

Law Bulletin

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AMENDMENTS TO BANKING LAW, CAPITAL MARKETS LAW AND RELATED LAWS AND REGULATIONS

The Law on the Amendments to the Banking Law and Certain Laws numbered 7222 (the "**Amendment Law**") was published in the Official Gazette numbered 31050 and dated 25 February 2020. The Amendment Law introduces novelties to the Banking Law, Capital Markets Law, Law on Financial Leasing, Factoring and Financing Companies and Law on Debit Cards and Credit Cards.

The Amendment Law mainly aims to **(i)** ensure optimum compliance with the international standards and principles (including Basel III principles) in banking and capital markets law, **(ii)** assure the trust and stabilization in financial markets, and **(iii)** organize banking systems with effective principles in order to preserve rights and interests of right holders.

The Amendment Law introduces new mechanics and structures under the Capital Markets Law in order to alter the point of view of the investment system in a way that will satisfy the investors' needs in real sector.

1. Amendments to the Banking Law and Relevant Legislation

- As per the recent revisions made to the Banking Law, the definition of the risk groups is expanded. The deputy general directors and other directors with same powers, and their spouses and children are included in the risk group definition. In addition, such revisions separate the risk groups related to the public banks and other institutions owned by the Turkish Wealth Fund. Thus, each of such public banks and other institutions, together

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with the companies directly or indirectly controlled by these banks and institutions, constitutes a separate risk group.

- Any data of the banks' clients (individual and/or legal entity) to be created with respect to the banking activities is defined as a client's confidential information. The banks will not disclose this confidential information and/or shared it with any third party located in Turkey and/or abroad without the permission of the relevant client, even if the relevant client gives a prior permission for sharing this information under Data Privacy Protection Law, subject to the exceptions stated under the relevant provision of the Banking Law.
- As per the new provision introduced to the Banking Law, the transactions and practices to be conducted by the banks to artificially affect the price formation, share information contrary to facts via any platform, mislead the right holders and other acts for these purposes are defined as manipulation and misleading transactions of the banks. The banks which made those acts will be imposed an administrative fine up to 5% of their total service income regarding the previous fiscal year which shall be not less than double the amount of benefit to be obtained from these transactions.
- As per another amendment made to the Banking Law, the Banking Regulation and Supervision Authority is entitled to determine the ratios or limitations to be applicable to the development and investment banks, different from those stipulated for the general banking system, and regulate the principles and procedures regarding the activities to be conducted by the development and investment banks without collecting any interest amount. Furthermore, the scope of the development and investment banks' activities are extended by considering the funds to be utilized by the development and investment banks from **(i)** their clients, partnerships and shareholders, **(ii)** other banks, and **(iii)** monetary markets, capital markets and organized markets as non-depository transactions.
- Additionally, the authority to determine any kind of cost, expenditure, commission to be collected by banks is given to the Central Bank of Turkey rather than the President of the Republic of Turkey.
- Another new provision incorporated into the Banking Law provides that the activities and advertisements of an individual and/or legal entity who violate the provisions of the Banking Law shall be suspended and the online access to this activities and advertisements which are available in websites in Turkey or abroad shall be blocked with the decision of the competent court.
- The systemically important banks shall be liable to submit precautionary plan to the Banking Regulation and Supervision Authority due to the occurrence of any events which may adversely affect the financial structure of the bank. In case that such banks do not

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fulfil this obligation, they can be subject to the reformatory, corrective and restrictive actions specified under the relevant provisions of the Banking Law.

- Furthermore, the Amendment Law amends other certain banking laws along with the Banking Law, such as the Law on Financial Leasing, Factoring and Financing Companies and Law on Debit Cards and Credit Cards. With these amendments, the amounts of administrative fines set forth under these laws are increased.

2. Amendments to the Capital Markets Law

- As per the recent revisions under the Capital Markets Law, publicly held companies' transactions regarding the substantial change of the field of activity and transfer, sale or lease of these companies' substantial properties are excluded from the substantial transactions' definition under the Capital Markets Law. With these amendments, the definition is simplified.
- The right of the shareholders to leave a publicly held company under the Capital Markets Law as a result of the substantial transactions of this company will be exercised through the shares' "*fair price*" rather than the stock exchange price. Furthermore, the Amendment Law envisages that the Capital Markets Board will determine the calculation principles of the fair price.
- The investors board is introduced for the purpose of enabling the investors of debt instruments to collectively act and decide to the terms and conditions of the relevant debt instrument. With this new platform, the company and the investors who own the debt instruments issued by the company will be able to negotiate the terms of debt instruments and the restructuring of the company's debts at the same platform.
- The Amendment Law, through another new provision incorporated into the Capital Markets Law, introduces the security agent concept that has been frequently used in the market, to ensure the rights of the investors under the debt instrument transactions. This will enable the investors to assign a security agent, as an expert who represents and acts on behalf them with respect to the securities to be provided under the debt instrument transactions. Thus, it is aimed to reduce the costs and expenses arising from the establishment and maintenance of the securities on behalf of the investors and facilitate the foreclosure and collection process. This new provision also aims to enhance the compliance of the Capital Markets Law provisions with the trust mechanism.
- With the further amendments introduced to the Capital Markets Law, the investment funds and asset finance funds defined under the Capital Markets Law are considered as a legal entity before official authorities and registry offices including the relevant trade registry and land registry offices.

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- Furthermore, the Amendment Law introduces the project finance fund, a new fund, under the Capital Markets Law. This new fund is established for the investors to provide financing to the major projects through the securitization structure. This fund is also considered as a legal entity before official authorities and registry offices including the relevant trade registry and land registry. With this structure, the cashflow generated from the project will be transferred to the fund and used to fulfil the borrowers' obligations under the project. Thus, this structure aims to protect the investors from bankruptcy risk of the borrower and diversify the investors' portfolio of these major projects.
- Another new provision provides that the administrative fines shall be imposed in case that the person does not cooperate with the officials appointed under the Capital Markets Law and makes unnecessary complaints which may result in the investigation and supervision of the Capital Markets Board by way of submission of wrong and misleading information.

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