

## Capital Markets Board of Turkey Amends the Communiqué on Principles of Venture Capital Investment Funds

*19 Nov 2020*

Capital Markets Board of Turkey has made amendments on several issues regarding venture capital funds, including new rules on activities of fund, representation of the fund, principles on investment companies and venture capital investments and new requirements for public disclosures, with the Communiqué numbered III-52.4.b on Amendment of the Communiqué on Principles of Venture Capital Investment Funds numbered III-52.4 ("**Amendment Communiqué**").

The matters regulated by Amendment Communiqué are as follows:

### Fund Activities

The main activity of the fund is to operate the portfolio consisting of venture capital investments. Accordingly, the following are included in the assets and transactions creating this portfolio:

- Transactions carried out in the committed transaction market with promise contracts,
- Lease certificates and real estate certificates,
- Domestic organized money market operations,
- Mortgage-backed and asset-backed securities guaranteed securities,
- Specially designed foreign investment instruments and loan participation certificates approved by the Board,
- Investments made in companies located abroad that are not listed on the stock exchange and that have the potential to develop,
- Gold and other precious metals and money and capital market instruments based on them.

Additionally, fund founders can now procure portfolio management services from real estate portfolio management companies.

### Legal Status of the Fund

Fund will be deemed to have legal entity status limited to its transactions before the official registries and commercial registry offices. This amendment aims to prevent problems experienced in practice due to lack of legal entity status of the funds.

### Representation of Fund

Signature of an authorized signatory representing the portfolio depository will now be sought for transactions to be carried out on behalf of fund in the commercial registry and other official registries, alongside with one authorized signatory representing the founder of the fund.

Board of directors of founder can transfer its authority on the representation of fund to the founder's personnel having first degree signature authority. It is also possible to transfer the representation of the fund within the scope of management of the venture capital portfolio to the investment committee by the decision of the board of directors.

### Issuance of Fund Units

The founder and portfolio manager could take the fund participation shares into their own portfolio before the sale of the shares to investors, and the fund could be lent to the fund with a reasoned board decision.

The sales start date to be determined cannot exceed one year following the receipt of the approved export document by the founder in any case. If the sale of the participation shares has not started within this period, it will be mandatory to apply to the board within six working days following the expiry of the period for the liquidation of the fund or for granting additional time.

Different share groups can be formed in the same fund in order to differentiate the rights and obligations granted to the shareholders, by stating the principles in the information documents.

## **Principles on Marketing of Fund Units**

It is obligatory to include the definition of qualified investor in the Board regulations and the issues that the sale will be made only to qualified investors who meet the necessary conditions in the promotions and advertisements to be made regarding the Fund.

## **Principles on Venture Companies and Venture Capital Investments**

The following are including in the investments of funds that are considered as venture capital investments:

- Fund can invest in debt instruments issued by venture companies whose shares are not traded on the stock exchange, and in lease certificates of which venture companies whose shares are not traded on the stock exchange are fund users.
- Fund can provide financing in the form of structured financing as a debt and equity financing mix to venture companies whose shares are not traded on the stock exchange.
- Fund can invest in asset-backed securities based on loans granted/to be granted available exclusively to venture companies or on interest-free financing.
- Fund can invest in debt instruments of special purpose companies and organizations established abroad for collective investment as defined in the communiqué or in lease certificates of which they are fund users
- In the event that the shares of venture companies are sold on a term basis or advances are given to purchase the shares of venture companies, the receivables and advances from these transactions are also considered as venture capital investments.
- Premiums of options contracts that give venture companies the right to purchase their shares are also considered as venture capital investments.

## **Limitations on Investments Other Than Venture Capital Investments**

Funds can only become a party to derivative instruments in order to protect their portfolios against risks such as foreign exchange, interest and market risks and provided that there is a provision in their bylaws. The amount of open positions exposed due to derivative instruments cannot exceed 20% of the total fund value. In the evaluations to be made within this scope, the total value of the fund at the end of the accounting period is taken as a basis.

Investments up to a maximum of 10 percent of the total value of the fund can be made to companies located abroad that are not listed on the stock exchange and have the potential to develop. These investments will not be included in venture capital investment limitations.

## **Limitations on Credit Transactions and Repo Transactions**

Funds can use credit or interest-free financing up to 50 percent of the total fund value. It is necessary to comply with the said rate in the price reports announced at the end of the fiscal period in which the loan or interest-free financing is used and the following fiscal periods.

## **Public Disclosure Platform**

Creating a Public Disclosure Platform page for funds, filling out the summary and general information to be included on this page, and concealing the information that qualifies as trade secrets, fund information documents, fund information documents amendment texts and financial reports to be announced on the Public Disclosure Platform are obligatory for funds. The funds which are established before the date of the Amendment Communiqué shall comply with this obligation until 31 December 2020.

## Informing of the Fund Depositary

Samples of information and documents regarding venture capital investments shall be delivered to the portfolio depositary within a reasonable time period before the execution of the documents regarding fund investments and exit from the investment. Definition of "reasonable time" and the procedures as to sharing of the documents can be included in the portfolio deposition agreement. Formerly, the term for such notification was determined as 10 business days following the realization of the investment.

Please see this [link](#) for the full text of the Amendment Communiqué which was published in Official Gazette numbered 31269 and dated 9 October 2020 (only available in Turkish).

## Related Practices

- [Securities and Capital Markets](#)
- [Financial Markets and Services](#)
- [Venture Capital and Private Equity](#)

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