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TURKEY: UNAUTHORIZED CAPITAL MARKET ACTIVITIES

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I. Introduction

Capital market activities as defined under Article 34 of the Capital Markets Law No. 6362 (the “**CML**”) are activities of capital market institutions falling within the scope of CML, investment services and activities and other ancillary services falling within the scope of the CML. In order to carry out capital market activities, permission of the Capital Markets Board of Turkey (the “**Board**”) is required. Obtaining permission is particularly important given that the consequences of determination by the Board that such activities are carried out without the permission from the Board may have severe consequences.

II. Capital Market Activities

According to Article 2 of the CML, “*capital market instruments, issuance of these instruments, public offerors, capital market activities, capital market institutions, stock exchanges and other organized markets where capital market instruments are traded, market operators, Turkish Capital Markets Association, Turkish Appraisers Association, central clearing houses, central custody institutions, Central Securities Depository and Capital Markets Board*” are subject to the CML.

On the other hand, capital market activities are not *numerus clausus*, therefore they cannot be conclusively listed. They are defined under Article 34 of the CML as “*activities under the*

Law and investment services and activities and other ancillary services falling within the scope of the Law”.

With the reference of Article 34, Article 37 of the CML lists the investment services and activities as follows:

- a) Receiving and placing orders relating to capital market instruments,
- b) Executing orders relating to capital market instruments for and on behalf of customer or on behalf of itself and for customer,
- c) Purchase and sale of capital market instruments from its account,
- d) Portfolio management,
- e) Investment consultancy,
- f) Intermediating sales through underwriting during capital market instruments’ public offering,
- g) Intermediating sales without underwriting during capital market instruments’ public offering,
- h) Operating multilateral sale and purchase systems and other organised over the counter markets,
- i) Custody and management of capital market instruments on behalf of customer and portfolio custody,
- j) Carrying out other service and activities determined by the Board.

The ancillary services which may be carried out by investment enterprises and portfolio management companies are set forth under Article 38 of the CML as follows:

- a) Providing consultancy services regarding capital markets,
- b) To loan or lend and provide foreign currency services on services and activities to be determined by the Board, including project finance, without prejudice to foreign exchange regulations,
- c) Investment research and financial analysis regarding transactions or providing general advice concerning capital market instruments,
- d) Providing services regarding carrying out underwriting,
- e) Providing brokerage services on borrowing or otherwise funding,
- f) Wealth management and financial planning,

- g) Other services and activities to be determined by the Board.

III. Capital Market Institutions

As per Article 35 of the CML, the list of capital market institutions which are allowed to carry out capital market activities are as follows:

- a) Investment enterprises
- b) Collective investment institutions
- c) Independent audit, valuation and rating agencies which will carry out activities in capital market
- d) Portfolio management companies
- e) Mortgage finance institutions
- f) Housing finance and asset backed funding
- g) Asset leasing companies
- h) Central clearing houses
- i) Central custody companies
- j) Trade repository institutions
- k) Other capital market institutions as determined by the Board

Accordingly, the capital market institutions have not been listed as *numerus clausus* and the Board is entitled to define additional capital market institutions, as the case maybe.

IV. Mandatory Permits for Investment Services and Activities

As per Article 39 of the CML, in order to provide investment services and carry out capital market activities listed above regularly, obtaining permission from the Board is mandatory. Accordingly, investment services and activities can only be provided and carried out by investment enterprises, established pursuant to the Communique on Rules of Establishment and Activities of Investment Enterprises No. III-39.1, provisions on investment trusts, portfolio management companies and stock markets are reserved.

The permit application varies depending on the activity and service applied for. A certificate of authorization will be issued by the Board, showing the investment services and activities to

whom the permission is granted. The list of the activity permit holder investment enterprises and the type of activity permits can be found on the web site of the Board.

On the other hand, in order to carry out ancillary services, instead of permit, notification to the Board is required. Pursuant to Article 7 of the Communiqué on Principles Regarding Investment Services and Activities and Ancillary Services No. III-37.1 (the “**Communiqué**”), ancillary services can be provided by investment enterprises without having to obtain certificate of authorization in accordance with the principles determined by the Board. The ancillary services must be notified to the Board. Unless otherwise expressed by the Board within 20 (twenty) days following the notification, the ancillary services may be carried out in accordance with the Communiqué.

V. Unauthorized Activities

If the Board identifies activities are carried out in the capital markets without permission, the Board files a criminal complaint against the persons to the Office of Chief Public Prosecutor. Under Article 109 of the CML, persons who carry out unauthorized activities in the capital markets can be convicted with 2 (two) to 5 (five) years of imprisonment and judicial fine from 5,000 (five thousand) to 10,000 (ten thousand) days. This judicial fine would be at least TRY 100,000 (~ EUR 6,750) when calculated over the minimum daily amount is TRY 20 (~ EUR 1,35) depending on the court’s decision.

Furthermore, as per Article 99 of the CML, the Board is authorized to take any kind of measures in order to stop the activities carried out without permission, and to bring action to cancel all the consequences arising out of unauthorized capital markets activities and transactions and to return the cash or capital markets instruments to the beneficiaries within 1 (one) year from the date the Board has identified such activities and in any case within 5 (five) years from the date of occurrence.

Moreover, pursuant to Article 8 of the Turkish Criminal Code No. 5237, an offender outside Turkey, who carried out capital market activities subject to the Board’s approval can be held liable for its activities concerning Turkey.

VI. Conclusion

Capital markets are heavily regulated and serious sanctions including imprisonment and judicial fines may be imposed upon breach. This includes investment services and activities in capital markets, which can only be carried out by duly established investment enterprises, crowd funding, capital market instruments, brokerage activities and so on. If one is unsure whether a party is authorized to carry out the activities, they may check the status from the web site of the Board which is publicly accessible.

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