

GEDİK & ERAKSOY

February 2014

New Communiqué on Securities Investment Trusts

The Communiqué on the Securities Investment Trusts, based on the new Capital Markets Law numbered 6362 (CML), is published in the Official Gazette dated 29 August 2013 (New Communiqué), replacing the old Communiqué on the Securities Investment Trusts (Old Communiqué) which was based on the abolished CML.

General Overview

Securities investment trusts (SITs) are investment companies governed by the Capital Markets Board (CMB) and incorporated for the management of portfolios composed of capital markets instruments, gold and other precious metals. SITs are incorporated as joint stock corporations adopting the authorized capital system and are obliged to become public by offering at least 49% of their shares, subsequent to the incorporation, in any case in line with the time limitations set forth under the New Communiqué. The main functions of SITs are to collect the deposits of investors, manage and invest such deposits in a portfolio consisting of different capital markets instruments and distribute revenues to shareholders depending on their share ratios, thus spreading the risk. The New Communiqué brings about many significant changes, aiming to solve the practical problems faced by investors regarding the functioning of SITs and ensuring more secure, transparent, efficient and competitive capital markets.

Changes Introduced by the New Communiqué

Abolition of Differentiation of A and B Type SITs

Under the Old Communiqué, SITs were classified into two groups: “A type SITs” that were required to invest at least 25% of their assets in equities issued by Turkish companies; and “B type SITs”, which were not subject to such an obligation. As a consequence, different taxation principles were applied to the incomes of these different SITs under the relevant tax legislation. However, this tax legislation was abolished on 1 January 2006 resulting in the two types of SITs consequently enjoying the same taxation incentives, meaning different classifications of SITs became unnecessary. The New Communiqué abolishes these SITs classifications.

Capital Increase

As per the New Communiqué, SITs may make capital increases through rights issues (*bedelli sermaye artırım*) only if the stock-exchange price of the shares is above TL 1. This price should be determined on

the 30 days weighted average of the stock price, such 30-days ending on the day preceding the date of the public disclosure of the capital increase. The New Communiqué contains two exceptions to this rule: (i) the SIT may increase its capital through issuance of shares below the nominal value provided that privileges on these shares are removed amending the articles of association of the relevant SIT, and (ii) the SIT may increase its capital through issuance of new shares by way of a private placement (*tahsisli sermaye artırımı*), provided that the price of the newly issued shares cannot be less than the nominal value and the average of the SIT's net unit asset value for a 30-days period, such 30-days ending on the day preceding the date of the public disclosure of the capital increase. SITs are not allowed to increase their capital prior to going public.

Incorporation Requirements

In addition to the incorporation requirements provided under the Old Communiqué, such as having an initial capital of at least TL 20 million and submitting an undertaking to the CMB to make a public offering of at least 49% of the shares, the New Communiqué provides that, for the incorporation of a SIT: (i) shares must be fully-paid in cash on the date of incorporation; (ii) the general manager and the board of directors of the SIT must meet the required qualifications; and (iii) a portfolio depository institution, which will be responsible for the safekeeping of the portfolio assets of the SIT, must be determined. However, as these portfolio depository institutions have only recently been introduced by the CMB under secondary legislation of the new CML, this obligation will not enter into force until 1 June 2014.

Share Transfer Restrictions

As per the Old Communiqué, share transfers realized after the public offering are not subject to any restrictions. However, under the New Communiqué, share transfers resulting in the change of control of the SIT's management are subject to a more restrictive regime and require the approval of the CMB.

Amendments Targeting Investments, Transparency and Protection of Investors

Under the New Communiqué, SITs are now authorized to only procure portfolio management and investment advisory services from portfolio management companies as defined under the CML.

The New Communiqué introduces detailed regulations on accounting, internal control systems and risk management systems. To this extent, under the New Communiqué, SITs must form inspection units within the company to assure compliance with the laws, employing an adequate number of inspectors licensed by the CMB to hold office in this unit. Additionally, the new Communiqué provides further restrictions relating to SITs portfolio assets and activities, as well as more detailed public disclosure requirements, rendering SITs more regulated capital market institutions.

Gedik & Eraksoy Avukatlık Ortaklığı

Kanyon Ofis Binası, Kat 6,
Office No: 1015 - 1023
Büyükdere Caddesi No.: 185
TR-34394 Levent, İstanbul
Turkey

Tel +90 212 371 2950
Fax +90 212 371 2955

www.gedikeraksoy.com

© Gedik & Eraksoy Avukatlık Ortaklığı 2012. This document is for general guidance only and does not constitute definitive advice.



Hakkı Gedik
Partner, Gedik & Eraksoy

Contact
Tel +90 212 371 2953
hakkı.gedik@gedikeraksoy.com



Gökhan Eraksoy
Partner, Gedik & Eraksoy

Contact
Tel +90 212 371 2952
gokhan.eraksoy@gedikeraksoy.com