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## CHANGES INTRODUCED TO BANKING AND CAPITAL MARKETS LAW

Law amending Banking and Capital Markets Law was approved by the Turkish parliament on 20 February 2020. The new law brings additional requirements to banks on data privacy, sanctions banks for misstatements and misleading information, gives authorization to Central Bank of Turkey (“**CBT**”) to determine all banking fees, costs and commissions and sanctions non-compliance of Banking Regulation and Supervision Agency (“**BRSA**”) instructions (as well as regulations, decisions and communiqués which are already in the existing law).

Amendments to Capital Markets Law ease the burden on listed companies in relation to material transactions, exit rights and take-over bids. Capital markets institutions in other jurisdictions such as assembly of bondholders, security agent/trust, project funds and bonds are introduced to Turkish law with the aim to deepen Turkish capital markets and offer additional sources of finance. The changes aim to meet international principles and standards in financial regulations and aim to address any concerns from international financial institutions.

*We would be delighted to prepare a case specific assessment, compliance and action plan if you think you will be affected by the changes to the Banking and Capital Markets Laws. Please contact us at [info@consulturk.com.tr](mailto:info@consulturk.com.tr).*

## CHANGES TO BANKING LAW

### Specific Data Privacy Requirements for Banks

❖ Banking data is deemed as client secret which gives it a **superior protection** compared to other customer data already protected by Data Privacy Law. Banking customer data include the following:

- deposit amount,
- loan amount,
- credit score, and
- account activity.



- ❖ Banking customer data cannot be shared with third parties **without customer’s specific request or instruction**, even if the prior express consent of the client is obtained. The blanket consents obtained from the customers will not be sufficient.
- ❖ The BRSA is authorized to ban the transfer of data abroad. The banks may be required to keep all IT systems and back-up within Turkey.

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## Misstatements and Misleading Information by Banks

- ❖ Following transactions and acts of banks will be deemed as financial manipulation and therefore sanctioned:
  - all transactions and acts with the aim to create artificial price change including artificial supply, demand or FX rates,
  - all misstatements and misleading information on the internet and other media,
  - misleading of account owners, and
  - similar transactions and acts for this purpose.



- ❖ The BRSA is authorized to determine which transaction and acts will be treated as financial manipulation.

## Banking Fees, Costs and Commissions



- ❖ CBT will be authorized to determine all banking fees, costs and commissions.

## BRSA Instructions

- ❖ Non-compliance with BRSA instructions (as well as regulations, decisions and communiqués which are already in the existing law) to be sanctioned with increased administrative fines in the Banking Law.



## CHANGES TO CAPITAL MARKETS LAW

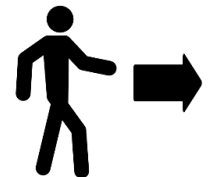
### The Scope of Material Transactions which give rise to Exit Right are limited

- ❖ The transactions listed below are removed from the material transactions list, therefore are not expected to give rise to exit right:
  - transfer, lease or establishing rights in rem (*mortgage, lien etc.*) over all or significant amount of company's assets,
  - change of scope of activity of the company,
  - delisting, and
  - dissolution.



### Flexibility in relation to Exit Right (in case of Material Transactions)

- ❖ The calculation of exit right price is changed to fair value principles to be determined by the CMB from weighted average over 30-day period prior to the disclosure of the material transaction.
- ❖ CMB is authorized to limit the exit right to investors who are shareholders on the date the material transaction is disclosed.
- ❖ The requirement of the listed company to exercise the exit right by buying the shares on its own behalf is eased. The shares can be offered to other shareholders or investors before being acquired by the listed company.

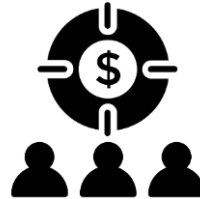


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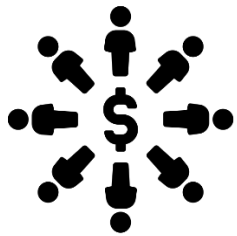
- ❖ CMB is authorized to introduce exemptions to exit right in certain cases such as distressed mergers, significant financial loss in case of exercise of exit rights etc.

## Number of shareholders who are offered Take-Over Bids are limited

- ❖ The shareholders who are offered take-over bids are limited to investors who are shareholders on the date the take-over is disclosed.
- ❖ The shareholders between the take-over bid disclosure date and the acquisition date will not be offered take-over bid.



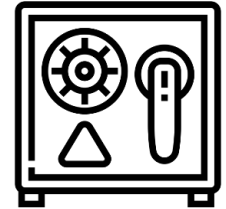
## Assembly of Bondholders introduced



- ❖ The opportunity for the investors and issuers to agree on the amendment of the terms of the issued bonds and the restructuring of the bond (*in case of default*) is intended by the “Assembly of Bondholders”.
- ❖ If Assembly of Bondholders agree to the restructuring of the issued bond, all execution proceedings and legal proceedings stop until the agreed date.

## Security Agent/Trust introduced

- ❖ Fast and easy recovery for the investors of bonds in case of default is intended by the “Security Agent/Trust”.
- ❖ Investment institutions can act as “Security Agent/Trusts”.
- ❖ The Security Agent/Trusts will be authorized by security agent/trust agreements to be executed before the issuance, to:
  - manage, maintain and protect the assets offered as security,
  - take legal action in case of default,
  - sell the assets and distribute the sale proceeds to investors and return any remaining sale proceeds to the issuer, and
  - return the assets to the issuer when the bond is paid and redeemed.
- ❖ The assets provided as security to the Security Agent/Trust will be separate from the security agent/trust’s own assets and cannot be seized, pledged or included in the bankruptcy estate for the security agent/trust’s own debts.

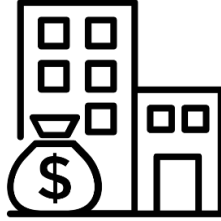


## Project Funds and Bonds

- ❖ Project Funds and Bonds are introduced to finance long-term, high-capital required infrastructure, energy, industry and technology projects.

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- ❖ Project funds and bonds are issued by investment institutions regulated by the CMB.
- ❖ The funds collected are allocated to the project instead of the sponsor so the investors only undertake the risk of the project.



- ❖ The returns of the project are also allocated to the fund to repay the principal and interest on the funds extended by investors.
- ❖ The assets in the project fund are protected by law so they cannot be seized, pledged or included in the bankruptcy estate.

*Please contact us at [info@consulturk.com.tr](mailto:info@consulturk.com.tr) for a case and company specific assessment, compliance and action plan on the changes to the Banking and Capital Markets Laws.*

This guide has been prepared for general information purposes. It is not meant to serve as legal advice in any manner. It is only a brief outlook of the topic. It is not and does not aim to be comprehensive. It only provides information on certain significant points of the topic and should not be used without a specific legal advice for the relevant case.

This guide has been prepared as of 24 February 2020 therefore is based on the bill passed by the parliament and does not provide for any further legislation or practice changes after such date. CONSULTURK does not have any obligation or requirement to update this guide or its beneficiaries in any case.

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