

FOURTH CHAPTER

Collective Investment Schemes

Investment companies

ARTICLE 48 – (1) Investment companies are joint stock corporations with fixed or variable capital established in order to issue their shares and with the purpose of managing the portfolios comprised of capital market instruments, real estates, venture-capital investments and other assets and rights to be determined by the Board

(2) The principles and procedures regarding the establishment and the founders of investment companies, the transformation of joint stock corporations into investment companies, removing from the investment company status, minimum free float rate, activity principles, types and share transfers, prospectus and the publication of prospectus, valuation of the assets and rights in their portfolios and safekeeping of assets , portfolio restrictions, management principles, capital increases and reduction of capital, issue of privileged shares, profit distribution and acquisition of their own shares, liquidation and termination as well as the other obligations they would be subject to shall be determined by the Board.

(3) It is compulsory to take the assent of the Board for the amendments of the articles of association of investment companies.

Conditions regarding the establishment and activities of investment companies

ARTICLE 49 – (1) In order to authorise the establishment of investment companies, it is compulsory that;

- a) They are established as joint stock corporations with authorised capital,
- b) Their initial capital is not less than the amount determined by the Board,
- c) Their shares are issued for cash and the amount of their shares are paid in full and cash during the establishment,
- c) Their trade names include the designation of “Investment Company”, d) Their articles of association conform to the provisions of this Law and other related regulations,
- e) An institution authorized by the Board has been determined for the purpose of carrying out the portfolio custody service,
- f) They meet the other conditions to be determined by the Board.

Provisions related to investment corporations with variable capital shall be reserved.

(2) The provisions of Article 44, the second paragraph of Article 45 and Article 42 shall be applied by analogy to respectively the founders, managers and employees of investment companies.

(3) Conditions related to the establishment of investment companies shall also be required in transformation to investment companies,

(4) Investment companies may take service from a portfolio management company, provided that there is a provision in their articles of association and that they take the approval of the Board.

(5) Assets that are deemed suitable to be taken into the portfolio may be as assigned as capital in kind at the establishment and capital increase of real estate investment companies. The principles and procedures regarding the valuation of these assets shall be determined by the Board. Real estate investment companies may offer to public the shares they would issue in value of the capital in kind according to the principles to be determined by the Board.

(6) Provisions of sub-paragraph (f) of the second paragraph of Article 408 of the Law numbered 6102 as well as provisions of Article 23 of this Law shall not be applied in the wholesale of the assets of real estate investment companies, the maximum ratio of which would be determined by the Board.

Investment companies with variable capital

ARTICLE 50 – (1) Investment companies with variable capital are investment companies of which the capital remains at any time equal to their net asset value. Net asset value is the amount calculated by deducting the liabilities from the total market value of assets.

(2) The shares of investment companies with variable capital consist of investor’s shares and founder’s shares

that have to be in the name of the holder. The shares of investment companies with variable capital do not have a nominal value. Founder's shares shall be allocated to those who established the investment company with variable capital by fulfilling the capital commitment. The founder's shares may also be issued after the establishment in order to be allocated to the existing founder partners or third persons with the permission of the Board and the decision of the general assembly. The transfer and redemption of founder's shares shall be subject to the approval of the Board within the framework of the principles determined by the Board. The transfer of founder's shares executed without taking the approval of the Board shall not be recorded to the share register and the records that are made in violation to this provision shall be null and void. Investor's shares do not give administrative rights to their holders.

(3) Investment companies with variable capital shall issue shares and redeem the issued shares in accordance with the provisions of this Law. Investment companies with variable capital are obliged to redeem the shares upon the request of the shareholder and pay back the share value that corresponds to this in the capital of the company. Principles and procedures regarding the redemption of shares shall take place in the articles of association.

(4) In the event that the value of the founder's shares of investment companies with variable capital falls under the amount determined by the Board or that the investment company's financial situation becomes insolvent, the board of directors shall notify this situation to the Board without delay. Following the notification, the board of directors shall immediately call the general assembly to a meeting for the purpose of taking the necessary measures and the general assembly shall gather within thirty days at the latest. In the event that the founder's shares cannot be raised to the amount determined or that the weakness of the financial situation cannot be recovered, the Board is authorised to take all kinds of measures about the investment companies with variable capital, including but not limited to liquidation.

(5) Investment companies may be transformed into investment companies with variable capital. The principles regarding the transformation procedure, general assembly meeting and decision quorums concerning the transformation, takeover bids to be made to shareholders because of the transformation and the determination of the bid price, protection of the rights and obligations of existing shareholders and the other issues shall be determined by the Board.

(6) The principles and procedures regarding the activity and management principles of investment companies with variable capital, valuation of assets and rights in their portfolios, safekeeping of their assets, portfolio restrictions, prospectus and publication of prospectus, the issue, sale and redemption of their shares, cessation of this redemption, their liquidation and termination shall be determined by the Board.

Provisions not applicable for investment companies with variable capital

ARTICLE 51 – (1) Provisions of joint stock corporations of the Law numbered 6102 regarding the principles of equity capital, minimum amount of capital, minimum content of articles of association, commitments of capital in-kind, nominal value, acceptance of its own shares by the corporation as acquisition or in pledge, the procedure of capital increase and reduction, share commitment and its payment, restrictions of share transfer, profit and loss account and profit distribution, reserves and liquidation shall not be applicable for investment companies with variable capital.

Investment Funds

ARTICLE 52 – (1) The asset which is established by portfolio management companies within the fund rules in conformity with the fiduciary ownership principles on the account of the savers, with money or other assets gathered from savers pursuant to the provisions of this Law in return for fund units in order to operate the portfolio or portfolios consisting of instruments and rights determined by the Board and which does not have a legal entity is called an investment fund.

(2) For taking a permission for establishment of an investment fund, the founder must come to an agreement with an institution which has been authorised by the Board in order to give a portfolio depositary service and the fund rules must be approved by the Board. The applications regarding the establishment of investment fund shall be concluded by the Board within two months starting from the full submission of the necessary documents to the Board and the state of affairs shall be notified to the interested persons.

(3) The portfolio management company represents, manages or supervises the management of the fund so as to

protect the rights of the investment fund unit holders. The portfolio management company shall be entitled, in its own name and in the account of the investment fund, to dispose of the assets belonging to an investment fund in accordance with the legislation and fund rules and to exercise any rights attaching thereto.

(4) In the event that no provision takes place in this Law, in the related legislation and in the fund rules, provisions of Article 502 to 514 of the Turkish Code of Obligations dated 11/1/2011 and numbered 6098 shall be applied by analogy to the relations between the portfolio management company and the holders of fund units.

(5) The fund shall be deemed as a legal entity limited to registration with the land registry. The real estates in the portfolio of the investment fund, rights based on the real estates and the bills based on the real estates shall be registered to the land register in the name of the fund. The transactions to be performed in the land registry in the name of the fund shall be executed with the common signatures of the persons authorised in the name of the portfolio management company and the institution carrying out the portfolio depositary service.

(6) The Board may authorise, by taking the opinion of the Central Bank of the Republic of Turkey and the Undersecretariat of Treasury, that the purchase and redemption of the fund units be made in terms of foreign currencies of which the selling and buying rates are declared daily by the Central Bank of the Republic of Turkey.

Segregation of the fund assets

ARTICLE 53 – (1) The assets of the fund are segregated from the assets of the portfolio management company and the institution that would carry out the portfolio depositary service.

(2) The fund assets cannot be used as collateral or be pledged, other than being used for taking credits, derivative instrument transactions, short selling transactions, or similar transactions realised as a party in the name of the fund, provided that these transactions are on the account of the fund and that a provision exists in the fund rules. The fund assets cannot be disposed of for any other purpose, even when the management or supervision of the portfolio management company or of the institution carrying out the portfolio depositary service is transferred to public institutions, cannot be attached including the purpose of collecting public receivables, cannot be included in the bankrupt's estate and cannot be subject to cautionary injunction.

(3) In the event that the fund assets are liquidated, payments may only be made to the holders of fund units.

(4) The debts and liabilities of portfolio management companies to third persons and the receivables of investment funds from the same third persons may not be set off against each other.

Other authorities granted to the Board regarding investment funds

ARTICLE 54 – (1) The Board determines the principles and procedures related to the following;

- a) The establishment of the fund, eligible assets that can be allowed in portfolios as of fund types, portfolio restrictions, valuation principles, rules regarding the determination of the fund profit and its distribution as well as principles concerning the activities and management of the fund, its merger, transformation, termination and liquidation,
- b) The preparation of the fund rules, management and depositary contracts, their scope, amendments, registration and announcements, the value of fund units, calculation and announcement of issue and redemption prices, purchase and sale principles, fund management and depositary fees,
- c) The issue of fund units,
- ç) The prospectus of funds and other public disclosure requirements,

Portfolio management company

ARTICLE 55 – (1) A portfolio management company is a joint stock corporation of which the main field of activity is the establishment and management of investment funds. It is compulsory to take the authorisation of the Board for the establishment of a portfolio management company and the launching of its activities. The related principles and procedures shall be determined by the Board. The applications of portfolio management companies for establishments shall be concluded by the Board within six months starting from the full submission of the necessary documents to the Board and the state of affairs shall be notified to the interested persons.

(2) The provisions of Article 43, Article 44, the second paragraph of Article 45 and Article 42 shall be applied

by analogy respectively to the establishment of the portfolio management company, its founders, managers and employees.

(3) Assets included in the portfolios of persons and institutions to whom the portfolio management company provides services and which may be subject to depository shall be kept by institutions giving portfolio depository services according to the principles determined by the Board.

(4) Principles and procedures regarding the shareholders of portfolio management companies, share transfers, minimum capital and capital adequacy, establishment and management of investment funds, portfolio management and investment advisory activities as well as other capital market activities they may carry out besides their main field of activity and obligations to deposit a guarantee related to their activities shall be determined by the Board. Guarantees deposited by portfolio management companies cannot be pledged, attached even for public receivables, disposed of for purposes other than the intended ones, transferred to third persons, included in the bankrupt's estate and be subject to any cautionary injunction.

(5) It is compulsory to take the assent of the Board in the transformation processes of portfolio management companies and (in the) amendments of their articles of association.

(6) Portfolio management companies are obliged to protect the interests of funds they manage, holders of fund units and their other clients in carrying out their activities.

Portfolio depository service and the responsibility arising from it

ARTICLE 56 – (1) Assets in the portfolios of collective investment schemes, shall be entrusted to the institution carrying out portfolio depository services in order to be kept in a separate custody account opened in the name of these institutions. The portfolio depository service includes the following:

- a) Ensuring that the issue and redemption of fund units of investment funds are carried out in accordance with the provisions of the legislation and the fund rules ,
- b) Ensuring that the issue and redemption of the shares of investment companies with variable capital are carried out in accordance with the provisions of the legislation and the articles of association,
- c) Ensuring that the value of a unit for investment funds or a share for investment companies with variable capital are calculated in accordance with the valuation principles determined within the framework of the provisions of the legislation and the provisions of the fund rules or those of the articles of association,
- c) Carrying out the directives of portfolio management companies, investment companies with variable capital, and investment companies, on condition that they are not in conflict with the legislation, the fund rules and the articles of association,
- d) Ensuring that in transactions involving the assets of collective investment schemes, the amounts arising from obligations are transferred to them within the appropriate period ,
- e) Ensuring that the incomes of collective investment schemes are disposed in accordance with the legislation and the fund rules or articles of association,
- f) Ensuring that purchase and sale of assets of collective investment schemes, portfolio structures and transactions are in accordance with the legislation and fund rules or articles of association.

(2) The institution which carries out portfolio depository services in the context of this Article shall be liable for any damages it has caused to the portfolio management company and holders of fund units in investment funds and to the corporation in investment companies, due to not fulfilling its obligations.

(3) The portfolio management company or the investment company is obliged to request from the institution carrying out the depository services and the institution carrying out the depository services is obliged to request from the portfolio management company or the investment company the compensation of the damages arising due to the violation of the provisions of this Law. The right to file a suit shall be reserved for shareholders or holders of fund units.

(4) The institution carrying out portfolio depository services may keep the assets under its custody totally or partially at other institutions carrying out depository services. In this case, all the institutions providing the portfolio

depository service shall be jointly liable.

(5) The Board may set out the obligation to monitor the assets that are deemed appropriate and are included in the portfolios of collective investment schemes in the accounts opened in the name of the related collective investment scheme at the central depository institution or the central clearing institution. The obligations of the institution carrying out the portfolio depository service shall also continue in this case.

(6) The institution carrying out the portfolio depository service and the portfolio management company cannot be the same legal entity. As they perform their tasks, the institution carrying out the portfolio depository service and the portfolio management company are obliged to act independently and solely in the interest of the fund unit holders or shareholders. (7) The managers of the institution carrying out the portfolio depository service and the ones of the investment firm providing intermediary services in the purchase and sale of assets to the fund portfolio as well as the persons authorised to represent and bind these institutions cannot be the shareholders, managers or representatives of the portfolio management company. The shareholders of the portfolio management company, managers as well as the persons authorised to represent and bind these companies cannot be managers or representatives of the institution providing the portfolio depository service.

(8) The Board may determine different principles or grant an exemption regarding the portfolio depository obligation according to the qualifications of the assets in fund portfolios, the issuer, investors to whom the issue is directed, the capital structures of portfolio management companies and investment companies as well as the nature of the issue.

(9) The principles and procedures regarding the qualifications of the institutions that would carry out portfolio depository services and the carrying out of this activity shall be determined by the Board.