

TURKISH CAPITAL MARKETS ATTRACT FOREIGN INVESTORS

By Nazlı Çapan & Ayşe Ece Bircan

This briefing note aims to guide foreign investors who carry the intention to engage in capital market activities in Turkey and to summarize the types of investment services and activities in Turkish capital markets and disclosure requirements of foreign investors based on the main piece of legislation regulating this subject, Capital Markets Law No. 6362 (“CML”) and Communiqué on Investment Services and Activities and Ancillary Services No. III-37.1 (“Investment Services Communiqué”), published by the Capital Markets Board of Turkey (“CMB”).

Foreign investors, whether actual persons or legal entities with residence abroad, are permitted to freely purchase and sell various forms of securities and other capital market instruments through the intermediation of Turkish investment institutions licensed by the CMB, and to also transfer their profits from such trading abroad through banks licensed in Turkey.

This liberalization in the legal environment of Turkish capital markets, in conjunction with efforts to position Istanbul as an international financial centre, has garnered the interest of foreign investors and created an attractive environment for foreign investors, spurring participation in Turkey’s active capital markets.

I. INVESTMENT SERVICES FOR FOREIGN INVESTORS

Investment services and activities in Turkey are determined by the CML¹ accordingly and include the following services: (i) intermediation in sales and purchase transactions, (ii) investment advisory services, (iii) asset management services, and (iv) custody of assets in the name of the client. Such services are provided by locally licensed entities to both Turkish investors and foreign investors within the scope of the CML and its sub-regulations.

1. *Intermediation in Sales and Purchase Transactions*

Intermediation in sales and purchase transactions is comprised of (i) reception and transmission of orders (*emir iletimine aracılık*), (ii) execution of orders on behalf of clients (*işlem aracılığı*) and (iii) dealing on own account (*portföy aracılığı*) pursuant to the Investment Services Communiqué.²

- i. Reception and transmission of orders refers to transmission of client orders by investment institutions, either to an investment institution authorized to execute orders of capital market instruments or to a properly licensed institution with residence abroad.
- ii. Execution of orders on behalf of clients refers to the execution of trading orders of a client in the name and on behalf of the client or in the institution's own name and on behalf of the client, which is conducted through transmission by the investment institution to the exchanges, to an entity authorized to trade on its own behalf, or to a properly licensed institution with residence abroad.
- iii. Dealing on own account refers to the execution of sales and purchases by an investment institution as the counterparty of the trading orders of a client relating to capital market instruments.

¹ The Capital Markets Law, numbered 6362, was published on 30 December 2012 (the "CML").

² The Communiqué on Investment Services and Activities and Ancillary Services, numbered III- 37.1, was published on 11 July 2013 and numbered 28704.

The above-listed trading activities shall only be provided by investment institutions, namely, banks and brokerage firms, that are appropriately licensed by the CMB. Additionally, foreign investors may freely approach such investment institutions and communicate with them in order to obtain their intermediation services in Turkish capital markets. As an example, in the event that a foreign investor prefers to buy a share of any publicly held company listed on Borsa Istanbul A.S., the said investor shall directly engage with any locally licensed brokerage firm or bank, which is also a member of Borsa Istanbul A.S. When the investor officially becomes a client of the investment institution, the institution shall execute the orders of its client within the limits of its activity licenses. In addition, profits realized from such activities may be transferred abroad to the accounts of the foreign investor through Turkish banks.

2. Investment Advisory Services

Investment advisory services are defined as any influential advice given by authorized investment institutions regarding securities and issuers of securities to clients whose financial status and risk and return preferences are consistent with the securities recommended. Compatibility is determined through suitability tests, as envisaged under the Investment Services Communiqué, either upon the specific request of the client or absent a request. Such advice shall be provided on a customized basis, considering the specific needs of the client.

Pursuant to applicable local legislation, investment advisory services shall only be provided by brokerage firms, investment and development banks, and asset management companies provided that a license to provide such services has been obtained from the CMB. Thus, foreign investors may freely contact any duly licensed Turkish entity listed herein in order to secure investment advisory services and make investment decisions accordingly.

3. Asset Management Services

Asset management services can be divided into two categories, namely (i) asset management services tailored to collective investment scheme³; and (ii) asset management services tailored to

³ Article 32 of the PM Communiqué defines asset management services tailored to collective investment schemes as the management of portfolios of collective investment schemes in the name and for the account of the respective schemes in return for monetary benefit.

individuals,⁴ in accordance with the Portfolio management, or PM Communiqué,⁵ and the Investment Services Communiqué. Asset management services tailored to collective investment scheme shall be exclusively provided by asset management companies, whereas asset management services tailored to individuals, i.e., discretionary asset management services, may be provided by brokerage firms, investment and development banks, and asset management companies.

Foreign investors may enter into an asset management agreement with any duly licensed Turkish asset management company in order to obtain asset management services for assets booked in Turkey or assets booked abroad. Since the asset management company is acting on behalf of its clients (i.e., foreign investors) as a proxy while providing asset management services, the asset management company contacts brokerage firms, which may be residents of Turkey or hold residence abroad, to arrange for trading and execution of the relevant products with clients. In addition, foreign investors may also obtain discretionary asset management services from locally licensed brokerage firms, investment and development banks, and asset management companies through agreements with such entities.

4. *Custody of Assets*

Custody services are carried out as limited and general custody services in accordance with the Investment Services Communiqué. Custody services are limited to the custody of capital market instruments, which are subject to intermediation services provided by the investment institution to its clients. Whereas, general custody services are provided independently of authorized intermediation services, and they may be offered by an investment institution to clients or non-clients who do not receive intermediation services from the same investment institution. Given these facts, foreign investors may freely contact investment institutions holding requisite licenses granted by the CMB in order to obtain limited or general custody services.

⁴ As per Article 37 of the Investment Services Communiqué, asset management services tailored to individuals (discretionary asset management) are defined as the management of portfolios that belong to individuals and that are composed of financial assets in the name and for the account of the individuals in return for direct or indirect benefit.

⁵ Communiqué regarding Portfolio Management Companies and Activities of Such Companies, numbered III-55.1, was published on 2 July 2013 (the “**PM Communiqué**”).

Securities shall be held under custody in segregated accounts and on a beneficial owner basis, both on the books of the relevant investment institution that provides general custody services and the books of the central securities depository, known as the Central Registry Agency, or Merkezi Kayıt Kuruluşu (“MKK”), where dematerialized capital market instruments are registered and held under custody in Turkey. The relevant investment institution satisfies such a requirement for both Turkish and foreign investors who obtain custody services from locally licensed entities. Hence, the legal owner of such custody accounts is the client. Cash held under custody accounts will be held in an omnibus account to be opened by relevant investment institutions in the name of the client, whether Turkish or foreign without any further identification of the beneficial owner, if any. Under such custody arrangements for both cash and securities, the assets of the foreign investor will be held under custody in segregated accounts, separate from the accounts of the investment institution.

In addition to the central depository role of the MKK, it has established an infrastructure for the electronic general assembly meeting system (e-GKS), which was launched on 1 October 2012. In accordance with this system, shareholders and proxy holders may perform all of the necessary transactions before, during and after general assembly meeting using digital signatures. Under this electronic system, shareholders are able to vote, appoint a representative, watch the meeting live, ask questions and express their opinions, and cast their votes without share blockage. In cases in which a foreign investor opens a custody account or obtains intermediation services with/from the locally licensed investment institution, such investment institution may exercise participation and voting rights arising from the share certificate of the foreign investor provided that instructions from the foreign investor are provided prior to every general assembly meeting of a relevant company whose shares are owned by the foreign investor. In the event the foreign investor does not wish to assign its rights attached to the securities, it is possible that such an investor will be able to attend the general assembly meetings by using MKK’s electronic system without physically attending the meetings.

II. DISCLOSURE REQUIREMENTS

In the event where the foreign investor intends to establish a business relationship with Turkish investment institution and accordingly it enters into an agreement with the investment institution in order to obtain any of the investment services as mentioned herein above, such investment institution shall open an account for this foreign investor through following necessary regulatory steps as envisaged under the applicable Turkish legislation. In this sense, foreign investors shall disclose their certain

information (i.e. name, surname, passport or national identity card, residency) to the investment institutions prior to opening an account and also execution of relevant agreement.

This disclosure of information requirement is arising from know your customer rule as envisaged under both capital markets legislation and prevention of laundering proceeds of crime legislation. In addition, such obligation is not only applicable for investment institutions but also asset management companies.

III. FINAL WORDS

As outlined herein, Turkish legislation does not restrict participation of foreign investors to Turkish capital markets. In contrary, the aim of the legislator is to liberalize more of the Turkish capital markets in order to attract foreign investors. In this sense, certain regulatory steps are taken for encouraging foreign investors to become steady participants in the active market and it is expected to see more of such improvements and novelties within the scope of placing Istanbul as an international financial centre. Such a reformist legal environment, product diversity, liquidity and technology developments must charm the appetite of foreign investors to the Turkish capital markets.

CONTACTS

Nazlı Çapan, Senior Associate

T: +90 212 365 9633

ncapan@eryurekli.com

Ayşe Ece Bircan, Associate

T: +90 212 365 9627

ebircan@eryurekli.com

ABOUT THIS PUBLICATION

ERYÜREKLİ is a law firm incorporated in the form of an attorney partnership and registered by Union of Turkish Bar Associations with registration number 245.

This publication is provided by ERYÜREKLİ as a news reporting service to clients and colleagues. The information given in this publication does not necessarily cover every aspect of the topics with which it deals and should not be construed as legal advice.

Should you have any questions on issues reported in this publication, please contact your own counsel or [ERYÜREKLİ](#) for further information.