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Amendment to the Equity Communiqué numbered VII-128.1

On January 26, 2018, Article 5/2 of the Equity Communiqué was amended through a communiqué numbered VII-128.1.c, which introduces a change in the criteria with respect to the initial public offering of privately held companies.

Before the amendment and by virtue of Article 5/2 of the Equity Communiqué, privately held companies that are in a certain financial status which triggers removal from the scope of the Capital Markets Law ("**Law**") were not able to apply to the Capital Markets Board ("**CMB**") for an initial public offering.

The circumstances that give the respective company the opportunity for applying to CMB to be exempted from the scope of the Law due to its financial status are set forth under Article 8/1 of the Communiqué on Principles Regarding the Removal of Corporations from the Scope of Law and Obligation of Trading of Shares on Exchange ("**Communiqué numbered II-16.1)**. By virtue of the reference made by Article 5/2 of the Equity Communiqué, privately held companies seeking an initial public offering shall not be in the financial circumstances specified under the Communiqué numbered II-16.1.

In this respect, companies whose (a) total assets are less than TRY 10,000,000; or (b) total sum of other revenues, excluding net sales revenues, and net sales revenues both of which are less than TRY 5,000,000; or (c) total sum of registered capital and legal reserves is completely unreciprocated according to their financial statements were not able to apply to the CMB for an initial public offering.

With the amendment of the Equity Communiqué, the current version of Article 5/2 does not anymore refer to the paragraph (c) of Article 8/1. Accordingly, privately held companies, total sum of the registered capital and legal reserves of which are unreciprocated, may now apply to the CMB for a public offering, as well as to be traded on Borsa Istanbul Stock Exchange, provided that they do not fall under paragraphs (a) or (b) of Article 8/1.

This amendment by the CMB aims to provide an alternative financing method for companies experiencing financial difficulty by enabling such companies to seek additional financing through initial public offering and became effective as of its publication on January 26, 2018.

Amendment to the Material Events Disclosure Communiqué numbered II-15.1

The Communiqué Amending the Communiqué on Material Events Disclosure numbered II-15.1 ("**Amendment Communiqué**") was published in the Official Gazette numbered 30331 on February 13, 2018 and entered into force on the same date.

As per Article 12/1-(a) of the Communiqué on Material Events Disclosure numbered II-15.1, if and when direct or indirect shares or voting rights of a natural person or legal entity or of other natural persons or legal entities acting together with such natural person or legal entity in the share capital of a publicly traded company reach or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95%, such persons shall disclose this change in the share capital structure and management control of such company on the Public Disclosure Platform.

According to the Amendment Communiqué, the disclosure that shall be made by the above mentioned persons will be made henceforth by the Central Registry Agency ("**CRA**"). However, the disclosure made by the CRA shall not release the respective natural or legal persons of their other disclosure obligations arising from the same article.

Furthermore, in its resolution published in the bulletin numbered 2018/7 and dated February 15, 2018, the CMB provided clarification on the implementation of the Amendment Communiqué and concluded that the disclosure obligation and responsibility of the respective persons as indicated under Article 12, including under paragraph (a), shall remain.

As a result, the respective persons shall fulfil their disclosure obligations arising from Article 12, regardless of the automatic disclosure which will be made by the CRA.

Management of Information Systems Communiqué numbered VII-128.9 and Auditing of Information Systems Communiqué numbered III-62.2

On January 5, 2018, the CMB promulgated two new communiqués, namely (i) Management of Information Systems Communiqué numbered VII-128.9 ("**Management Communiqué**"); and (ii) Auditing of Information Systems Communiqué numbered III-62.2 ("**Audit Communiqué**").

The Management Communiqué sets forth the rules, procedures and principles regarding the establishment and operation of the information systems of various entities within its scope, whereas the Audit Communiqué regulates the inspection of such systems by independent auditors.

A wide range of entities is subject to the obligations envisaged under the Management Communiqué, including publicly traded companies, capital markets institutions (i.e. intermediary institutions) private pension funds, Istanbul Settlement and Custody Bank (*Takasbank*), Borsa Istanbul A.Ş and the CRA. However, since the information systems of banking and insurance companies, financial leasing, factoring and financing companies are already subject to their similar sector specific regulations, these entities will be deemed in compliance with the Management Communiqué, provided that they fulfil their obligations arising from their own specific regulations.

In general terms, obligations imposed on entities within the scope of the Management Communiqué may be outlined as follows:

- Having an "information security policy" on the establishment, management and operation of information systems prepared by the senior management and approved by the board of directors
- Ensuring the privacy of the data with respect to the information systems, including customer data received or stored through information systems
- Conducting risk analyses, including performing penetration tests at least once a year
- Establishing an inventory consisting of owned information assets and ensuring that such inventory is up-to-date
- Preparing a continuity plan for the purpose of ensuring the continuity of information systems and establishing secondary systems to serve as a backup for primary systems
- Keeping primary and secondary systems within the territory Turkey

Furthermore, several entities explicitly referred to under the Management Communiqué, such as publicly traded companies and intermediary institutions with limited authority are exempted from certain obligations, including appointing an individual responsible for the security of information systems, conducting penetration tests and establishing secondary systems. However, those entities are still required to keep their primary systems within Turkey.

The senior management of such entities is responsible for the implementation of data security policies, whereas the board of directors has a general obligation to conduct efficient and adequate supervision on the information systems within the scope of the information security policy.

With respect to the audit requirement of such information systems, the Audit Communiqué envisages different audit periods depending on the entity operating the relevant information system. It is important note that certain entities, including publicly traded companies and intermediary institutions with limited authorization are exempt from such periodic auditing requirement in relation to their information systems.

Both communiqués entered into force on January 5, 2018, on the date of their publication.

Regulation on Monitoring of Transactions Affecting Foreign Currency Positioning

The Central Bank of the Republic of Turkey ("**Central Bank**") adopted the Regulation on Principles and Procedures of the Supervision of the Central Bank on Transactions Affecting Foreign Currency Positioning ("**Regulation**"), which was published in the Official Gazette numbered 30335 and dated February 17, 2018.

The Regulation is of a complementary nature to the recent amendments to the Decree No. 32, which, in principle, increase the restrictions on the ability of Turkish-resident entities and individuals to borrow in foreign currencies, while at the same time granting a higher degree of borrowing ability to entities, with an outstanding foreign currency loan exposure equal to or exceeding USD 15,000,000 at the time of the utilization of the loan.

In this respect, legal entities and individuals other than banks and financial institutions, with outstanding foreign currency cash loans and foreign currency-indexed loans utilized from abroad and within Turkey amounting to or exceeding USD 15,000,000 as of the last day of the respective accounting period, are required to notify the Central Bank in line with the procedure set forth under the Regulation.

As regards to the borrowings denominated in a different currency, the dollar equivalent of such borrowing amount will be calculated based on the exchange rates published in the Official Gazette on the last business day of the respective accounting period.

For the determination of the notification obligation, the financial statements prepared pursuant to the Turkish Accounting Standards, or in the absence of such, tax financials will be taken into consideration.

Furthermore, individuals and legal entities that are under a notification obligation shall enter into an agreement with

an independent auditor in 60 days as of the date they become subject to such notification requirements.

Non-compliance with the notification obligations and providing any misleading information may result in judicial fines arising from the Law numbered 1211, establishing the Central Bank.

Central Counterparty Legislation in Turkey

In the midst of "EMIR 2" developments in the EU, this article briefly outlines central counterparty ("**CCP**") legislation and its increasing importance in Turkey.

As is known, CCP clearing has globally drawn the attention of regulators as a result of the G20's mandate, in the aftermath of the financial crisis, that all standardized OTC derivatives should be centrally cleared where appropriate. This was an important response to the role played by credit default swaps in the crisis as they were blamed for contributing to systemic risk by creating interconnectedness and procyclicality within the financial system and preventing transparency.

Against this background, CCP clearing in Turkey is provided under Articles 77 and 78 of the Capital Markets Law, based on which the secondary legislation consists of: (i) a general regulation on the incorporation and operations of central clearing institutions, (ii) a regulation on the principles and procedures for central clearing and settlement, and (iii) a regulation on the central counterparty service of Istanbul Clearing, Settlement and Custody Bank Inc. ("**CCP Regulation**"), all adopted in 2013. On the other hand, as opposed to the international regulatory trend, no legislative step has so far been taken for the mandatory central clearing of standard OTC derivatives in Turkey, mainly due to their low levels of usage between Turkish banks and systemic risk added in the sector.

Nevertheless, the CCP concept is gaining importance with new clearing and settlement mandates Turkey's only CCP (*Takasbank*) receives and the ambitious Istanbul International Financial Center Project.

In very brief terms, CCP is a financial market infrastructure that interposes itself between several counterparties and becomes "buyer to every seller and seller to every buyer", thus ensuring the fulfilment of bilateral contracts via collateralization, multilateral netting and loss mutualization. To break down the CCP Regulation, four main chapters could be outlined therefrom:

- General provisions: In principle, "open offer method" shall be in place so that the CCP becomes"buyer to every seller and seller to every buyer" without requiring its members to enter into new novation contracts for each transaction. CCP is also not responsible for the obligations of its members vis-a-vis their clients.

- CCP membership: There exist stringent conditions for membership, which relate to, inter alia, the compliance of members with the CCP Regulation and other relevant capital markets regulations, the presence of appropriate information systems, risk management, internal control and audit mechanisms, requirements on minimum capital and financial strength; all supervised by the CCP.

- Margining and the Default Fund: CCP members are under the obligation to provide margins for the positions they hold on their own or clients' behalf. Collateral assets are insolvency-proof and shall be segregated from CCP's assets. CCP shall also segregate CCP members' assets from the assets of the CCP members' clients. Margin consists of initial margin and variation margin, which refer to covering losses between default and positions' closing and marked-to-market value adjustments, respectively. CCP may also make margin calls depending on the position of each member or client. Additionally, CCP shall have in place a default fund that must be sufficient to respond to defaults under unfavorable market conditions. Each member shall contribute thereto on the basis of position size and added risk. CCP may call additional default fund contribution in case of change in members' (or clients thereof) positions or assets value.

- Default waterfall: CCP members shall be deemed in default if they fail to timely fulfill their obligations arising from margin or additional default fund contribution calls, delivery of or payment for capital markets transactions, etc. In case of a member's default, CCP shall allocate losses by making recourse in the following order: a) Defaulted member's margins; b) Defaulted member's default fund contribution; c) indemnities from insurance, if any; d) CCP's initial capital allocated for risks; e) Default fund contribution of non-defaulting member; f) CCP's remaining capital.

In March 2016, the Capital Markets Board found Takasbank as compliant with CPMI-IOSCO principles and declared it as "Qualified-CCP". In August 2016, Takasbank applied to the European Securities Markets

Authority to be recognized as a third-country CCP. If recognized as such, it will be able to provide clearing services to EU entities creating more incentives for them to enter into further operations with Turkish banks. Additionally, as also mentioned above, Takasbank's expanding mandates and the Istanbul International Financial Center Project would further boost the importance of the CCP legislation in the future.

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Yours faithfully,
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