TURKISH CAPITAL MARKETS 2020 OVERVIEW

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The Turkish capital markets have undergone many regulatory amendments and adjustments this year to provide a more robust environment in terms of transparency, competition, and stability for investors. As regulators have kept manipulative transactions in their sights to overcome the panic created by COVID-19, the Turkish Capital Markets Board (CMB) has imposed many sanctions and penalties.

Amendments to Capital Market Law

Amendments to Turkey's Capital Market Law that came into effect on February 25, 2020 included regulations as to the sanctions and measures available to authorities for infringements and principles as to significant transactions and exit rights and security trustees, as well as increasing flexibility for crowdfunding platforms. The amended CML foresees that, in determining the administrative penalty for legal entities, the highest amount of either the gross profit or sales revenue will be taken into account, and an unintentional obstruction of an audit is included in the actions requiring an administrative penalty.

Additionally, the amended CML enabled investment enterprises to engage in project finance transactions and to securitize project finance tools and introduced the Debt Instrument Holders Board to represent investors and issuers.

Subsequently, as secondary legislation to the amended CML, Communique No. II-23.3 on Significant Transactions and Exit Rights came into force (as published in the Official Gazette of June 27, 2020), setting forth regulations as to the scope of significant transactions and exit rights of minorities. Pursuant to the Communique, certain transactions that had previously been regarded as significant transactions were excluded. Among other things, the Communique also regulates the determination of shareholders entitled to exit and the principles for determining the price of an exit right.

Digitalization of Finance Agreements

The Law Regarding the Amendments to Certain Laws and Decrees No. 7247 allows certain types of financial agreements, such as leasing agreements, factoring agreements, and agreements between finance companies and their customers to be concluded via remote or electronic forms of communication that the relevant institution accepts as a replacement for the written form and through which customer identity validation is possible.

Restriction on Dividend Distributions for Capital Companies

As a precautionary measure to mitigate the negative impacts of COVID-19, a transitional provision was added to the Turkish Commercial Code No. 6102. Accordingly, for all non-state-affiliated companies, where questions about the distribution of cash dividends concerning the 2019 fiscal year are on the agendas of general assembly meetings to be held before September 30, 2020: (i) profits of years before 2019 shall not be distributed; (ii) dividends from the 2019 fiscal year shall not exceed 25% of the net profit of 2019; and (iii) the board of directors shall not be granted the authority to distribute dividend advances.

Amendments Regarding Mortgage Finance Companies

Communique No. III-59.1 on Covered Securities, Communique No. VII-128.8 on Debt Instruments, and Communique No. III-58.1 on Asset-Backed and Mortgage-Backed Securities contained amendments to soften the principles and procedures that mortgage finance corporations (MFC) are subject to.

In this regard, Communique No. III-59.1 states that the threshold regarding the circulation of covered securities will no longer be applicable for covered securities issued by MFCs, while fees payable to the CMB as to the issuance of covered securities will be half for MFCs. Additionally, the fees payable to the Capital Markets Board for MFCs will start to accrue after December 31, 2021.

Furthermore, the amended Communique No. VII-128.8 foresees that the issue threshold stipulated by it is not applicable to MFCs, and fees payable to the Capital Markets Board for the issuance of debt securities will not be collected until the end of 2021 – and after the end of 2021, half of such fees will be

collected.

Finally, the upper issuance threshold under Communique No. III-58.1 will no longer apply for asset-backed and mortgage-backed securities issued by MFCs or funds founded by MFCs, and half of the fees payable to the Capital Markets Board will be collected for asset-backed and mortgage-backed securities issued by MFCs or funds founded by MFCs. Communique No. III-58.1 also foresees that fees payable to the Capital Markets Board for MFCs or funds founded by MFCs will start to accrue after December 31, 2021. ■

A REVIEW OF BIOMETRIC DATA PROCESSING SYSTEMS USAGE UNDER THE PERSONAL DATA PROTECTION LAW AND SECONDARY LEGISLATION

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Personal data, one of the most discussed topics in the legal world, is protected in many countries, and it is regulated in Turkey under the Personal Data Protection Law, number 6698 (the "Law"), and secondary legislation. In addition, the decisions of the Personal Data Protection Board established under the Law (the "Board"), provide insight on the rules applicable to data controllers and processors.

There are several general principles in the Law related to the processing of both personal and "sensitive" personal data, with decisions of the Board helping to determine the necessary degree of compliance with them. Biometric data, such as fingerprint, face, and DNA information, is considered sensitive personal data, the processing of which is subject to strict conditions and additional measures. The most important principle applied to processing of sensitive personal data is that it be "relevant, limited, and proportionate to the purposes of processing.

The Board's decisions in cases where data controllers providing sports club services processed members' biometric data are instructive. In these decisions, the Board determined that obtaining the biometric data (related to palm prints) of members who wish to access sports club services is incompatible with the "being relevant, limited, and proportionate to the purposes of processing" principle, since it was possible to control their access by alternative means. As a result, the Board imposed administrative fines on the data controllers and instructed them to control access by alternative means and cease the processing of biometric data.

State Council rulings related to biometric data processing are also instructive. The most important decision for these purposes concerns the rejection of an employee's claim requesting the termination of a face-scanning system used to track employee shifts. The Administrative Court rejected the claim of the employee as: (i) the relevant method was not used in all units; (ii) the system was put in practice after the employer had encountered difficulties using alternative means to control of the employees' shifts and, (iii) the face scans of employees were converted into digital codes. However, and despite the Administrative Court's ruling, the State Council deemed the usage of face scanning a breach of right of privacy as not "relevant, limited, and proportionate to the purposes of processing" principle.

Thus, although there is no established precedent for the usage of biometric data processing systems, the Board and State Council's decisions demonstrate that the principle that the use of sensitive personal data be "relevant, limited, and proportionate to the purposes of processing" is of the highest importance. Therefore, data controller companies using systems that process biometric data, especially for the purposes of tracking personnel or building security, should evaluate whether there is a reasonable balance between the use of these systems and the benefit intended. As it is not yet clear which conditions the Board will accept as being in full compliance