

## **SECOND CHAPTER**

### **Measures**

#### **Measures to be applied to illegal issues**

**ARTICLE 91** – (1) The Board is authorised to take all necessary measures exempt from all kinds of charges and guarantees about those that have been identified to have issued or have made an attempt to issue capital market instrument in violation of this Law, provided that all kinds of civil and penal liabilities are reserved; to request cautionary injunctions and attachments exempt from all kinds of charges and guarantees for the equivalent of the amount sold and the capital market instrument to be sold.

(2) In order to eliminate the consequences resulting from the illegal issue and to refund cash and other assets to the right holders, the Board shall make a written notice to the issuer within thirty days starting from the date of determination. The addressee shall announce by means of instruments to be determined by the Board the detailed information concerning the real persons and legal entities from which\whom it has raised money as well as the raised amount and shall report this information to the Board within at least thirty days from the notice. Within three months following this announcement, real persons and legal entities from whom money has been raised may file an objection to the civil court of first instance of the place where the partnership is located. Upon the finalization of the related list, right holders shall be refunded by the person who made the related issue. The cautionary injunctions and attachments put according to the first paragraph cannot be removed before the fulfilment of this restitution.

(3) In the event that the consequences resulting from this illegal issuance are not be totally eliminated within one year starting from the date of the written notice has been made by the Board, the Board is authorised to file a suit for refunding the cash and other assets to right holders or for the liquidation of the partnership.

(4) The rights arising from general provisions of persons from whom money has been raised shall be reserved.

#### **Measures to be applied to the illegal transactions of issuers and their transactions reducing the assets or capital**

**ARTICLE 92** – (1) In cases where it is determined by the Board that there is a capital or asset decrease or loss due to the situations and acts of issuers contrary to the law, the capital market legislation, the articles of association and the provisions of the fund rules or the purpose and field of enterprise, the Board is authorised to;

- a) request from related parties to take measures in order to resolve the violations and to make the envisioned transactions and convey the situation to the related authorities if necessary, without prejudice to the provisions of the Law numbered 6102,
- b) file a lawsuit of nullity within three months starting from the date when it has been determined by the Board that these situations and acts were illegal and in any case within three years starting from the date when these situations and acts have occurred, and file a lawsuit for determination of nullity and validity within five years,
- c) remove the authorities to sign of those who are responsible for these transactions if the presence of these situations and acts are determined by the decision of a court of first instance or if it is decided by a court upon the demand of the Board without waiting such decision; in cases where an indictment is made about the related persons, discharge them from office until the trial is finalised and assign new members of the board of directors in place of those who have been discharged from office until the first general assembly meeting.

(2) Before taking any measures about publicly held banks according to this Article, the Banking Regulation and Supervision Agency shall be consulted.

#### **Measures to be applied in the authorised capital system**

**ARTICLE 93** – (1) The Board is authorised to file a lawsuit of nullity against the board of directors decisions taken within the framework of the principles mentioned in Article 18 at the commercial court of first instance where the headquarters of the partnership is located within three months starting from the date of the announcement of these decisions to public, and to request to defer the execution of these decisions without guarantee.

#### **Measures to be applied in the illegal transfer pricing activities**

**ARTICLE 94** – (1) The Board is authorised to request the announcement of supervision results from publiclyheld corporations, and collective investment schemes as well as their associates and subsidiaries which have been determined to be engaged in the transactions mentioned in Article 21; to file a suit for the return of the amount determined by the Board within the period specified by the Board. .

(2) The first paragraph of Article 92 shall also be applied in terms of this Article.

**Sending an observer to general assembly meetings**

**ARTICLE 95** – (1) When it deemed necessary, the Board may send an observer to the general assembly meeting of publicly-held corporations, without any voting rights.

**Measures to be applied in the illegal transactions and activities of capital market institutions**

**ARTICLE 96** – (1) In cases where capital market institutions determined to be engaged in activities contrary to the legislation, the standards determined by the Board, the articles of association, the provisions of the fund rules; the Board is authorised to request from the related parties to resolve the contradictions within the period determined by the Board and to provide the compliance to the Law, the purpose and principles of the enterprise; or to restrict directly the scope of the activities of these institutions or to suspend their activities temporarily or; to cancel their licenses fully or as of certain capital market activities or; take all kinds of other measures that the Board would envision.

(2) The Board is authorised to cancel temporarily or permanently the licenses hold by managers and employees who have been determined to be responsible for such illegal activities or transactions; to restrict or cancel their authorities to sign starting from the date when it has been decided to make an indictment about them until the trial is finalised; to discharge members of the board of directors from office found responsible for illegal activities or transactions with a court decision and to assign new ones in place of them until the first general assembly meeting to be held. Before taking a measure in the direction of discharging the members of the Board of Directors of a bank, the Banking Regulation and Supervision Agency shall be consulted.

**Measures to be applied in the deterioration of the financial situation**

**ARTICLE 97** – (1) In cases where it is determined that the capital market institutions cannot fulfill their capital adequacy obligations, their cash and financial instrument delivery liabilities resulting from capital market operations or that they could not fulfill them in a short period or independently from these facts that their financial structures is weakening seriously or that their financial situations have weakened to the extent that they could not able to meet their commitments; the Board is authorised to request them to strengthen their financial structures in a given pertinent period that shall not exceed three months or to stop temporarily the operations of these institutions directly without giving any time; to cancel their licenses fully or as of certain capital market activities; to decide on the compensation of the investors; to cancel temporarily or permanently the licenses of the managers and the employees who are responsible for these illegal activities, to restrict or cancel their authorities to sign and to discharge members of the board of directors from office when necessary and assign new ones in place of them until the first general assembly meeting; to decide on the gradual liquidation of these institutions and to request their bankruptcy after the end of the gradual liquidation or without going through any gradual liquidation or to take other measures it deems necessary.

(2) Except the transactions to be made by the Board and those to be performed by the ICC in the context of gradual liquidation, the assets of capital market institutions which are subject to withdrawal of authorities permanently shall not be transferred, pledged, collateralized, subject to cautionary injunction and attachment from the date of the Board decision regarding to the withdrawal of authority until it is announced that the gradual liquidation procedures have been completed; and until the demand of bankruptcy has been concluded with prejudice by the court in case where bankruptcy has been requested directly or following the gradual liquidation. All of the attachments and cautionary injunctions shall lapse and all bankruptcy and execution proceedings shall automatically stop, the lapses of time which can be interrupted with a follow-up execution procedure shall not apply. In case where a bankruptcy decision has been taken, the claims of the ICC arising from the payments it has made shall be collected primarily as preferred claim, being after the claims of the State and those of social security institutions which are in the scope of the Law numbered 6183.

These claims shall be paid according to the cash position of the bankrupt's estate without waiting for the finalisation of the list shown in Article 232 of the Law numbered 2004. With regard to the banks and institutions which are subject to the provisions of the Law numbered 5411 as well as real persons and legal entities subject to the provisions of the Law numbered 5411, the claims of the ICC shall come after the claims of the Savings Deposit Insurance Fund.

(3) Except the transactions to be performed by the Board, the assets of capital market institutions the activities of which have been suspended temporarily according to the first paragraph shall also not be transferred, pledged, collateralised, subject to cautionary injunction or attachment from the date of temporarily suspension decision until the date of reauthorisation to launch its activities, all the attachments and all the cautionary injunction on these institutions and all bankruptcy and execution proceedings shall automatically stop. The lapses of time which can be interrupted with a follow-up execution procedure shall not apply. The capital market institutions about which a decision is taken by the Board regarding the pursuance of their activities, all the transactions which have stopped within the framework of the first sentence of this paragraph shall resume.

(4) The temporary suspension period of the capital market institutions, the activities of which have been suspended temporarily according to this Law by the Board or by their own will shall not exceed two years.

(5) Except the measures devoted to resolve the violations of the capital market legislation or those devoted to the carrying out of capital market activities, the Banking Regulation and Supervision Agency shall decide upon the implementation of the measures determined in the first paragraph on banks. On the other hand, the Savings Deposit Insurance Fund shall decide upon the implementation of the related measures on banks the management or supervision of which has been transferred to the Savings Deposit Insurance Fund according to the related provisions of the Law numbered 5411.

#### **Measures to be applied in cases of gradual liquidation and bankruptcy**

**ARTICLE 98** – (1) In case of the bankruptcy of capital market institutions or when they go through gradual liquidation according to Article 86, the Board is authorised to request the individual bankruptcy of their shareholders who have directly or indirectly more than ten per cent of the shares, their members of board of directors who have resigned or are holding office and their managers having an authority to sign, the managers of portfolio management companies and the members of the fund board of housing finance funds and of asset finance funds; provided that their responsibility has been determined in accordance with Article 97.

#### **Measures to be applied in unauthorized capital market activities**

**ARTICLE 99** – (1) Provided that all kinds of civil and penal liabilities are reserved, the Board is authorised to take all necessary measures to stop the unauthorised capital market activities inter alia to file a lawsuit within one year starting from the date when unauthorised capital market activities and transactions have been determined and in any case within five years starting from the date when they have occurred, to refund right holders their money or capital market instruments and to annul the consequences caused by unauthorised capital market activities and transactions.

(2) Second paragraph of Article 96 shall be applied by analogy for the real persons and legal entities who have engaged in unauthorised capital market activities as well as for the shareholders and managers determined to be responsible for these activities by the Board, unconditional on the finalisation of the losses arising from the related activities.

(3) When it is determined that unauthorised capital market activities have been carried out via internet; if the domain and hosting are within the country, the courts shall decide on prohibiting the internet access upon the request of the Board in line with the related legislation. In case where the domain and hosting are outside the country, the Information and Communications Technologies Authority shall prohibit the internet access upon the request of the Board.

#### **Measures to be applied in illegal notices, advertisements and disclosures**

**ARTICLE 100** – (1) In cases where it is determined that an entity has engaged in activities on capital market without authorisation or that an entity has used words or phrases in its commercial titles, notices and advertisements

which gives the impression that they engage in activities on capital market even though its licenses have been cancelled or its operations have been stopped or its branch offices have been closed down, then, in circumstances where it is found to be detrimental to postpone action, unconditional on an ongoing penal prosecution conducted on those liable, their notices and advertisements may be stopped, and the notices and advertisements may be confiscated with the documents which are in violation of the law under the related legislation, and upon the request of the Board their workplaces may be closed temporarily by the relevant local highest officials of the civil service. ;

(2) The Board may request that notices, advertisements and disclosures which have been found to be against the third paragraph of Article 7 be stopped or removed.

#### **Measures to be applied in the investigations of insider trading and manipulation**

**ARTICLE 101 –** (1) In what concerns the real persons or legal entities as well as the authorised officers of those legal entities; about whom a reasonable doubt exists concerning the execution of actions mentioned in Article 106 and 107, and also regarding the related capital market instruments the Board is authorised to take all kinds of necessary measures to provide the effective and robust functioning of the market and to determine the principles and procedures regarding the implementation of these measures, including;

- a) Temporarily or permanently prohibiting the trading activities in the exchanges,
- b) Changing the methods of clearing,
- c) Putting restrictions at the transactions of margin trading, short selling, borrowing and lending,
- c) Imposing a guarantee obligation or changing the obligation,
- d) Being traded in different market or markets or determining different transaction principles,
- e) Restricting the extent of the distribution of the market data,
- f) Imposing a transaction or position limit.

(2) When a buy-back program has been put into force in accordance with Article 22, the Board may impose a restriction at the transactions on the shares of the related publicly-held corporation of the real persons or legal entities with whom it is associated, directly or indirectly as of management, auditing or capital and to transactions made by other associated persons.

#### **Obligation of notification**

**ARTICLE 102 –** (1) If there is a matter implying any information or doubt that a transaction constitutes the crimes enumerated in Articles 106 and 107, the investment firms and the capital market institutions to be determined by the Board are obliged to notify this situation to the Board or to other institutions and organisations to be determined by the Board. The Board shall determine the principles and procedures of the obligation of notification.

(2) Even though a provision exists in special laws, those who make a notification to the Board cannot give information to third parties, agencies and institutions including those who are engaged in the transactions, about the notification made according to this Article and about those to whom the notification has been made, except courts, prosecution offices and the Presidency of the Financial Crimes Investigation Board.