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NEWSLETTER

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A New Financial Institution Introduced by the Capital Markets Board: “Investment Company with Variable Capital”

On 27 May 2015, the Capital Markets Board of Turkey (“CMB”) issued the Communiqué on Securities Investment Companies (“Communiqué”). The Communiqué has introduced a new type of securities investment company, investment company with variable capital (“ICVC”) to Turkish capital markets.

Turkish capital markets had already been familiar with securities investment companies (“SIC”) that allowed investors to benefit from a diversified portfolio of assets by purchasing shares of a SIC established as a joint stock company. On the other hand, the variable capital structure for SICs, meaning that the capital of the SIC is basically equal to its net asset value and comprises of shares with no nominal value, is an entirely new concept for Turkish capital markets.

Pursuant to the Communiqué ICVCs may be established as joint stock companies subject to the approval of the CMB. ICVCs may invest, without short-selling or margin trading, in variety of assets including:

- (i) shares and warrants;
- (ii) debt instruments and sukuks;
- (iii) repos and reverse repos;
- (iv) deposit accounts (both conventional and Islamic with maturities up to 12 months);
- (v) mutual fund shares;
- (vi) precious metals and capital markets instruments backed by precious metals; and
- (vii) real estate certificates etc.

The Communiqué also allows conversion of existing SICs into ICVCs on the condition that a mandatory tender offer is made for the opposing minority shareholders. ICVCs may therefore appear on the market in a while, as a result of conversion of existing companies as well as establishment of new ones.

Legislative Highlights

- ✓ Regulation on Notarial Transactions through Electronic Platforms published in the Official Gazette dated 11 July 2015 and numbered 29413 and will enter into force as of 1 March 2016. According to such regulation, certain notarial transactions which do not require the arrangement of the notary public or a declaration of intention, (such as translations, approvals of commercial books and delivery of notices (without having the signature approval)), can be carried out online through secured electronic signature of the relevant person without being present before the notary public. Transactions which require the arrangement of the notary public or a declaration of intention can be initiated through the electronic platform but have to be finalized physically before the notary public. Transactions that are subject to special ceremonies or specific form and security agreements cannot be done electronically through secured electronic signature and can only be carried physically by the notaries. The online platform through which the electronic notarial transactions will be performed is expected to be established until 1 March 2016.
- ✓ Communiqué on Documentation and Record Order Regarding Investment Services and Operations and Ancillary Services is issued by the Capital Markets Board and published in the Official Gazette dated 1 August 2015 and numbered 29432. The communiqué regulates the documents which should be held by the investment companies, records regarding the investment services and operations and ancillary services and the principles to be followed in the preservation of such records for their accounting records.

Jurisdictional Highlights

- ✓ The Supreme Court of Appeals rendered a recent award which will avoid conflicting court award about payment of “severance pay” in case of resignation of the employee to move to a new job even if such employee is duly completed “15 years and 3600 days” or “25 years and 4500 days” as an employee since the initial registration to the social security system. Previously, employers were claiming that the resigning employee should not receive severance pay if such employee is resigned to switch job and some of such claims were successful.

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Basel III: “Drafts of the Amendments to the Banking Regulation”

As part of its efforts to align Turkish banking regulations with Basel III, on 15 July 2015 the Banking Regulation and Supervision Agency of Turkey (“**BRS**A”) has released amendment drafts to some of its regulations including:

- (i) Regulation on Equities of Banks;
- (ii) Regulation on Internal Systems and Internal Capital Adequacy Assessment Process of Banks;
- (iii) Regulation on Procedures and Principles regarding Accounting Practices of Banks and Document Keeping;
- (iv) Communiqué on Risk Mitigation Techniques; and
- (v) Communiqué on Financial Statements to be Disclosed by Banks.

While the amendment drafts include rather minor changes to the banking regulations, the BRS A has also announced its intention to replace Regulation on the Measurement and Evaluation of Capital Adequacy of Banks, Communiqué on the Calculation of Credit Risk Amount with an Approach Based on Internal Evaluation, Communiqué on the Risk Measurement Models and Calculation of Market Risk and Communiqué on Calculation of Risk Weighted Amounts regarding Securitizations.

A new and secure way for immovable purchase and sale: “TapuTakas”

Takasbank, Turkey’s clearing and settlement institution is now rendering settlement services for the purchase and sale of an immovable property through a secured online platform called “TapuTakas”.

In December 2014, General Directorate of Land Registry and Cadastre of Turkey and Takasbank executed a protocol for launching the new online platform TapuTakas; which provides a safe and secure mechanism for exchange of money and the property and the new platform is launched on 17 April 2015.

The main objective of TapuTakas is to provide a secure and safe zone for simultaneous exchange of purchase price and the title of the real estate subject to the transaction through the online platform. In order to use the system, basically, an online application is required to be made; which should be followed by payment of the purchase price by the buyer. Upon payment, such purchase price is blocked by TapuTakas,

and will not be transferred to the seller’s bank account until the registration of the sale at the Land Registry Office. Once the sale is officially concluded before the relevant Land Registry Office, the system automatically realizes the transfer of the funds to the sellers account.

TapuTakas eliminates the risk of carrying cash to the Land Registry Offices, a very common way in Turkey; which gives rise to robberies and fraud quite often. New system also introduces a more straightforward and convenient method of payment compared to blocked check; which was the most common secure way used before TapuTakas.

The cost of using the system is as low as TRY 70 (app. USD 25) per each transacting party. Further, parties using the system may check each and every step of their transaction via SMS, e-mail or through status inquiry section on the website.

TapuTakas also gives the buyer an opportunity to withdraw entire purchase price smoothly if the transaction may not be concluded for any reason. Basically, system works like a virtual escrow.

How does TapuTakas work? During online application process, each of the seller and the buyer register the agreed purchase price amount to TapuTakas. If such purchase prices match each other, the purchase price will be automatically transferred to the sellers account simultaneously with the transfer of title to the buyer. However, if these amounts do not match, the seller can cancel the transaction even if the buyer has sent the purchase money to TapuTakas. As a result, the money will return to the buyer automatically.

It should, however, be noted that even with TapuTakas, title deed fees should be paid to the Land Registry Office and the execution of the sale transaction and transfer of title should be carried out at the Land Registry Office.

The system exists only for safe and secure exchange of the purchase amount and the title simultaneously; which is still a big novelty for these transactions.

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Yours faithfully,
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