



SCREENING CHAPTER 04 FREE MOVEMENT OF CAPITAL

**Country Session: The Republic of TURKEY
22 December 2005**



SECURITIES AND OTHER CAPITAL MOVEMENTS

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OPERATIONS IN SECURITIES TRADED ON THE CAPITAL MARKET



Acquisition by Non-residents (Residents) of Domestic Securities (Foreign Securities) Both Traded and Not Traded on a Stock Exchange

- **Decree No. 32 on the Protection of the Value of the Turkish Currency**
- **Foreign Direct Investment Law**

It is free

- **to buy or sell all securities and other capital market instruments through brokerage houses and banks**
- **to transfer the income and the sales proceeds from the securities or the purchase value through banks**



Admission of Domestic Securities to a Foreign Capital Market

- **Decree No. 32 on the Protection of the Value of the Turkish Currency**

The Capital Markets Board's registration is required.

- **Communiqué Serial II, No. 13 on the Registration of Corporate Bonds with the Board**

Issuers of bonds and other borrowing instruments are exempted from preparing prospectus and circular.



Admission of Foreign Securities to the Domestic Capital Market

- **Decree No. 32 on the Protection of the Value of the Turkish Currency**

Issue, public offer and sale of the securities and other capital market instruments by non-residents are realized within the framework of the provisions of the Capital Market Legislation.



Admission of Foreign Securities to the Domestic Capital Market (cont.)

➤ Capital Market Law

Authorizes the Capital Markets Board (CMB) to make necessary regulations within the framework of related legislation with respect to the issuing and public offering of capital market instruments in Turkey by non-residents.



Communiqué Serial III, No. 20 on the Registration and Sale of Foreign Capital Market Instruments

Foreign securities to be offered to the public are required to be registered with the CMB likewise the domestic securities.

Requirements for foreign securities:

- Securities must be listed on a stock exchange. In the case of non existence of a stock exchange in the country of origin, the CMB may waive the condition of listing.**
- Securities must be denominated in YTL or foreign currencies of which daily exchange rates are announced by the Central Bank of the Republic of Turkey.**



Requirements for foreign securities: (cont.)

- **Public-offering of foreign stocks must be through depository receipts.**
 - ✓ **the foreign company to be formed at least 2 years before the application date and have declared profits in its last year financial statements,**
 - ✓ **issued stocks of the company to have been listed on a stock exchange for at least a year before the application for public offering of depository receipts and to have been traded for at least 100 days during this period.**



Requirements for foreign securities: (cont.)

- **The capital of foreign investment companies shall not be less than the amount required for national investment companies.**
- **The foreign company issuing bonds and other debt instruments must have at least “medium grade” rating.**



Additional Listing Requirements for Foreign Securities

- **Decree Law Regarding Stock Exchanges No. 91**
- **Istanbul Stock Exchange Listing Regulation**
- ✓ **State Minister's approval**
- ✓ **Securities should be listed on one stock exchange or meet conditions set by the ISE in the case of non existence of a stock exchange.**



OPERATIONS IN UNITS OF COLLECTIVE INVESTMENT UNDERTAKINGS



Acquisition by Non-residents (Residents) of Units of National (Foreign) Undertakings Both Traded and Not Traded on a Stock Exchange

- **Decree No. 32 on the Protection of the Value of the Turkish Currency**

It is free



Admission of Units of National Collective Investment Undertakings to a Foreign Capital Market

- **Decree No. 32 on the Protection of the Value of the Turkish Currency**

Units of national collective undertakings to be issued or offered to the foreign markets are required to be registered with the CMB.



Admission of Units of Foreign Collective Investment Undertakings to the Domestic Capital Market

- **Communiqué Serial VII, No. 14 on the Registration and Sale of Foreign Mutual Funds**
 - ✓ **CMB's registration is required.**
 - ✓ **A representative (bank or brokerage house in Turkey) should be appointed. It is responsible for timely publishing and the accuracy of information to be disclosed to public, the redemption of the units sold, the accuracy of customer identification, the amounts of the units bought and sold, and transaction dates, etc.**



Registration Requirements for Units of Foreign Funds:

- Fund units should be traded in Turkish Lira or foreign currencies of which daily exchange rates are announced by the Central Bank of the Republic of Turkey,
- Fund has to have been operating at least for the last three years and the current value of the units to be sold at the date of application should not be less than the minimum amount determined for national mutual funds,



Registration Requirements for Units of Foreign Funds: (cont.)

- In the issuer's country, there should not be any limitation on the sale of fund units, financial rights and relevant transactions and payments to be made in Turkey,
- The fund units must have been offered to public in the country of origin and the total current value of the units in circulation should be at least USD 1,000,000 (€ 834,000),
- At least 80% of the fund's portfolio should be invested in foreign securities,



Registration Requirements for Units of Foreign Funds: (cont.)

- The portfolio management company should be authorized in the country of origin,
- The portfolio value invested in securities of a single corporation should not be more than 10% of the portfolio value,
- The fund should not have more than 9% of the voting rights or capital in any corporation,
- The principles of lending assets and borrowing that the fund is subject to should be consistent with the principles applied to national mutual funds,



Registration Requirements for Units of Foreign Funds: (cont.)

- The financial statements of the fund should be subject to independent auditing at least once a year,
- Guarantee should be provided by the fund confirming that the documents and information regarding public disclosure and information requested by the Board shall be submitted and any auditing that will be done by the Board will be made available.



INVESTMENT RULES FOR COLLECTIVE INVESTMENT UNDERTAKINGS AND INSURANCE COMPANIES



Regulations of Private Pension System

- **The Law On Individual Pension Savings And Investment System (Law No. 4632)**
- **CMB's Implementing By-law on the Principles Applicable to the Establishment and Operations of Pension Investment Funds**
- **Undersecretariat of Treasury's Regulations:**
 - ✓ **By-law Concerning the Foundation and Operation Principles of the Pension Companies,**
 - ✓ **By-law Regarding the Individual Pension System,**
 - ✓ **By-law Concerning Individual Pension Intermediaries.**



The Main Properties of the Private Pension System

- **Supplementary to the existing state pension plans (third pillar)**
- **Voluntary**
- **Based on defined contribution plans**
- **Contributions collected from the individuals to be transmitted to pension funds (established as a mutual fund).**
- **Only pension companies can establish the pension funds.**



The Main Properties of the Private Pension System (cont.)

- Establishment and operation license of pension companies are granted by the Undersecretariat of Treasury.
- The fund will be managed by portfolio management companies authorized by the Capital Markets Board.
- At least 3 different private pension funds with different portfolio structures must be established.

Investment Rules of Pension Funds

➤ Implementing By-law on the Establishment and Operations of Pension Investment Funds

- ✓ Pension funds may invest on investment grade foreign money and capital markets instruments.

Pension funds' participants

- ✓ may invest max. 15% of their contribution to the funds investing min. 80% on foreign instruments.
- ✓ have to invest min. 30% of their contribution to the funds investing min. 80% on government borrowing instruments including reverse repo.

- **Communiqué Serial: VII, No: 10 on Mutual Funds**
Mutual funds investing at least 25% of monthly average portfolio value in shares of corporations established in Turkey including the ones that shall be privatized are called Type A.
- **Communiqué Serial: VI, No: 4 on Investment Companies**
Investment companies investing at least 25% of their portfolios continuously in shares of corporations established in Turkey including State Owned Enterprises subject to privatization are called Type A.

 Type A funds have some tax advantages that will end on 31 December 2005.



Insurance Supervision Law No. 7397

Deposit System (Compulsory Reserves)

- **Establish deposit proportional to the insurance premiums**
- **Place all their deposits to the banks on behalf of Treasury**



Insurance Supervision Law No. 7397 (cont.)

Acceptable assets as deposits include

- Cash deposits in Turkish Lira and foreign currencies of which daily exchange rates are announced by the CB of the Republic of Turkey.
- Government borrowing instruments,
- Shares of the companies at least more than 51% of the capital of which is owned by the State,
- Other capital market instruments acceptable by the Undersecretariat of Treasury,
- Real estates owned by the insurance companies in Turkey.



Life Insurance By-law, Article 24

Types of Assets to be Kept as Mathematical Reserves

- Turkish currency, foreign currencies which daily exchange rates are announced by the CB of the Republic of Turkey and their cash deposits,
- Loan facilities on policy, investment fund participation certificates, profit/loss sharing certificates,
- Government borrowing instruments,
- Private sector bonds and repurchase agreements,



Life Insurance By-law, Article 24 (cont.)

Types of Assets to be Kept as Mathematical Reserves

- **Asset based securities and stocks,**
- **Real estates and certificates of real estates,**
- **Long-term loan facilities made available to natural persons and secured by mortgages and**
- **Other money and capital market instruments determined by the Undersecretariat of Treasury.**



OPERATIONS IN SECURITIES AND OTHER INSTRUMENTS TRADED ON THE MONEY MARKET



Decree No.32 on the Protection of the Value of the Turkish Currency

- **Acquisition by non-residents (residents) of domestic (foreign) money market securities and instruments is free.**
- **Commercial paper, bank bills and bank guaranteed bills having a maturity of less than one year are subject to regulations of the CMB. Resident and non-resident issuers are required to register their securities with the CMB.**



OPERATIONS IN CURRENT AND DEPOSIT ACCOUNTS WITH FINANCIAL INSTITUTIONS

- **No limitations in Decree No. 32**



Commercial Credits And Financial Loans

- **Freely granted by non-residents to residents in accordance with foreign exchange legislation**
 - ✓ **The maturity of the credits extended to finance exports can not exceed 18 months, with some exceptions.**
- **Turkish banks may grant loans abroad up to the total amount of foreign exchange deposits and loans they have obtained.**



Commercial Credits And Financial Loans (cont.)

- Residents may extend credits related to the commercial transactions in accordance with the foreign trade legislation.
- The period for exports on credit is two years for consumption goods and five years for investment goods. However, this period can be extended by the Undersecretariat for Foreign Trade, upon the request of the exporter.



Commercial Credits And Financial Loans (cont.)

- **Financial leasing contracts concluded between residents and non-residents are subject to the registration of the Undersecretariat of Treasury according to the financial leasing legislation.**
- **The authority in charge of leasing legislation will be transferred to the Banking Regulation and Supervision Agency as of 1 January 2006.**



Sureties, Other Guarantees and Rights of Pledge

- **No limitations in foreign exchange legislation**
- **Issues of guarantee letters for the transactions specified in the Public Procurement Law must be granted by a resident bank.**



TRANSFERS IN PERFORMANCE OF INSURANCE CONTRACTS



- **Transfers are free in accordance with the foreign exchange legislation.**
- **Insurance Supervision Law No. 7397**
Real persons and legal entities resident in Turkey are obliged to buy their insurances from companies operating in Turkey. However some insurance contracts can be bought from abroad:



(cont.)

- **The hull insurance of aircrafts, helicopters and ships which are purchased through a foreign loan or leased through a financial leasing contract from abroad,**
- **Marine liability insurance,**
- **Transportation insurance of imported and exported goods,**
- **Life insurance,**
- **Personal injury, health and motor vehicle insurance during any travel abroad,**
- **Insurance of ships and yachts (Turkish International Ship Registry Law No. 4490).**



Reinsurance (Decree of the Council of Ministers 2001/3480)

- **After holding the retention, only the part of non-life insurance concerning foreign reinsurance, 20% of premiums is subject to compulsory ceding to a special reinsurance pool.**
- **This procedure will end at the end of 2006.**



PERSONAL CAPITAL MOVEMENTS



Personal Capital Movements

- **Transfers of personal capital in cash are free in accordance with foreign exchange legislation.**
- **Cross-border movements of personal capital in kind, as identified in the Directive No. 361 are carried out in accordance with the Customs Regulation.**



PHYSICAL IMPORT AND EXPORT OF FINANCIAL ASSETS



In accordance with foreign exchange legislation

- **Physical import and export of securities and other instruments are free**
- **Import of means of payment to Turkey is free**
- **Travellers may take up to USD 5,000 (€ 4,170) or its equivalent in cash out of Turkey**
- **To take out above this amount:**
 - ✓ **non-residents must declare the foreign currency amount on their arrival**
 - ✓ **residents must present a document indicating that foreign currency in cash is bought for the payments of invisible transactions**



Under the provisions of Capital Market Law

- **The dematerialization of capital market instruments is going on and as a first step, by 28 November 2005 the shares of ISE listed companies were dematerialized by the central registry. There are no issued share certificates.**
- **Electronic transfer of shares through central registry system is free.**



Other Capital Movements

- Procedures are determined by the Circular No. I-M of the Central Bank of the Republic of Turkey on invisible transactions.
- The list of invisible transactions in this Circular are arranged in accordance with the OECD Code of Liberalization of Current Invisible Operations.
- Transfers through banks are free within the framework of the national and international banking practices.



Issues of Preferential Treatment

- There are special deposit accounts in the Central Bank of the Republic of Turkey (CBRT), which can be opened only by Turkish nationals residing abroad.
- Individuals eligible for opening these accounts at the CBRT are real persons over 18 years of age having residence or working permits abroad or the right thereto, Citizens of The Republic of Turkey (possessing The Republic of Turkey Identity Card / passports) or foreign nationals possessing “Certificates Regarding the Use of Rights Reserved Under the Law No. 5203”.