

Communiqué on Principles regarding Private Equity Investment Funds has been amended

Summary

Communiqué Amending the Communiqué on Principles regarding Private Equity Investment Funds numbered III. 52.4.c ("Amending Communiqué" or "Amendments") has been published in the Official Gazette dated September 21, 2024, and numbered 32669 and entered into force. Thus, some amendments have been made in the Communiqué on Principles regarding Private Equity Investment Funds numbered III-52.4 ("Communiqué")

Please find below our summarized explanations regarding the important amendments that entered into force with the Amending Communiqué:

➤ **Investment in foreign companies for PEIF has been simplified.**

- Before the Amending Communiqué, the following foreign investments were considered within the scope of private equity investments that should constitute at least 80% of the total fund value of the private equity investment fund ("PEIF"):
 - i. Companies [equivalent of joint stock companies] that are incorporated abroad as of the date of investment, but according to the latest annual financial statements, have at least **80% of** their assets consisting of subsidiaries or affiliates incorporated in Turkey [having the characteristics of Turkish joint stock companies]
 - ii. Special purpose joint stock vehicles [SPVs] established abroad whose fields of activity as defined in their articles of association are exclusively limited to investing in private equity companies as defined in the Communiqué
 - iii. Investments made in private equity companies through institutions established abroad for collective investment purposes to make capital investments in private equity companies as defined in the Communiqué, provided that the risk arising from the investments is limited to the principal amount invested

With the amendment, the **80% ratio** stated in (i) **has been reduced to 51% and it is stated that** the most recent annual financial statements as well as the **financial statements dated closest to the date of investment can be taken into account**. In this context, in order for foreign investments to be considered as private investment investments, **it is necessary and sufficient that at least 51% of their assets consist of subsidiaries or affiliates established in Turkey** according to their last annual financial statements or the most recent financial statements dated as of the date of investment.

- Before the Amending Communiqué, while it was only possible for PEIF to invest in joint stock companies (*in case of investments in limited liability companies, the said private equity companies must be converted into joint stock companies within one year following the date of the initial investment*), with the Amending Communiqué, **the requirement that the private equity to be invested in must be a joint stock company has been made applicable only to private equity companies established in Turkey**, and in case of investments in companies established abroad, the requirement that these companies must be joint stock or limited liability companies will not be sought, and **the conversion of foreign limited liability companies into joint stock companies will not be mandatory**.

- With the Amending Communiqué, the maximum investment ratio that can be made in companies with development potential, which are not listed on the stock exchange and are located abroad, without being included in private equity investment, was increased **from 10% to 15%** of total value of the PEIF. This 15% ratio will be applied as follows for participation units of the PEIF held by natural or legal persons resident abroad:

- a) **30%** in case of holding participation units from 20% to 30%
- b) **50%** in case of holding participation units from 30% to 50%,
- c) **80%** in case of holding participation units from 50% to 80%,
- d) **100%** in case of holding participation units from 80% or more,

These **investments** will also be **included in the private equity investment classification**. Thus, these investments are now considered as private equity investments.

- **The rates listed in the above-mentioned article** shall also be **applicable, in the event it is certified that the funds** collected in exchange for participation units of PEIF **is sourced from abroad**.
- While the portfolio limitation according to the ownership ratio of non-residents as of the end of the accounting period is linked to the control responsibility of the portfolio custodian, it has been stipulated that the necessary infrastructure will be provided by Turkish Central Registry Agency to be able to check whether natural or legal persons are resident abroad, while the portfolio limitation according to the ownership ratio of non-residents as of the end of the accounting period is linked to the control responsibility of the portfolio custodian.

Please see Annex 1 for the situation after these amendments.

Our evaluation

It is clear that the above amendments regulated with to the Amending Communiqué, are beneficial in terms of positioning Turkey as an asset management hub. These amendments enable investors, particularly foreign investors, to invest in companies abroad through a PEIF established in Turkey. With these regulations, a PEIF established in Turkey will be able to invest in companies established abroad, even at a higher rate than the proportion of non-resident investors investing in it. In this way, capital and financing can be provided to foreign companies with the resources collected in the PEIFs. Even investors resident in Turkey will be able to realize their investments abroad by investing in PEIFs with the above-mentioned portfolio composition, provided that it is certified that the investment amount to be transferred to the PEIFs originates from abroad.

➤ Investment in other PEIFs' participation units by PEIFs has been restricted

Amending Communiqué introduced the limitation that PEIFs- except for those titled as "fund basket" - may invest in the units of other PEIFs up to a maximum of 25% of the PEIF's total value. However, taking into account international practice and current market needs, a 'fund basket' type has been defined for PEIFs, and with this fund type preserving the possibility for PEIFs to invest unlimitedly in the units of other PEIFs provided that at least 80% of the total value of PEIF is invested in this fund type. Moreover, with amendments, **it is no longer possible for other (non-fund basket) PEIFs to invest in participation units of other PEIFs with an amount between 25% and 80% of the total value of PEIF**.

It has been regulated that previously established funds to comply with the portfolio limitation herein by 31.12.2025.

➤ **PEIFs shall no longer be allowed to invest in real estate companies and construction contracting companies**

With the Amending Communiqué, it is regulated that, in principle* companies whose at least 40% of their total assets consist of real estate and/or real estate-based assets according to their last annual financial statements and companies whose main activity is contracting for construction will not be considered as private equity companies. Accordingly, as of 21.09.2024, **PEIFs to be established will not be allowed to invest in:**

- **Companies whose total assets, according to their latest annual financial statements, consist of at least 40% real estate and/or real estate-based assets, and**
- **Companies whose main activity is contracting for construction**

It is also regulated that if the PEIFs established before 21.09.2024 have private equity investments in their portfolio that do not comply with the above-mentioned restrictions, these investments will not be considered as a violation of the relevant regulations, but such additional investment cannot be made after 21.09.2024.

Considering that Communiqué on Real Estate Investment Funds ("REIF Communiqué") allows for investment in projects, it has been considered that this regulation aiming to securitize real estate investments through real estate investment funds rather than through PEIFs.

As of 21.09.2024, the regulations regarding the relevant restriction will not apply for PEIFs that are not in compliance with the restrictions herein. However, it is stated that investments to be made after 21.09.2024 must comply with the relevant restrictions.

Please see Annex 2 for the situation after these amendments.

** Exceptionally - "Provided that the appropriate opinion is obtained from the Ministry of Industry and Technology, companies structured as technology development zones, incubation centers, technology transfer offices, R&D/design centers, technology development centers, higher education technology transfer offices, research centers, and clustering structures within the scope of the Technology Development Zones Law No. 4691 dated 26/6/2001, the Law on Supporting Research, Development and Design Activities No. 5746 dated 28/2/2008, the Higher Education Law No. 2547 dated 4/11/1981, and other relevant legislation, as well as companies engaged in activities specified in the relevant laws, even if their main activity is not real estate project development and management, are not included within the scope of this paragraph."*

➤ **New investments limitations have been introduced**

- With the Amending Communiqué, it is regulated that PEIFs **can invest in unlisted shares of publicly traded private equity companies up to a maximum of 20% of the PEIF's total fund value.** Previously established funds must comply with the portfolio limitation herein until 31.12.2025
- With the Amending Communiqué, it is regulated that **the investments made in companies and their related parties, in which the investors holding participation units of PEIFs have management control or are related parties, can constitute a maximum of 20% of the PEIF's total fund value.** As of 21.09.2024, the regulations regarding the relevant restriction will not apply for PEIFs that are not in compliance with the restrictions herein. However, it is stated that investments to be made after 21.09.2024 must comply with the relevant restrictions.

➤ **Investment with SAFE (Simple Agreement for Future Equity) agreements have been determined as private equity investment**

Investments made through SAFE agreements, which give the right to become a shareholder in private equity companies in the future, has been determined as private equity investment with the Amending Communiqué.

➤ **The requirement of obtaining approval from all participation unit holders for the redemption of PEIFs participation units through the transfer of shares of private equity companies to the PEIFs participation unit holder has been abolished**

Before the Amending Communiqué, it was required to obtain approval from all participation unit holders, if any, before each transaction, or to include the approval for such transactions in the investor agreements, when the redemption of PEIFs participation units to PEIFs was to be carried out through the transfer of shares of private equity companies to participation unit holder. With the Amending Communiqué, this requirement has been abolished.

➤ **The umbrella fund structure, which was applicable to securities investment funds, has been introduced for PEIFs as well**

With the Amending Communiqué, in parallel with the amendments made to REIF Communiqué, PEIFs will be able to be established as umbrella funds similar to securities investment funds. Thus, participation units of PEIFs to be established can be issued with an issuance certificate under a single fund circular, without preparing separate fund circular for each PEIF to be established.

➤ **The fund issuance agreement has been introduced**

With the Amending Communiqué, in parallel with the amendments made to REIF Communiqué, the fund issuance agreement to be concluded between investors individually or collectively has been regulated. **Some elements from issuance certificates are included in the fund issuance agreement**, whose minimum elements are regulated by the Amending Communiqué, to ensure that investors can continue to be informed within the scope of simplifying the issuance certificate. As of 21.09.2024, PEIFs whose participation units were issued must sign fund issuance agreement with their investor and to ensure that their issuance certificates comply with the new standard by 30.06.2025

➤ **The requirement to obtain Capital Markets Board' ("Board or CMB") approval for changes to the issuance certificate has been abolished, and obligations have been imposed to Founders**

- It has been regulated that the Board's approval will not be required for amendments to the issue certificate, and in cases where there are investors wishing to redeem their participation units, (i) the effective date of the amendments is postponed until the first date on which participation units can be returned to the fund, and the postponement will also be announced on the Public Disclosure Platform, (ii) the Founder is responsible for making the relevant amendment and compliance of the amendments with the relevant legislation and the issue certificate standard.
- Also, it has been regulated that the provisions regarding the minimum 30-day waiting period for the entry into force of amendments and the postponement of the effective date will not apply if the written approval of (i) the participation unit holders representing more than 65% of the existing participation units in the funds where participation units can be redeemed within the fund term, and (ii) all participation unit holders in the funds where participation units can be redeemed only at the end of the fund term is obtained.

➤ **Period regarding collection of the minimum commitment is shortened**

Before the Amending Communiqué, the collection of the minimum commitment (TL 50,000,000 for 2024) was 2 years period following the starting date of sale of participation units. With the Amending Communiqué, this period is revised as 1 year. However, it is regulated that the period regarding collection of the minimum commitment will apply as 2 years for funds whose issuance certificates are approved.

➤ **Amounts regarding the obligation to prepare a report by the valuation firm for valuation of private equity company investments have been revised**

The valuation report prepared by the valuation institutions deemed appropriate by the Board is mandatory in determining the value of private equity investments for funds where investor can only participate to fund with capital commitment and where, except for the exceptions specified in the fund issuance agreement, participation units cannot be redeemed participation units before the fund term.

With Amending Communiqué;

- The requirement to conduct the valuation with a report prepared by valuation institutions at the end of each third accounting period following the investment for private equity company investments with an investment amount of less than TL 5 million, has been changed to an investment amount of TL 25 million.
- The requirement to conduct the valuation with a report prepared by valuation institutions at the end of each second accounting period following the investment for private equity company investments with an investment amount between TL 5 million and TL 10 million, has been changed to an investment amount between TL 25 million and TL 50 million.
- The requirement to conduct the valuation with a report prepared by valuation institutions at the end of each accounting period following the investment for private equity company investments with an investment amount of more than TL 10 million, has been changed to an investment amount of TL 50 million.
- At the end of other accounting periods, the determination of the value of investments made by the fund in the relevant private equity company can be conducted by the investment committee based on a valuation report prepared in accordance with the Board's valuation standards, subject to the board of directors' decision of Founder.

Should you have any further queries, please feel free to contact us.

Umurcan Gago

Partner

umurcan.gago@gsg hukuk.com

Onur Atilla

Subject Executive Advisor

onur.atilla@gsg hukuk.com

ANNEX 1

Investment Ratios and Limitations of PEIFs' Foreign Investments

Foreign Investment Limitations

Investments Deemed as Private Equity Investments

80%

At least 80% of the net asset value of the Fund:

- ✓ Companies that are incorporated abroad as of the date of investment, but **at least 51% of their assets** consist of subsidiaries or affiliates **incorporated in Turkey** [with the characteristics of Turkish enterprise companies] according to their last annual financial statements or the most recent financial statements dated as of the date of investment
- ✓ The companies domiciled abroad and at the time of such investment **at least 51 % of their assets** consist of subsidiaries or affiliates [which have Turkish private equity company qualifications] **domiciled in Turkey** according to the most recent annual financial statements [equivalent of joint stock company]
- ✓ **Special purpose companies established abroad** in the form of joint stock companies whose fields of activity, as determined in their articles of association, **are exclusively limited to investing in qualifying target companies in Turkey** [SPVs]
- ✓ Investments in private equity companies specified in the PEIF Communique through **companies domiciled abroad and established for the collective investment purposes** provided that the risk is limited to the capital investment therein
- ✓ **In the event that a certain portion of the outstanding participation units of the PEIFs is held by non-residents**, at the following rates:

Participation units' ownership rate of non-resident person(s)*	The maximum total value of the fund
%20 - %30	%30'u
%30 - %50	50%
%50 - %80	%80'i
≥ %80	%100'ü

* These limitations shall **also apply if it is certified that the amount collected in Exchange for participation units is sourced from abroad.**

Other Allowed Investments other than Private Equity Investments

15%

Maximum 15% of the net asset value of the Fund:

Investments made in **companies domiciled abroad that are not traded on a stock exchange and that have development potential**

- ✓ Through direct or indirect capital transfer or transfer of shares
- ✓ Through investment in the bonds or lease certificates issued by these companies
- ✓ Through bridge financing structured as a mix of debt and capital

The table below summarizes the limitations on investment to be made abroad in the event that natural or legal persons resident abroad become investors in the PEFs at certain rates:

Ratio of participation units of investors resident abroad	Rates of participation units of investors resident in Turkey (maximum)	Rates of allowed investment in foreign companies	Rates of foreign investment of residents in Turkey (maximum)
%0-20	%100	%15	%15
%20-30	%80	%30	%24
%30-50	%70	%50	%35
%50-80	%50	%80	%40
+%80	%19.99	%100	%19.99

The Amending Communiqué stipulates that "If it is certified that the amount collected from abroad in exchange for participation units of PEIF is sourced, it shall also be subject to the limitations set forth in this paragraph". It is understood that investors resident in Turkey will be considered as investors resident abroad to the extent of the resources they bring from abroad¹. In this case, the opportunity for Turkish residents to invest abroad is further expanded, as can be seen in the table below.

Ratio of participation units held with resources collected from abroad by investors resident in Turkey OR resources collected by investors resident abroad	Ratio of units held with resources from Turkey provided by investors resident in Turkey (maximum)	Ratio of allowed investment in foreign companies	Ratio of foreign investment made by investors resident in Turkey using resources from abroad and Turkey
%0-20	%100	%15	%15
%20-30	%80	%30	%30
%30-50	%70	%50	%50
%50-80	%50	%80	%80
+%80	%19.99	%100	%100

¹ It is not clearly specified in the provision the term "foreign-sourced" refers to the amount brought from abroad or the amount obtained by person resident in Turkey a result of his/her activities abroad and it is expected to be clarified in practice.

ANNEX 2

Limitations on Real Estate Investments of PEIFs

Asset Type	Investment Limitation	Explanation
Companies with at least 40% of their total assets consisting of real estate and/or real estate-based assets according to their latest annual financial statements	%0	With the amendment made to the Communiqué on 21.09.2024, it was regulated that these companies will not be considered as private equity companies , thus investments in these companies have been blocked . In this framework, PEIFs to be established after 21.09.2024, will not be able to invest in these companies. However, PEIFs established before 21.09.2024, will not be able to make additional investments in these companies after 21.09.2024
Companies whose main field of activity is contracting	%0	
Real Estate Investment Fund ("REIF") Participation Units	%20	A maximum of 20% of the total value of the PEIFs may be invested.
	%4	The amount invested in single REIF cannot exceed 4% of the total value of the PEIFs.
Real Estate Certificates/Lease Certificates	%20	A maximum of 20% of the total value of the PEIFs may be invested.
	%49	If the direct investments of the PEIFs in SMEs exceed 10% of the PEIFs' total value, it may invest in these assets up to 49% of the PEIFs' total value.