**THIRD CHAPTER**

**Investment firms**

**Establishment conditions**

**ARTICLE 43 –** (1) For the Board to permit the establishment of intermediary institutions;

a) They must be established as joint stock corporations,

b) All of their shares must be registered,

c) Their shares must be issued for cash,

ç) Their capital must not be less than the amount determined by the Board,

d) Their articles of association must be in compliance with the provisions of this Law and related regulations,

e) Their founders must meet the conditions indicated in this Law and related regulations,

f) Their ownership structure must be transparent and clear.

(2) Conditions laid down in the first paragraph shall also be required for other investment firms with the exclusion of banks. The Board may determine additional conditions for these institutions.

(3) Principles and procedures regarding the implementation of this Article shall be determined by the Board.

**Conditions related to founders**

**ARTICLE 44 –** (1) Founding-partners of intermediary institutions;

a) Must not be bankrupt, or have declared composition with creditors or a decision of postponement of bankruptcy must not have been taken about them,

b) Must not be among persons liable for the sanction in institutions which have had one of their permissions for activity cancelled by the Board,

c) Must not have a finalised sentence due to the crimes in the context of this Law,

ç) A liquidation decision must not have been taken about them or the institutions where they were a partner according to the Decree Having the Force of Law dated 14/1/1982 and numbered 35 on the Transactions of Bankers in Payment Difficulty and its annexes,

d) Must not, even if the durations indicated in Article 53 of the Turkish Criminal Code dated 26/9/2004 and numbered 5237 have elapsed, have been sentenced to prison for five years or more due to a crime committed on purpose or sentenced for crimes committed against the security of the state, crimes committed against the constitutional order and the functioning of this order, the crimes of embezzlement, extortion, bribery, theft, fraud, forgery, abuse of confidence, fraudulent bankruptcy, rigging an auction, rigging in terms of discharging an obligation, hindrance or destruction of an information system, deletion or alteration of data, abuse of bank or credit cards, laundering proceeds of crime, smuggling, tax evasion or unjustified benefit,

e) Must have necessary financial strength and the honesty and reputation that the job requires.

Conditions indicated in sub-paragraph (a) shall not be taken into consideration in the implementation of this paragraph in the event that ten years have elapsed since the decision regarding the rescission or closing of bankruptcy proceedings or the approval of composition offer while the conditions indicated in sub-paragraph (b) shall not be taken into consideration in the implementation of this paragraph in the event that ten years have elapsed since the date when the decision related to this has been finalised.

(2) Legal entities which are founding-partners of intermediary institutions as well as partners having directly or indirectly a significant influence, for which conditions shall be determined by the Board, shall meet the conditions mentioned in the first paragraph.

(3) The assent of the Board is required for the transformation processes of intermediary institutions and for amendments to their articles of association and; the permission of the Board is required for their share transfers and related principles and procedures shall be determined by the Board. Transfers which have been realised in violation of regulations made according to this paragraph shall not be registered to the share register and the records that are made in violation of this provision shall be null and void.

(4) Principles and procedures regarding outsourcing of supporting services by intermediary institutions in order to carry out their activities under the scope of this Law shall be determined by the Board.
(5) Conditions required for the founders of other investment firms with the exclusion of banks shall be determined by the Board.

**Conditions regarding the performance of activities**

**ARTICLE 45 –** (1) The requirements of investment firms and the rules and principles and they are obliged to abide by during the performance of investment services and activities and ancillary services shall be determined by the Board.
(2) Managers of investment firms shall meet the conditions other than financial strength mentioned in the first paragraph of Article 44 as well as conditions with regard to experience and education to be determined by the Board.
(3) In order to trade in exchanges investment firms are required to obtain the authority of trading from the related exchange.
(4) The Board is authorized to classify investors in order to determine the protection to be provided to investors during the performance of investment activities and services by investment firms.
(5) Investment firms are obliged to establish internal control units and systems that are appropriate to the investment services and activities they perform and that protect the rights and interests of investors in order to provide the follow-up and conclusion of investor complaints by also considering risks that may develop due to their activities.

**Guarantees, investor assets and utilization principles**

**ARTICLE 46 –** (1) The Board may impose the obligation to deposit or hold a guarantee on those that perform investment services and activities.
(2) Investment firms may request from investors to provide a guarantee for margin trading of capital market instruments, lending transactions of capital market instruments or short sale transactions as well as other investment services and activities and ancillary services. Exchanges as well as clearing institutions and securities depositories may request from investment firms and investors to provide a guarantee in the context of investment services and activities.
(3) The principles and procedures concerning the type, amount, area and form of utilization of guarantees regulated in this Article as well as their deposit and release shall be determined by the Board.
(4) Guarantees regulated in this article shall not be used for purposes other than that for which they were deposited, shall not be transferred to third persons, attached even for public receivables, pledged, included in the bankruptcy estate and be subject to cautionary injunction.
(5) Cash and capital market instruments of investors under any form that are maintained at investment firms shall be monitored separately from the assets of investment firms. The assets in question shall not be used by deposited institutions without the express consent of investors for purposes other than that for which they were deposited or in a way that would provide a benefit to themselves or to third persons.
(6) Cash and capital market instruments of investors under any form that are maintained at investment firms may not be attached even for public receivables, pledged without the prior consent of investors, included in the bankruptcy estate and be subject to cautionary injunctions due to debts of investment firms and the same applies for the assets of investment firms due to the debts of investors.

**Contracts of guarantee relating to capital market instruments**

**ARTICLE 47 –** (1) Contracts of guarantee with underlying capital market instruments that are monitored in a dematerialized form by the CRA shall be made in written form. The ownership of the capital market instruments underlying these contracts of guarantee may be transferred to the guarantee takeraccording to legal procedures in the framework of the contract or it may remain with the guarantee provider. In cases where there is no provision about this issue in the contract, the ownership of capital market instruments underlying the guarantee shall not be deemed to be transferred to the guarantee taker.
(2) Contracts of guarantee; where ownership is transferred to the guarantee taker; the guarantee takershall take

over ownership rights of capital market instruments underlying the guarantee by complying with legal procedures at the moment of the conclusion of the contract of guarantee. Upon the termination of the contract of guarantee, the guarantee taker shall return the ownership of the underlying capital market instruments or their equivalents to the guarantee provider.

(3) Contracts of guarantee; where ownership remains at the guarantee provider; parties shall come to an agreement about the context in which the guarantee may be used, including the sale of the underlying capital market instrument. Upon the termination of the contract of guarantee, the guarantee taker shall return to the guarantee provider the underlying capital market instruments or their equivalents if he has used these instruments.

(4) Where a receivable would be met from the guarantee in case of default or due to reasons foreseen in the law or the provisions of the contract, the following provisions shall apply without the obligation to make any notification or warning, allow a period, permission or approval from judicial or administrative authorities or without the obligation to fulfill any pre-condition such as liquidation of the guarantee, through auctioning or another method:

a) In contracts of guaranteewhere ownership is transferred to the guarantee taker; unless otherwise provided in the contract between the parties, the guarantee taker holds the right to sell the capital market instruments underlying the guarantee and meet his receivables from the sale amount provided that this value is not below the values on the exchange or other organised markets if they are listed in these markets or the right to deduct the value of these instruments from the obligations of the guarantee provider ,.

b) In contacts of guarantee where ownership remains at the guarantee provider; the guarantee taker, holds the right to sell the capital market instruments underlying the guarantee to meet his receivables provided that this value is not below the values on the exchange or other organised markets if they are listed in these markets or the right to deduct the value of these capital market instruments from the obligations of the debtor by assuming ownership of these instruments. In order for the guarantee taker to be able to assume ownership of the capital market instruments underlying the guarantee, the fact that this right may be used and the way the evaluation should be made if the capital market instrument is not listed in the exchange or in other organised markets shall be expressly stated in the contract of guarantee concluded between the parties.

c) In the utilization of the rights arising in case of default in the implementation of sub-paragraphs (a) and (b), the highest value at the due date shall be considered for the capital market instruments underlying the guarantee listed in the exchange or other organised markets. The amount remaining after guarantee taker makes use of this right and meets his receivables, shall be returned to the guarantee provider.

(5) In the event that a decision on the restructuring of assets or a similar decision or a liquidation decision is taken by judiciary or administrative authorities concerning the guarantee taker or the guarantee provider, the capital market instruments underlying the guarantee as well as the rights of the guarantee taker and the guarantee provider shall not be affected by this decision and shall also be valid for the related restructuring or liquidation authority. This provision shall also be valid for transactions realised the same day after such decisions have been taken, provided that the guarantee has been provided before the related decision and that the guarantee taker is good faith.

(6) The provisions of this Article shall not be applicable to contracts of guarantee and guarantee provisions the provisions and consequences for which have been established in specific laws.