

Latest Developments in Banking & Finance: Reform on the Securities Investment Trusts in Turkey

The New Communiqué on the Principles Regarding Securities Investment Trusts has been published in the Official Gazette numbered 29368 (hereinafter referred as to “Communiqué”) on 27 May 2015.

This Communiqué is quite attractive for the foreigners as well as the Turkish citizens who are interested at foundation of securities investment funds. Within the frame of the New Communiqué, securities investment trusts have been separated in securities investment trusts with fixed and variable capital. It is possible that securities investment trusts with fixed capital may be transformed to securities investment trusts with variable capital. Securities investment trusts with variable capital are new in Turkish Law and this type of investment trust exists also in other jurisdictions in Europe.

Securities investment trusts with fixed capital

The securities investment trusts with fixed capital are capital markets institutions established as joint stock corporations and on the principle

of authorized capital, with the purpose of administration of a portfolio including assets and instruments specified below, in accordance with the provisions of the Capital Markets Law (hereinafter referred to as “Law”).

- Shares of the corporations established in Turkey, including those included within the privatization framework, as well as government debt securities and private debt instruments,
- Foreign government debt securities and private debt instruments and shares allowed to be traded within the framework of the provisions of Decree Numbered 32 regarding the Protection of the Value of Turkish Currency,
- 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,
- Lease certificates, repurchase, reverse repurchase and future, option and forward contracts, Cash collaterals for transactions carried out in the Turkish Derivatives Exchange and money market transactions in the presence of the Settlement and Custody Bank Inc. carried out to invest cash,
- Other assets and instruments approved by Capital Markets Board of Turkey (hereinafter referred to as “Board”).

Securities investment trusts differ from other types of trusts that securities investment trusts’ activities are limited to the portfolio management consisting of capital market instruments, gold and other precious metals. However, some activities have been prohibited to securities investment trusts such as lending money, commercial, industrial, agricultural and intermediation activities, short selling or margin trading, mortgage or offer as collateral the assets in their portfolio, acquire movable and immovable property exceeding the amount and value required for the activities.

Securities investment trusts

with variable capital

Securities investment trust with variable capital is defined as investment trust established as joint stock company capital of which is equal with its net asset value. The main difference of these investment trusts from investment trusts with fixed capital is that the investment trust with variable capital may obtain the permissions regarding their control, accounting, operation and risk management from other institutions stated in the Communiqué. Moreover, these trusts will be subject to their specific legislation with regard to the capital, nominal value, capital increase and decrease procedure and liquidation, the TCC is not applicable to these investment trusts.

The major functions of securities investment trusts in general

Major functions of securities investment trusts have been stated in the Communiqué as follows;

To create and administrate the Trust portfolio, to effect changes in the portfolio when necessary,

To diffuse investment risk through portfolio diversification, so as to minimize the risks per fields of activity and the state of companies,

To continuously monitor developments regarding capital market instruments, financial markets and institutions, and corporations, and to take necessary measures with respect to portfolio management,

To engage in research to preserve and increase the portfolio value.

Establishment requirements

Securities investment trusts may be established in accordance with general foundation procedures in accordance with Turkish Commercial Code. The approval regarding the establishment of these trusts which is given by the Board are subject to certain conditions such as an initial capital not less than TRY 20 million. For securities investment trusts with variable capital, this amount shall not be less than TRY 2 million.

Not only the securities investment trust, but also its shareholders shall fulfill the requirements stated in the Communiqué.

In investment trusts with fixed capital, shareholder(s) which hold a share of at least 25% of the capital in the Trust singlehandedly or jointly, are defined as leading shareholder in the Communiqué. The leading investor should meet the requirements specified herein, in addition to the requirements stated in the Communiqué.

Establishment proceedings

Any real person or legal entity which may establish a joint stock company and fulfill the requirements set forth in the Capital Markets Law may establish a securities investment trust. The establishment proceedings of securities investment trusts have been regulated in the Communiqué. To sum up, the founders of the trusts to be established should apply to the Board with the establishment form subject to the principles and form to be determined by the Board, and the documents specified in such form.

In case the application is approved by the Board, the application to the Ministry shall be made with all required documents including those attesting the payment of the capital in accordance with the provisions of the Communiqué, accompanied with the approval petition for the establishment.

Management of the trust and trust portfolio

Requirements for members of the board of directors, auditors and general managers in the investment securities trust have been specified in the Communiqué. The members of the board of directors who meet these requirements should be determined at the time of the application to be made to the Board.

In investment trusts with variable capital, the board of directors is appointed according to the articles of TCC and appointment of a new board member shall be notified to the authorized institution stated in the Communiqué.

The general manager may sit in the boards of directors or auditors at entities with which the trust is engaged in management, audit or capital relations, entities which have direct or indirect control over the management, capital, or audit of such entities, exchanges and organized markets, settlement and custody agencies, and other financial agencies which may be approved by the Board, provided that the position is not an executive one, and which shall not hamper the execution of the position in the trust.

The trusts may either manage their portfolios themselves through the employment of an adequate number of employees or may outsource from an institution having portfolio management authorization certificate from the Board, within the framework of a contract signed and the Board regulations regarding portfolio management.

Advantages of securities investment trusts

Securities investment trusts provide numerous opportunities to the investors such as professional management of the investors' capital, possibility of investment in securities with benefit potential, saving on time and money and minimization of risk due to the diversity of securities in trust's portfolio.

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