

Incorporation of Investment Companies or Funds in Turkey

I. Capital Markets Law

The subject of Capital Markets Law dated 30 July 1981 and numbered 2499 (hereinafter “Capital Markets Law”) is to regulate and control the secure, transparent and stable functioning of the capital market and to protect the rights and benefits of investors with the purpose of ensuring an efficient and widespread participation by the public in the development of the economy through investing savings in the securities market.

The scope of Capital Markets Law is the capital market instruments and their issuance, public offering and sale; those who issue or offer them to the public; exchanges and other markets organized pursuant to Article 40 of Capital Markets Law; capital market activities; capital market institutions; and the Capital Market Board (“Board”) are subject to the provisions of Capital Markets Law.

II. Capital Market Activities

Capital Market Activities falling within the scope of Capital Markets Law are;

1. Intermediation to the public offering or issuance of capital market instruments that are to be registered with the Board;
2. The trading of previously issued capital market instruments for the purpose of intermediation;
3. Intermediation to the trading of all kinds of derivative instruments including futures and options contracts based on economic and financial indicators, capital market instruments, commodities, precious metals and foreign currency;
4. The buying and selling of the capital market instruments with the agreement to repurchase or to reselling them;
5. Investment advisory;
6. Portfolio management and administration;

7. Activities of other capital market institutions.

- Approval for the activities

Institutions to be engaged in capital market activities must obtain approval from the Board. The principles regarding application and approval are to be regulated by the Board with respect to types of activities and intermediation. The approval for one or more than one type of activity or intermediation type can be granted to the capital market institutions by the Board.

A Certificate of Authorization shall be given to authorized institutions indicating the types of capital market activities in which they are going to engage. Those which do not have a Certificate of Authorization or whose certificate has been cancelled, may neither engage in capital market activity nor use any phrases or words in its commercial name, advertisements or announcements which could create the impression that it engages in such activity.

- Capital Market Institutions

Under Article 32 of Capital Markets Law, Capital Market institutions which may operate in accordance with Capital Markets Law are specified as below:

- a. Intermediary Institutions,
- b. Investment Companies,
- c. Mutual funds,
- d. Other institutions given approval to operate in capital markets.

- Investment Companies

Pursuant to Article 35 of Capital Markets Law, investment companies are joint stock companies that are established with the purpose of managing portfolios of capital market instruments, real estate, or gold or other precious metals. Such portfolios may be limited to one of these components or may include a mixture of those components.

In order to obtain approval to establish such a company, application must be made to the Board of Capital Markets to engage in portfolio management as contemplated by subparagraph (f) of the first paragraph of Article 30. The activities other than portfolio management in which investment companies may engage shall be regulated by the Board.

According to Article 36 of Capital Markets Law; the followings are required for investment companies to obtain approval for establishment and operation:

- They must be established in the form of a joint stock company under the registered capital system,
- Its initial capital must be not less than an amount, which shall be determined by the Board pursuant to the types of such investments,

- 100% of their capital must be paid fully.
- Their commercial title must include the phrase “Investment Company”,
- Their Articles of Association must comply with the provisions of Capital Markets Law
- Its founders must be certified as never having been subject to legal prosecution due to bankruptcy or other infamous offence.

The types of investment companies according to the asset types that they can hold, principles of valuation, portfolio restrictions, principles of management, the principles with regard to distribution of profits, depository procedures and principles, and their obligations and principles in the event of their liquidation is determined under duly issued communiques by the Board.

Capital in kind may be used in accordance with the provisions of the Turkish Commercial Code dated July 9, 1956 and No. 6762 (“Turkish Commercial Code”) for the establishment of and for capital increases of the real estate investment companies. The principles with respect to the public offering of shares issued in exchange for capital in kind is determined under duly issued communiques by the Board and the provisions of Article 404 of the Turkish Commercial Code shall not apply to the transfer of such shares.

- Investment Funds

Funds are established and regulated under the Capital Markets Law and the communiques duly issued by the Board based on Capital Markets Law.

The property established to manage a portfolio of capital market instruments, real estate, gold, or other precious metals by funds collected from the public in return for participation certificates issued in accordance with the provisions of Capital Markets Law, on the account of the holders of such certificates under the principle of distribution of risk and fiduciary ownership is called mutual fund under the Capital Markets Law.

Such a fund does not have any legal identity; however, its assets are separate from those of its founder. The founder shall represent, manage or supervise the management of the fund in such a manner as to protect the rights of the holders of the certificates. The founder is responsible for the protection and safekeeping of the fund's assets. In the relations between the founder and the holders of the participation certificates, the provisions of the Code of Obligations regarding procuration shall apply so long as the Capital Markets Law and related regulations do not provide otherwise.

Rules and regulations regarding registration, annotation and other title deed operations related to real estate and real estate backed securities which are included in the portfolios of mutual funds and investment companies shall be determined by the Ministry to which the General Directorate of Title Deed Cadastre is related.

In order to establish a mutual fund, it is compulsory for the founder to apply to the Board for approval with a certified copy from a notary of the internal statute of the fund prepared by

the founder and the other documents required by the Board. When a bank or insurance company applies to the Board for establishing a mutual fund, the opinion of the Undersecretariat of Treasury and Foreign Trade shall be obtained.

The Board may direct that fund management and depository services be carried out by different institutions. Banks, insurance companies, intermediary institutions, pension funds and employee funds, provided that there are no contrary provisions in their special laws, and also funds established in accordance with Article 20 of Law numbered 506 which comply with standards put forward by the Board in a communiqué may establish mutual funds.

The Board of Capital Markets shall determine the following:

1. The establishment of the fund, its minimum value, assets allowed for portfolio composition on the basis of differing types of funds, portfolio restrictions, valuation principles, determination of the funds profits and distribution of the fund's profits, principles regarding the operation and administration of the fund, merging of such funds, and the liquidation and termination of such funds,
2. The principles related to the preparation, scope, registration and announcement of the internal statute of the fund, and of the fund management contract, depository contract, the principles related to value of the participation certificates, computation and announcement of their issue and redemption prices, and terms of trading.

The assets of such funds may not be pledged or provided as guarantee and may not be seized by third persons.

The Board is empowered to take the necessary measures in the case of bankruptcy or liquidation of the founder or manager of the fund.

- Available Types of the Funds

Mutual funds, provided that the fund rules states so, can be established in the following types:

- i. Funds which continuously invest at least 51% of the fund portfolio in;
 - a) Public and/or private debt instruments shall be called "BONDS AND BILLS FUNDS"; Public and/or private debt instruments and monthly weighted average maturity of the portfolio is at least 45 days and at most 90 days and not able to include stocks in portfolio shall be called "SHORT TERM BILLS AND BONDS FUNDS",
 - b) Stocks of corporations established in Turkey, including those within the privatization framework, shall be called "STOCK FUNDS",
 - c) Securities of corporations from a certain industry shall be called "SECTOR FUNDS",
 - d) Securities issued by subsidiaries as specified by Board Communiqué Series XI, Nr: 1,

annex 3 shall be called "SUBSIDIARY FUNDS",

e) Securities of a certain group as defined in Communiqué Series: XI, Nr: 10, article 2 shall be called "GROUP FUNDS"

f) Foreign private and public securities shall be called "FOREIGN SECURITIES FUNDS",

g) Gold and other precious metals traded in national and international exchanges, as well as capital market instruments backed by such metals and traded in exchanges shall be called "PRECIOUS METALS FUNDS", while those invested in gold and gold-backed capital market instruments traded in national and international exchanges are called "GOLD FUNDS",

ii. Funds which invest the whole portfolio in;

h) At least two of stocks, debt instruments, gold and other precious metals as well as capital market instruments backed by such, with none of the items comprising less than 20% of the total portfolio value are called "COMPOSITE FUNDS",

i) Funds which continuously include in the portfolio highly liquid capital market instruments with a maximum of 180 days remaining in their maturation date, and of which portfolio has a maximum weighted average term of 45 days are called "LIQUID FUNDS",

The weighted average term of the portfolio shall be determined by taking into consideration the individual terms of the capital market instruments.

j) Funds which can not be classified in any one of the types above with regard to portfolio restrictions are called "VARIABLE FUNDS",

iii. Funds which invest at least 80% of the portfolio on a continuous basis in;

k) all or a sampled part of the securities included in a Board approved index which constitutes the basis of the fund, and with which value a correlation factor of 90% is ensured regarding the unit share price of the fund in accordance with the calculation to be carried out in accordance with the formula provided in Annex 3 of the Communiqué are called "INDEX FUNDS",

l) Units of other mutual funds and exchange traded funds are called "FUNDS OF FUNDS",

iv) Provided that the sub funds are established with a minimum term of six months;

m) Funds established as umbrella funds and where a part or all, or the initial amount of the investor's investment plus a certain return is guaranteed on the basis of an appropriate investment strategy and the guarantee provided by the guarantor, to be paid back to the investor within the framework of the principles specified in the prospectus at a specific term or periods, are called "GUARANTEED FUNDS",

n) Funds established as umbrella funds and where a part or all, or the initial amount of the investor's investment plus a certain return is targeted on the basis of an appropriate investment strategy and the best efforts strategy, to be paid back to the investor within the

framework of the principles specified in the prospectus at a specific term or periods, are called "PROTECTIVE FUNDS".

- Documents required for the fund establishment

a) A notarized copy of the decision by the authorized body of the founder on the establishment of a mutual fund.

In the very least, the following shall be required in the decision by the authorized body: i) Name of the fund, ii) Amount of the fund, iii) Members of the fund council and the auditor, iv) Manager, b) Founder's; i) Shareholding structure as of the application date,

ii) Most recent general assembly certified financial statements, and the general assembly meeting minutes, iii) Latest financial statements which had undergone independent audit, iv) Activity report,

c) Certified circular of signature for the officials of the founder, members of the fund council, and the auditor,

d) Notarized declarations by the officials of the founder, stating that they meet the requirements specified in sub-paragraphs (e) and (f) of the first paragraph of article 10 of the Communiqué,

e) Résumés and notarized declarations by the members of the fund council and fund auditor stating that they are not among the persons who had been found liable in organizations which lost temporarily or permanently one or more capital market activity licenses, or expelled from exchange membership permanently or on a provisional basis,

f) Other information and documents which may be required by the Board.

- Minimum fund volume

Under Article 20 of the Communiqué of the Board, the minimum fund volume at the date of establishment of the investment fund is regulated as distinct from what is required for the joint stock companies in general. According to such article, minimum fund volume shall not be lower than 100,000,00- TL. Pursuant to the Article 20 of the Communiqué Serial: VII, No: 10 on Principles Regarding Mutual Funds, this amount shall be re-adjusted on the basis of the revaluation factor announced each year.

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