbrella fund, investments made to (i) structured investment instruments and loan participation notes, except structured debt securities, and (ii) collaterals and premiums deposited for leveraged transactions shall not be taken into consideration for calculation of the 80% threshold². However, structured debt securities and asset/mortgage-backed securities are included as debt securities in the calculation of investment limitations.

² In case at least 80% of an investment funds' total value comprises of certain financial instruments, the umbrella fund shall be named accordingly; such as Debt Securities Umbrella Fund, Equity Umbrella Fund, Guaranteed Umbrella Fund, Participation Umbrella Fund.

- A new provision has been brought for the control of concentration limits for asset/mortgage backed securities. As per this provision, in case investment funds invest in asset/mortgage-backed securities, each asset finance fund or residence finance fund is considered as a different issuer. However, the investments made to these instruments shall not be included in the calculation of the investments made to the money market instruments and capital market instruments of the same group.
 - The deposit accounts and participation accounts held by the same issuer will be included in calculation of the concentration limits.
- 2) The amendments applicable to “*Guide to Retirement Investment Funds*” can be summarized as follows:
- A new article has been added into this Guide in relation to the debt securities which are being held in the portfolio of a retirement investment fund. In accordance with this, any expenditure arising from the default or restructuring of the issuer of the afore-mentioned debt securities, shall be covered by the Founder.
 - Results exceeding the thresholds given under this Guide during retrospective risk tests shall be reported to CMB within 5 (five) business days and certain corrections and measures shall be adopted for improving the risk management models. However, in the presence of extraordinary market conditions which cause retrospective test results to exceed the thresholds, the results exceeding such thresholds may be dismissed. In this case, the board of directors’ resolution for the dismissal and documents constituting grounds for this resolution shall be submitted to CMB within 5 (five) business days.

- When classifying the type of a retirement investment fund, investments are reviewed in order to determine whether the 80% threshold³ for sector-specific or region-specific funds is satisfied by the investments made in the spot markets. In parallel to the amendments brought to investment funds, investments made to structured investment instruments and loan participation notes, except structured debt securities, shall not be taken into consideration for calculation of the 80% threshold. However, structured debt securities and asset/mortgage-backed securities are included as debt securities in the calculation of investment limitations.
 - A new provision has been brought for the control of concentration limits for asset/mortgage backed securities. As per this provision, in case retirement investment funds invest in asset/mortgage-backed securities, each asset finance fund or residence finance fund is considered as a different issuer. However, the investments made to these instruments shall not be included in the calculation of the investments made to the money market instruments and capital market instruments of the same group.
- 3) The Decisions taken by CMB applicable to the “*Communiqué on Principles of Venture Capital and Private Equity Investment Companies*” and “*Communiqué on Principles of Venture Capital Investment Funds*” can be summarized as follows:
- Venture capital investment companies and venture capital investment funds are now entitled to invest in companies located abroad which carry a growth potential and shares of which are not traded in the stock exchange; provided that these investments fall within *the assets other than venture capital investments* and will not be included in the venture capital investment restrictions. These investments shall not exceed 10% of the venture capital companies’ assets or

³ In case a retirement investment fund’s title contains any word implying investments in any asset group, sector, country or region, at least 80% of the retirement investment funds’ investments shall be made to the corresponding financial instruments.

total value of the venture capital fund. In case the headquarters of a company in the portfolio is transferred abroad, investment in this company is considered under the provisions stated herein.

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