

DOING BUSINESS IN TURKEY: SALE OF FOREIGN INVESTMENT FUNDS IN TURKISH MARKET

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This briefing note aims to summarize the procedures and requirements for the sale of foreign mutual fund units in Turkish capital markets based on the primary legislation regulating this subject, the Communiqué on Foreign Capital Market Instruments and Depositary Receipts and Foreign Investment Funds VII-128.4 (“Communiqué”), published by the Capital Markets Board of Turkey (“CMB”) in the Official Gazette dated 23.10.2013 and numbered 28800.

The Communiqué referenced hereinabove envisages several prerequisites to the sale of foreign investment funds (“FIF”) and their units in Turkey. Among these, the minimum requirements are that the agreement must be signed by and between the FIF and its representative in Turkey; procedures for the CMB application and for the sale of FIF units must be in place; and there must be applicable methods for such sales, as well as adequate public disclosure principles.

I. PREREQUISITES FOR FIFS AND FIF UNITS TO BE SOLD IN TURKEY

FIFs represent investment funds or collective investment institutions incorporated abroad. The Communiqué defines FIF units as *“the securities which are issued by a foreign investment fund classified as a collective investment scheme founded abroad, and are considered as other capital market instruments.”*

The prerequisites to be fulfilled by an FIF whose units are to be sold in Turkey are as follows:

- a. FIF units must be traded in Turkish Lira or in any other foreign currency for which the daily buying and selling exchange rates are published by the Turkish Central Bank;
- b. The issuer must have obtained prior permission or consent from the relevant authority of the home country for the sale of FIF units;
- c. A minimum period of three years must have elapsed from the date of initiation of the sale of FIF units abroad, and the current value of FIF units to be sold must be a minimum of EUR 2,000,000 or its equivalent as of the date of the CMB application;
- d. There should be no restrictions envisaged by the home country legislation of the issuer on the sale of FIF units in Turkey, and on payment and transaction with respect to the financial rights arising from such sales in Turkey;
- e. The net asset value of the FIF must be a minimum of EUR 10,000,000 or its equivalent;
- f. At least 80% of the net asset value of the FIF must be invested in money and capital market instruments and transactions, as well as assets (excluding Turkish public debt instruments), of issuers who are residents of Turkey;
- g. If portfolio management services are provided from an institution other than the issuer, such institution must have a portfolio management license in its home country;
- h. FIF investments in money and capital market instruments from the same entity or corporation must not exceed 10% of the net asset value of the FIF (such limit shall be a maximum of 35% for money and capital market instruments issued by public entities and institutions);
- i. An FIF must not be a shareholder holding more than 10% of capital shares or all voting rights in any corporation;
- j. Regulations of the relevant country pertaining to borrowing of the fund and lending of its assets must be in compliance with legislation applicable to investment funds founded in Turkey;
- k. Financial statements of the FIF, prepared and issued in accordance with international accounting standards, must be audited by an independent audit firm at least once a year;
- l. An authorized body of an FIF must issue a letter of undertaking addressed to the CMB, certifying that all forms of information and documents which may be requested by the CMB (including public disclosure information and documents listed in the Communiqué) will be duly provided, and that the FIF will be available for audit by persons or entities to be designated by the CMB at the sole cost of FIF and/or its representative.

The CMB may at any time contemplate further requirements other than those stated above for the protection of the investors and for other related reasons.

II. FUND REPRESENTATIVE, REPRESENTATION AGREEMENT AND LIABILITIES OF THE REPRESENTATIVE

FIFs must have a representative in Turkey to oversee the sale of FIF units in Turkey. In addition, a representation agreement must be signed by and between FIF and its representative in written form. The minimum content to be covered in the fund representation agreement is clearly listed under Annex 3 of the Communiqué.

A fund representative is liable:

- a. For ensuring that FIF unit holders in Turkey have rights equal to FIF residents abroad, and that all payments relating to such FIF units are made in Turkey;
- b. For ensuring that all information requiring public disclosure is duly disclosed in a timely manner, and all notifications made to the CMB are timely completed, and all documents, prospectuses and investor information notes attached to applications and all other information disclosed to the public are true and accurate;
- c. For trading of FIF units in compliance with FIF principles;
- d. If and to the extent the FIF fails to make payment for any reason whatsoever upon return of FIF units to FIF, for ensuring that the FIF unit price is fully paid in cash and the relevant FIF units are repurchased from investors within a maximum of two business days following the end of the time period granted for repurchase of FIF units;
- e. For ensuring that records relating to FIF units sold in Turkey, the identity of buyers thereof, the number of FIF units traded, and the date of such trading activities are accurately recorded, and that records and information to be transmitted to the issuer are accurately transferred and records kept in Turkey and abroad are mutually consistent.

III. SALES OF FIF UNITS IN TURKEY

FIF units may be sold (i) through a public offering or (ii) without a public offering in Turkey. The Communiqué envisages a condition for sale through a public offering requiring that such units must have already been offered to the public in the home country of the FIF.

A. APPLICATION TO THE CMB

In each case in which FIF units are intended to be sold through a public offering or without a public offering in Turkey, the FIF representative must apply to the CMB in order to ensure compliance with the FIF prospectus relating to sales of FIF units in Turkey.

The FIF representative is primarily responsible for submitting the prospectus, the investor information form and the application form (drafted by CMB) in conjunction with the above-mentioned application. Additional information and documents to be submitted are also delineated by the CMB. The CMB, upon review of the application of an FIF representative, may request an opinion regarding the FIF and FIF officials from the relevant authority of the FIF's home country.

In addition to the above requirements, if a bank applies to the CMB for approval of the FIF prospectus pertaining to the sale of FIF units in Turkey, a prior opinion of the Banking Regulation and Supervision Agency is required.

B. INVESTOR INFORMATION FORM AND PUBLIC DISCLOSURE

The investor information form is prepared and published in accordance with the principles set forth in CMB regulations pertaining to investment funds. The FIF representative is responsible for ensuring that the content of this form is accurate and up to date.

The prospectus and investor information forms are to be published on a public disclosure platform and the web site of the FIF representative within 10 (ten) business days following receipt of the CMB's approval. Said documents shall not be separately registered in the Trade Registry or announced in the Turkish Trade Registry Gazette; however, publication stating where the prospectus is published shall be registered in the Trade Registry and announced in the Turkish Trade Registry Gazette.

Original versions and summaries of financial reports prepared in Turkish, independent audit reports and other periodical reports issued and prepared in accordance with the home country laws, and international accounting standards applicable to FIFs are required to be published on a public disclosure platform. The FIF representative is responsible for the publication of such reports.

C. SALES AND PURCHASES OF FIF UNITS AND PRIVATE PLACEMENT

Relying on public disclosure principles, the CMB reviews the application, considering whether the prospectus contains all information relating to the FIF and the sale of FIF units, as specified in relevant statute or other information relating thereto, and determining whether the FIF representative and the representation agreement meet all conditions requisite in the

Communiqué. The CMB completes its review of the application within 20 (twenty) business days and informs the applicant regarding outstanding documents/ information to be submitted or additional information required within 10 (ten) business days following the date of application.

FIF units cannot be sold in Turkey unless the CMB approves the relevant prospectus or certificate of issuance, where applicable. CMB's approval of the FIF prospectus/ certificate of issuance does not constitute a warranty as to the accuracy of information contained in the approved document and cannot be accepted as a recommendation of the relevant FIF units. Prospectuses/certificates of issuance or relevant advertisements and statements shall not contain any explicit or indirect phrases or expressions which may lead readers to interpret CMB's approval as a warranty proffered by the CMB or the public.

FIF units must be traded through the FIF representative in Turkey. Purchased FIF units may only be sold back to the FIF itself or to the FIF representative as authorized by the FIF.

One of the specific methods of FIF unit sales without a public offering in Turkey is through private placement. FIF units may only be sold through private placement to qualified investors. In this case, preparation of a certificate of issuance instead of a prospectus shall suffice for the purpose of application to the CMB. With respect to FIF units to be sold through private placement:

- i. Prerequisites, excluding paragraph (f) listed under section (I) above, are not required to be fulfilled;
- ii. The requirement of registration and announcement of the prospectus (as stated under paragraph (B) of section (III) above), preparation of an investor information note, and the publication of financial reports, independent audit reports and other periodic reports shall not be applicable.

The FIF representative shall be liable for obtaining and regularly maintaining all information and documents which serve to verify that the investors to whom FIF units are sold possess the requisite investor qualifications, as set forth under the relevant CMB regulations.

IV. CONCLUSION

Sales of foreign investment fund units in Turkey have been regulated in detail under Turkish capital market legislation. As may be determined on the public disclosure platform, the two primary market participants are the Franklin Templeton Fund, represented by Denizbank A.Ş., and the Pioneer Fund, represented by Yapı ve Kredi Bankası A.Ş., whose sub-funds are structured under their own umbrella. Additionally, information regarding FIF units sold through private placement is not publicly available.

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