

THIRD CHAPTER

Other Institutions

Investor Compensation

ARTICLE 82 – (1) When it is determined that investment firms are unable to fulfill their obligations regarding cash payment or capital market instruments delivery or that they will not be able to fulfill them within a short period of time, the Board shall decide to compensate investors. This decision shall be taken within three months starting from the determination of the situation. The authority of the Board to take measures in the context of this Law shall be reserved.

(2) The Board shall take the opinion of the Banking Regulation and Supervision Agency in order to take the compensation decision about banks according to the first paragraph. The provisions of this Law related to the compensation of investors shall not be applied to cash payment obligations which are considered as deposit or participation fund according to banking legislation.

Investor Compensation Center

ARTICLE 83 – (1) The ICC possessing a public legal identity has been established for the purpose of investor compensation in the context of the conditions specified in this Law. ICC shall be administered and represented by the Board in the framework of a by-law to be issued by the Board. In principle, the operations and transactions to be carried out by the ICC shall be performed by the Board staff and staff to be employed for this purpose. The principles and procedures regarding this issue shall be determined with a by-law to be issued by the Board.

(2) Investment firms are obliged to participate in the ICC. The principles and procedures regarding the participation of investment firms to the ICC as well as their obligations to pay entrance fees, annual fees and additional fees shall be established with a by-law to be issued by the Board. In this by-law, different principles may be specified in the determination of the fee amount depending on types and risk conditions of firms.

(3) When deemed necessary by the ICC, with regard to firms for which an investor compensation decision has been taken by the Board, it may be decided to suspend the payments of the firm and to grant the ICC sole authority to dispose of all of its assets. With regard to banks, this provision shall be applied to the cash payment and capital market instrument delivery obligations of banks arising from their capital market activities.

(4) All kinds of deposits and receivables arising from investment services and activities shall be recorded as a revenue to the ICC in cases where they are not claimed and collected within ten years starting from the date of the last claim, transaction or any written order of the account holder and starting from the liquidation date for investment funds and investment companies with variable capital. The principles and procedures relating to this issue shall be determined by the Board.

(5) The assets of the ICC cannot be; used outside their purpose, provided as guarantee, attached even for public receivables, pledged, included in the bankruptcy estate and be subject to any cautionary injunction.

(6) The transactions to be made by the ICC in the scope of this Law shall be exempt from charges and the documents it would issue shall be exempt from stamp duties. A commercial enterprise in terms of the Corporate Tax Law dated 13/6/2006 and numbered 5520 shall not be deemed to be formed due to the activities of the ICC performed in the context of this Law.

Scope of compensation

ARTICLE 84 – (1) The scope of compensation consists of claims arising from failure to fulfill cash payment or capital market instrument delivery obligations with regard to assets belonging to investors kept or managed by investment firms in the name of the investor in relation to investment services and activities or ancillary services.

(2) The investors of investment firms subject to an investor compensation decision, are entitled to claim compensation in the framework of this Article. Losses incurred by investors due to investment advice or price movements in the market are not included in the coverage of compensation.

(3) Claims of investors sentenced due to crimes mentioned in Articles 106 and 107 or the laundering of crime proceeds, shall be outside the scope of compensation in what regards receivables in relation to the mentioned actions.

Payments to be made to persons for whom an indictment has been made due to the mentioned crimes shall be suspended from the beginning of the investigation on the related crimes until the finalisation of the court decision.

(4) Persons and institutions listed below shall not be compensated:

a) Members of board of directors, managers, personally liable shareholders of investment firms for which an investor compensation decision has been taken, their shareholders holding a share of five percent or more, members of their board of auditors or persons who are in similar positions in other companies in the same group with the related investment firm as well as their spouses, relatives by blood or marriage up to second degree and third parties acting on behalf of those persons

b) Other companies in the same group with investment firms for which an investor compensation decision has been taken

c) Companies where real persons and legal entities mentioned in sub-paragraph (a) of this paragraph hold a share of twenty five percent or more

c) Persons that have caused investment firms to enter into financial distress or persons liable for actions having an important impact in the deterioration of the financial status of investment firms or those acquiring benefit from these actions

(5) The maximum compensation amount to be paid to each right holder investor shall be one hundred thousand Turkish Liras. This amount shall be increased at the rate of the revaluation coefficient announced each year. The total compensation amount may be increased up to five times by the Council of Ministers upon the proposal of the Board. This limit includes all the claims of an investor from the same investment firm, regardless of the currency or the number or type of account. In the event that the amount exceeding the maximum amount to be paid by the ICC has been transferred in order to be paid to another investor, no payment shall be made by the ICC to the transferee.

Compensation process

ARTICLE 85 – (1) Investors shall make their compensation claims to the ICC in writing. The right to make a compensation claim shall lapse after one year starting from the announcement of the compensation decision to the public.

(2) The ICC is obliged to make necessary preparations in order to compensate as soon as possible the investors which have been entitled for compensation and to make payments within three months after determining the right holders and compensation amounts. In compulsory cases, this period may be extended for a maximum of three months with the approval of the Board.

(3) Compensation claims of investors shall be calculated upon the cash payment and capital market instrument delivery obligations which have not been fulfilled by investment firms. Capital market instruments kept in the name of investors shall primarily be distributed to right holders. These capital market instruments shall be deducted on the basis of each account and especially for unfulfilled clearing obligations. The compensation amount shall be determined by also taking into account deduction and similar requests of investment firms based on legal and contractual conditions. The principles and procedures related to the calculation of investor receivables shall be determined by the Board.

(4) After the completion of the investor compensation process, the Board shall decide to close the compensation process upon the notification of the ICC. The ICC shall present the results of the compensation process to the Board along with its reasoned proposal on whether requesting the gradual liquidation or bankruptcy of those about whom an investor compensation decision had been taken is beneficial or not. The gradual liquidation or bankruptcy decision shall not prevent the operation of the compensation process. The ICC shall be the successor to rights of investors with the compensation amount it has paid.

(5) Those the investors of whom have been compensated partially or totally are obliged to make payments and expenses made by the ICC and arising from the compensation including the principal and legal interest in order to be able to relaunch investment services and activities, without prejudice to other conditions required by legislation.

(6) Without prejudice to the issues regulated in other articles of this Law, the principles and procedures regarding

the notification and announcement of the compensation decision, the operating procedure of the compensation, obligations of firms for which a compensation decision has been taken against the ICC, sanctions to be imposed in cases where these obligations are not fulfilled, principles regarding the protection of investors in domestic or foreign branches, obligations regarding the notification of investors by those for whom an investor compensation decision had been taken, rights and obligations of the ICC, issues regarding the investment of the assets of the ICC, financial statements, books and reports of the ICC as well as other issues shall be determined with a by-law to be issued by the Board in the context of general provisions.

Gradual liquidation

ARTICLE 86 – (1) For those about whom an investor compensation decision has been taken according to Article 82, the Board may also take the decision of gradual liquidation along with the decision to close the compensation process, with the exception of banks. In this case gradual liquidation operations shall be conducted by the ICC.

(2) The purpose of gradual liquidation is to pay remaining receivables of investors which have not been compensated within the context of the investor compensation process established in Article 85 as well as the receivables of the ICC arising from its position as successor to investors, through the allocation of assets of those who have been subject to a gradual liquidation decision or the allocation of the amount obtained by liquidating these assets into cash. Provisions of the Law numbered 6102, the Law numbered 2004 and provisions of other legislation related to liquidation shall not be applicable to gradual liquidation decisions and operations. The principles and procedures regarding gradual liquidation shall be determined with a by-law prepared by the Board.

(3) The duties and authorities of the statutory bodies of those about whom a gradual liquidation decision has been taken by the Board shall be fulfilled by the ICC, starting from the gradual liquidation decision until the finalisation of the liquidation. Among the operations made, those which have to be registered shall be registered and announced upon the request of the ICC, without being subject to charges. At the date of announcement of the finalisation of the gradual liquidation, the legal organs present prior to the decision of gradual liquidation shall assume their duties and authorities, without the need for any further operation.

(4) The payments of those about whom a gradual liquidation decision has been taken shall be suspended and solely the ICC can dispose of all their assets. The ICC shall determine the assets and liabilities of those subject to gradual liquidation. Rights and obligations of related persons deriving from their contracts which become due after the gradual liquidation decision, shall also be determined as of their maturity dates. Guarantees provided according to legislation shall also be considered within assets. The default interest to be applied during the period between the compensation and the liquidation process shall be determined by the Board. In cases where a gradual liquidation decision has been taken, no bankruptcy decision shall be taken until the decision on the closing of this liquidation. No proceedings shall be made in the scope of the Law numbered 2004 and the Law on Procedures of Collection of Public Receivables dated 21/7/1953 and numbered 6183 about those for whom a liquidation decision has been given, proceedings which have started previously shall stop; statutes of limitation and lapses of time which can be interrupted by a proceeding and foreclosures shall not apply.

(5) The ICC shall identify actual right holders in the context of liquidation as well as the amounts of their receivables and debts on the basis of information and documents obtained during the compensation process. The receivables of the ICC as a successor to investors, and its liquidation expenses shall also be considered as receivables of the ICC. The cash assets of those about whom a gradual liquidation decision had been taken shall be used directly in the payment of these receivables while those which are not in cash shall be used after being liquidated. Primarily the receivables of customers shall be paid from the assets. In the event that the totality of customers' receivables cannot be met, a pro-rate payment shall be made. After all receivables have been paid first a pro-rata payment shall be made for public receivables from the remaining amount and then the receivables of the ICC deriving from the payments it has made in the context of Article 85 and its liquidation expenses shall be paid from the residual. The remainder shall be allocated to other creditors. Other issues with regard to principles and procedures relating to the liquidation of the noncash

assets belonging to those about whom a gradual liquidation decision has been taken as well as pro rata payments to be made shall be established with a by-law to be issued by the Board.

(6) The Board may decide on the transfer the management of portfolios managed by those about whom a gradual liquidation decision has been taken, to another investment firm.

(7) Without any delay, the ICC shall request from the shareholders holding directly or indirectly, alone or together, the management and audit of investment firms about whom a gradual liquidation decision has been taken with the compensation decision as well as from real person shareholders holding more than five percent of the capital of his legal entity shareholders to make a declaration of properties showing real estate and participations, attachable movable properties, rights and receivables, securities and all kinds of earnings and revenue which belong to themselves, their spouse and their children under guardianship; as well as the real estate, attachable movable properties, rights, receivables and securities that they have acquired or transferred gratuitously or non-gratuitously within two years prior to the declaration of the liquidation. It is obligatory to submit the declaration of property requested according to the provisions of this paragraph to the ICC within seven days at the latest. The ICC is authorised to request from the related court to take all kinds of conservation measures necessary for the interests of creditors including cautionary injunction and cautionary attachment decisions without requiring any guarantee on the assets of shareholders holding management and audit directly or indirectly, alone or in concert, as well as a ban on leaving the country for related persons. The related provisions of the Law numbered 2004 shall be valid for the provisions and consequences of this declaration of property. In the event that no lawsuit has been filed or no demands for execution or bankruptcy proceedings have been made within six months starting from the injunction and attachment decisions taken in the framework of this paragraph, these decisions shall be cancelled automatically.

(8) The Board shall decide to close the gradual liquidation upon the application of the ICC. In the event that it is determined that the assets of those about whom a gradual liquidation decision has been taken are not adequate to meet receivables of right holders in the scope of the liquidation purpose, payments made in the context of the compensation, and liquidation expenses, the ICC may also request the bankruptcy of related persons with the assent of the Board.

(9) All the lawsuits for damages and actions for debts filed or to be filed against the legal representatives, managers and staff of the ICC due to the pursuance of their duties shall be filed against the ICC. On the other hand, the provision of Article 133 shall be applied for criminal lawsuits to be filed against the ICC staff. ICC staff may not be held responsible for the public debts of firms the gradual liquidation of which they are carrying out, the debts of these firms to social security institutions and their other financial obligations which have incurred or will incur during gradual liquidation operations. ICC staff shall not have any obligation to make a notification to the court due to the loss of capital of capital market institutions which have been decided to be gradually liquidated and/or due to the fact that they are heavily in debt. The provisions of Article 179, 277 and the following as well as Article 345/a of the Law numbered 2004 shall not be applied to these persons due to not making a notification; no personal liability lawsuit may be filed against them according to Article 341 of the Law numbered 6102. The ICC shall reserve its right of recourse against staff having gross negligence or deliberation.

(10) ICC's right to file a lawsuit due to those about whom a gradual liquidation decision has been taken shall be subject to the general statute of limitations. In the presence of the circumstances mentioned in Articles 278, 279 and 280 of the Law numbered 2004, the ICC may file a lawsuit without requiring to submit a certificate of insolvency. While performing its tasks arising from this Article, the ICC is authorized to request cautionary injunction and cautionary attachment exempt from all kinds of guarantee.

Trade Repositories

ARTICLE 87 – (1) With the purpose of monitoring systemic risk and maintaining financial stability, in what regards capital market transactions, the Board may request from those executing these transactions that information regarding these transactions be notified under the form and content it shall determine directly to itself or to a trade repository that it would authorise. In the context of this Article, those who are obliged to make a notification may not

refrain from providing requested information by relying on the secrecy and confidentiality provisions in their special legislation.

(2) In the event that the notification is made to a trade repository authorised by the Board, obligations of the related trade repository, the form and media in which information shall be kept as well as principles and procedures concerning activities in relation to their duties under this Article shall be determined with a regulation to be published by the Board.

(3) Sharing of information kept at trade repositories with third persons, including public legal entities, shall be subject to the approval of the Board. The legislation concerning the usage of personal data shall be complied with in the implementation of this paragraph.

(4) In order to increase efficiency in data storage, the Board may require persons executing financial transactions in Turkey to obtain an identifier code or number from an institution to be determined by the Board. The principles and procedures regarding the implementation of this paragraph shall be determined by the Board.