

TURUNÇ

23 March 2011

Certain Amendments to the Capital Markets Legislation

On 16 March 2011, the Capital Markets Board of Turkey issued two communiqués, which amended certain provisions of two previously issued communiqués. Among other things, the amendments create certain exemptions for issuers whose shares are traded on the Emerging Companies Market of the Istanbul Stock Exchange and expand the scope of certain exemptions and thresholds available to issuers in private placements. The two communiqués are:

- Communiqué, Series IV, No. 50 on Amendments to the Communiqué on the Principles Regarding Exemptions Available to, and Deregistration of, Issuers (Series IV, No. 39, dated 8 March 2008 (“Communiqué IV/39”)) (“**Communiqué IV/50**”) (*İhraççuların Muafiyet Şartlarına ve Kurul Kaydından Çıkarılmalarına İlişkin Esaslar Tebliğinde Değişiklik Yapılmasına Dair Tebliğ (Seri: IV, No: 50)*).
- Communiqué, Series IV, No. 51 on Amendments to the Communiqué on the Principles to be Complied with by Joint Stock Companies that are Regulated by the Capital Markets Law (Series IV, No. 41, dated 19 March 2008 (“Communiqué IV/41”)) (“**Communiqué IV/51**”) (*Sermaye Piyasası Kanunu’na Tabi Olan Anonim Ortaklıkların Uyacakları Esaslar Hakkında Tebliğde Değişiklik Yapılmasına Dair Tebliğ (Seri: IV, No: 51)*).

Both communiqués entered into force as of their dates.

The following two tables below summarize the amendments made by the two communiqués.

I. Amendments Regarding Exemptions Available to Issuers

Communiqué IV/39 (amended Communiqué)	Communiqué IV/50 (amendments)
—	<p>(1) New definition. The following definition has been inserted as subparagraph (f) of the first paragraph of Article 3 of Communiqué IV/39:</p> <p>“(f) <i>Emerging Companies Market (“ECM”)</i>: the trading market for securities of companies unable to meet the listing requirements of the stock exchange, but demonstrating development and growth potential.”</p>

Communiqué IV/39 (amended Communiqué)	Communiqué IV/50 (amendments)
<p style="text-align: center;">—</p>	<p>(2) <i>New provision.</i> The following paragraph 3 has been added to Article 3 of the Communiqué IV/39:</p> <p style="padding-left: 40px;">“(3) Companies whose shares are traded on the ECM are exempt from the primary dividend distribution requirements for the first three consecutive accounting periods following their registration with the Capital Markets Board.”</p>
<p>The second and third paragraphs of Article 6 used to read as follows:</p> <p style="padding-left: 40px;">“(2) However, if securities sold <u>to qualified investors</u> without a prospectus in accordance with the exemption contained in <u>subparagraph (d)</u> of the first paragraph of this Article are later resold in a manner that falls under the scope of the definition of a public offering in Article 3 of the Capital Markets Law, then it is compulsory to issue a prospectus and a circular for such resale.</p> <p style="padding-left: 40px;">(3) <u>Except for capital increases by limiting the right of first refusal of current shareholders or a public offering of shares by current shareholders,</u> the Capital Markets Board may exempt issuers from issuing a prospectus if the total amount of securities to be issued is less than <u>TL 170,000 (approximately USD 113,300 or Euro 85,000)</u>, provided that, with the purpose of informing the public, announcements disclosing certain necessary information in the form determined by the Capital Markets Board are made. The maximum amount under this exemption is calculated by taking into consideration issuances over the last twelve months.”</p>	<p>(3) <i>Amendment.</i> The second and third paragraphs of Article 6 of Communiqué IV/39 have been amended as follows:</p> <p style="padding-left: 40px;">“(2) However, if securities sold <u>in a private placement or to qualified investors</u> without a prospectus in accordance with the exemption contained in <u>subparagraphs (c) and (d)</u> of the first paragraph of this Article are later resold in a manner that falls under the scope of the definition of a public offering in Article 3 of the Capital Markets Law, then it is compulsory to issue a prospectus and a circular for such resale.</p> <p style="padding-left: 40px;">(3) The Capital Markets Board may exempt issuers from issuing a prospectus if the total amount of securities to be issued is less than <u>TL 3,000,000 (approximately, USD 2,000,000 or Euro 1,500,000)</u>, provided that, with the purpose of informing the public, announcements disclosing certain necessary information in the form determined by the Capital Markets Board are made. The maximum amount under this exemption is calculated by taking into consideration issuances over the last twelve months.”</p>

Communiqué IV/39 (amended Communiqué)	Communiqué IV/50 (amendments)
—	<p>(4) New provision. The following provision has been inserted after Article 6 as Article 6/A of Communiqué IV/39:</p> <p><i>“Exemptions for sales made to qualified investors</i></p> <p>Article 6/A – Those issuers whose shares are not registered with the Capital Markets Board, and who are exempt from prospectus issuance requirements by virtue of subparagraph (d) of the first paragraph of Article 6 of Communiqué IV/39 for the issuance of debt instruments only, are also exempted from the independent auditing requirements for annual and interim financial statements and the reporting of such statements to the Capital Markets Board and the stock exchange.”</p>

II. Amendments to the Principles to be Complied with by Joint Stock Companies that are Regulated by the Capital Markets Law

Communiqué IV/41 (amended Communiqué)	Communiqué IV/51 (amendments)
—	<p>(1) New definition. The following definition has been inserted as paragraph (f) of the first paragraph of Article 3 of Communiqué IV/39:</p> <p>“(f) <i>Emerging Companies Market (“ECM”)</i>: the trading market for securities of companies unable to meet the listing requirements of the stock exchange, but demonstrating development and growth potential.”</p>
<p>The first paragraph of Article 7 used to read as follows:</p> <p>“Companies whose shares are traded on the stock exchange must form an investor relations department to deal with the use of the shareholding rights, report to the board of</p>	<p>(2) Amendment. The first paragraph of Article 7 of Communiqué IV/41 has been amended as follows:</p> <p><u>“Except for those companies whose shares are traded on the ECM,</u> companies whose shares are traded on the stock exchange must form an investor relations department to</p>

<p>directors and provide communication between the board of directors and the shareholders. The full name and contact information of the manager of such department, and any changes to such name or information, must be reported to the stock exchange to be published in its bulletin, in accordance with Capital Markets Board regulations regarding public disclosures of special conditions.”</p>	<p>deal with the use of the shareholding rights, report to the board of directors and provide communication between the board of directors and the shareholders. The full name and contact information of the manager of such department, and any changes to such name or information, must be reported to the stock exchange to be published in its bulletin, in accordance with Capital Markets Board regulations regarding public disclosures of special conditions.”</p>
<p>The first paragraph of Article 8 used to read as follows:</p> <p>“Companies whose shares are traded on an exchange must appoint an employee responsible for the fulfillment of the company’s obligations arising out of the capital markets legislation and the coordination of the implementation of corporate governance principles. Such employee must hold an “Advance License for Capital Market Operations” and an “Expert Grading License for Corporate Governance”, and must be working full time for the company as an executive manager and must report to the top executive manager about his/her work.”</p>	<p>(2) Amendment. The first paragraph of Article 8 of Communiqué IV/41 has been amended as follows:</p> <p><u>“Except for those companies whose shares are traded on the ECM,</u> companies whose shares are traded on an exchange must appoint an employee responsible for the fulfillment of the company’s obligations arising out of the capital markets legislation and the coordination of the implementation of corporate governance principles. Such employee must hold an “Advance License for Capital Market Operations” and an “Expert Grading License for Corporate Governance”, and must be working full time for the company as an executive manager and must report to the top executive manager about his/her work.”</p>

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