

# GEDİK & ERAKSOY

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## *Recent Developments in Capital Markets Legislation regarding Selling Restrictions Applicable to Issuances to Turkish Investors*

*The Communiqué Serial III No. 37.1 on the Principles of Investment Services and Ancillary Services (the Communiqué III/37.1) which sets out new rules on selling restrictions will enter into force on 1 July 2014.*

### **Overview**

Since the adoption of the new Capital Markets Law no. 6362 (the **CML**) on 30 December 2013, the Capital Markets Board of Turkey (the **CMB**) has been revising and updating the relevant secondary legislation in line with the CML, the practices and necessities in the capital markets. Accordingly, the Communiqué III/37.1 was published in the Official Gazette dated 11 July 2013 and numbered 28704. The Communiqué III/37.1, which is to enter into force as of 1 July 2014, will regulate the services and operations of investment institutions, which were previously called “intermediary institutions” under the relevant legislation. Upon its entry into force, (i) the Communiqué Serial V No. 46 on the Intermediary Activities and Intermediary Institutions; (ii) the Communiqué Serial V No. 55 on Investment Advisory Activities and Institutions Authorized to Provide Investment Advisory Services; and (iii) the Communiqué Serial V No. 125 on Principles regarding Leveraged Transactions and Institutions Authorized to Provide Those Transactions will all be abolished.

The Communiqué III/37.1 introduces, among others, an important provision which has been already applied by the CMB in practice based on the general provisions of both the Capital Markets legislation and the Decree No. 32 on the Protection of the Value of the Turkish Currency (the **Decree No. 32**), on selling restrictions of the capital market instrument.

### **Existing Regime**

Sale of foreign capital market instruments by Turkish residents are currently regulated under Decree No.32 and the Capital Markets legislation which requires the sellers to initiate a public offering or a private placement subject to the CMB approval. The only way to sell the foreign capital market instruments without triggering the regulatory approval procedure is on a reverse enquiry basis where no solicitation and marketing activity takes place in Turkey and the investor uses a locally licensed intermediary to purchase the relevant capital market instrument.

### **Provisions under the Communiqué III/37.1**

By enactment of the new Communiqué III/37.1, the CMB clarified the scope of the foregoing restriction to be applied on the sale of debt instruments which are approved to be offered only for the purpose of sale outside Turkey. According to the new Article 9 of the Communiqué III/37.1, any services and activities provided by the foreign financial institutions and any accounts opened with such institutions, any cash or securities deposited to such accounts and any transactions conducted over those accounts are not restricted

by the Communiqué III/37.1, provided that no advertisement, marketing and publicity has been conducted towards Turkish investors and that Turkish investors decide on such transactions with their own initiative. Communiqué III/37.1 further defined what would be considered solicitation of Turkish investors. According to Communiqué III/37.1, to open a business, to establish a website in Turkish, to directly or indirectly conduct advertisement or marketing activities through individuals or institutions resident in Turkey are considered solicitation of Turkish Investors. The CMB has the authority to set additional criteria to determine whether an operation of a foreign institution constitutes solicitation of Turkish investors. In case of solicitation of Turkish investors Turkish legislation is applicable to the foreign institution and the transaction in question.

These new restrictions will start to apply on 1 July 2014. Although it does not bring in radical changes to the selling restrictions regime, it surely will serve as a guideline to foreign issuers and entities with respect to the do's and don'ts in cross border selling and marketing activities.

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