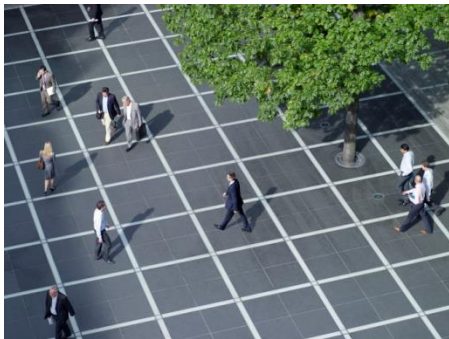

The New CMB Communiqué on Portfolio Management Companies



16/07/2013

The New Communiqué on PMCs

After the new Capital Markets Law (“CML”) came into force, the Capital Markets Board (“CMB”) Communiqué on “Portfolio Management Companies and Principles Regarding Their Operations” (“Communiqué”), has been published in the Official Gazette dated 2 July 2013.

The Communiqué will enter into effect on 1 July 2014. Nonetheless, the provision regarding the requirement of TRY2 million initial share capital, is in force as of the publication of the Communiqué.

Based on the new CML investment funds can only be founded by Portfolio Management Companies (“PMCs”). This has significantly increased the role of PMCs in the Turkish financial markets.

In this bulletin, we cover the highlights of the new regime for PMCs.

1- Which services can be offered by PMCs?

PMC is a capital markets institution, established in the form of a joint stock corporation with the approval of the CMB, the core business of which is founding and managing funds, managing portfolio of pension funds, investment companies and compatible foreign collective investment vehicles. PMCs are also authorized to provide Investment Advisory (IA) services and manage portfolios of private investors.

Portfolio Management (PM) and IA activities require an authorization licence from the CMB.

In addition to PM and IA activities, without being required to get any further authorization licence, PMCs can also provide some Ancillary Services, such as,

- i. investment research and financial analysis or general advice concerning transactions in capital market instruments,
- ii. consultancy services on capital markets (for PMCs with min. 5 million TLs of equity capital), and
- iii. wealth management and financial planning (for PMCs with min. 10 million TLs of equity capital).

Furthermore, there are some other Limited Purpose PMC types:

- PMCs which exclusively found and manage real estate investment funds - REPMCs
- PMCs which exclusively found and manage private equity funds - PEPMCs
- PMCs which exclusively give portfolio management and ancillary services to non-residents - NRPMCs
- PMCs which exclusively found and manage foreign collective investment vehicles that are marketed only to non-residents- FCIVPMCs.

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2-What do the terms “portfolio” and “portfolio management” mean?

Portfolio refers to monetary and capital market instruments, precious metals and all the assets and transactions deemed appropriate by the CMB.

Portfolio management, is defined as management of the portfolio of private investors and/or collective investment vehicles, such as funds (collective portfolio management). The Communiqué defines portfolio management as managing portfolios of clients for the purpose of financial benefit on behalf of each client by proxy, within the framework of a portfolio management contract. Services which can be offered within this purpose are mentioned in the Communiqué in detail.

Management of the portfolio of private investors is regulated in the CMB Communiqué on Principles Regarding Investment Services and Operations and Principles of Ancillary Services.

3- How are the PMCs established and how do they start operating?

Founding a PMC requires CMB approval and the minimum initial capital requirement is TRY2 million. CMB should complete the establishment licensing approval process within 6 months. Following the *establishment license*, another application needs to be made to CMB at most within 3 months, in order to get an *operating license* and an *authorization certificate*. In order to do so, fee of TRY 43.870,10 TL should have been paid for each year and conditions mentioned in the Communiqué should have been met. To this end:

- Capital adequacy ratio should have been met,
- A collateral, amount of which shall be determined by the CMB, should have been deposited with Takasbank,
- A custodianship agreement should have been signed with a Custodian,
- Executives and employees should have the required qualifications
- At least 2 portfolio managers should have been hired,
- Appropriate number of research analysts should have been hired,
- Account, recording, information and documentation systems, appropriate business flow and communication systems, technical infrastructure to for information systems should have been set
- General manager should have been appointed
- The organization structure regarding the conflict of interest policies and infrastructure, internal control, risk management, internal inspection, fund services, job descriptions, definitions of roles and responsibilities should be in place .

4- Can the portfolios established by PMCs be managed by another PMC?

Yes. It is possible for a PMC to manage the funds that were founded by another PMC. In order to do so, a portfolio management contract should be signed.

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5- What are the special regulations and advantages provided for Limited Purpose PMCs?

In the Communiqué, certain liabilities have been eased for PMCs which will operate within the limited Purpose mentioned below.



The Communiqué brings some exemptions for Limited Purpose PMCs. Accordingly;

- Limited Purpose PMCs may outsource supervisory, internal control, risk management and research functions and services.
- Capital and equity capital requirements are 50% less for Limited Purpose PMCs.
- Limited Purpose PMCs are exempted from the requirement of employing a minimum of 2 portfolio managers.
- Limited Purpose PMCs are required to send their capital adequacy reports on a monthly basis instead of a 15-day basis.
- Professional experience, education and licensing requirements of BoD members, directors and other professional staff stipulated for ordinary PMCs does not apply to Limited Purpose PMCs.
- General managers and at least one of the members of the BoDs of FCIVPMCs should have a minimum of 5-years experience in financial markets, whilst the requirements are higher in other (ordinary)PMCs.
- FCIVPMCs and PEPMCs cannot manage portfolio of private investors, provide investment advisory services, or marketing and distribution of the participation units of funds founded and managed by other PMCs.

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6- What are the regulations regarding the operations and organizations of PMCs?

PMCs;

- Should have policies and systems which would prevent a *conflict of interests*;
- Should have an *internal control* system, set related policies and procedures in written form and appoint a board member who is responsible for internal control;
- Should have a *risk management* system and unit and possess the related written procedures;
- Should have an *internal control* system and an *internal inspection* unit responsible for the supervision and inspection of the risk management units,
- Should develop *contingency and emergency plans*.
- Can establish domestic or foreign branches, and can form an agency relationship with banks and intermediary firms.

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7- What are the conditions of equity capital and services that can be outsourced for PMCs?

The minimum initial capital requirement is TRY2 million.

PMCs are obliged to meet relevant equity capital requirements in accordance with size of the portfolio that they are managing. In this context, the services that PMCs can outsource are determined accordingly. The table below outlines services that PMCs can outsource depending on their equity capital.

On the other hand, PMCs that manage funds more than TRY10 billion have to inject an additional %0.02 equity capital for the amount that exceeds TRY10 billion. In this sense, the maximum equity capital shall be TRY20 million.

Capital adequacy is to be reported to the CMB in every 15 days.

For the first 2 years starting from the establishment of a new PMC, only 50% of the minimum equity capital is required.

PMCs according to the size of portfolio that they manage				
	Up to TRY100 million	TRY100-500 million	TRY500 million-5 billion	TRY5 billion and above
Minimum Equity Capital	TRY2 million	TRY3 million	TRY5 million	TRY10 million
Type of services that can be outsourced				
Internal inspection	Yes	No	No	No
Internal control	Yes	No but can be carried out by the internal inspector	No	No
Research	Yes	Yes	No	No
Fund service unit	Yes	Yes	Yes	Yes
Risk management services	Yes	Yes	No	No
Information systems services	Yes	Yes	Yes	Yes

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8- What kind of qualifications are the managers and employees in PMCs required to meet?

The Communiqué requires the managers and personnel of the company to meet certain qualifications. The below table summarizes those requirements.

Personnel/Qualification	Education	Experience	Capital Market Licence
Executive Board Members	4 years of undergraduate education	Minimum 7 years in the financial markets for the majority of the members	Advanced Level and Derivatives Licence (at least one member of the BoD should hold these.)
Chairman	4 years of undergraduate education	7 years in the financial markets	Advanced level
Deputy Chairman	4 years of undergraduate education	7 years in the financial markets	Advanced level
Directors of Capital Markets Units	4 years of undergraduate education		
Fund Manager	4 years of undergraduate education	7 years in the financial markets	Basic level
Expert Personnel Inspector Internal Control Personnel	-	-	A licence that shows Professional competency.

9- What are the basic liabilities of PMCs?

- CMB approval is required for any change in the **articles of incorporation and transfer of PMC shares.**
- PMC should be audited by an **independent auditor**
- PMCs should **notify the CMB** regarding certain issues mentioned in the Communiqué
- PMCs should **register and announce** the authorization, permission certificate, branch or agency permission, company name utilization permit etc.
- PMCs should **meet the capital adequacy requirement of the CMB.**
- PMCs should **sustain document order and notify the customers.**

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10- Can PMCs hold shares of other companies?

PMCs can have shares in other companies, as much as 25% of their equity capitals, without being subject to any approval. However, if the participation amount exceeds this rate, the transactions shall be subject to the approval of the CMB, in principle.

Nonetheless, if the investment firm participates in capital markets institutions, precious metals intermediary firms, insurance, private pension, leasing, factoring, financing, asset management companies, the transaction shall not be subject to a approval from the CMB.

PMCs cannot be shareholders in the companies of whose capital more than 25% is held by shareholders or managers who own at least 10% of the PMC shares respectively or together.

11- How would the client assets be kept in custody? How would the rights regarding these be exercised?

The client assets to be managed by PMCs should be kept in portfolio custody institutions.

Collecting, paying transactions regarding cash capital, dividend, interest etc, or the use of pre-emptive rights and voting rights might be exercised by PMCs within the framework of authorization given in the portfolio management contract.

12- When will the Communiqué come into force? Does it stipulate a transitional period for current PMCs?

The New PMC Communiqué will come into force in 1 July 2014. However, the requirement of TRY2 million of initial capital regulated in the Communiqué has come into force as of 2 July 2013, and the companies are obliged to meet this requirement within 1 year.

The Communiqué gives a 1 year period to PMCs starting from the effective date of the Communiqué, in order for them to make their articles of incorporation, equity capital, structure and organization compatible with the Communiqué. In other words, as of 1 July 2015 the PMCs must have met the aforesaid requirements.

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