

## **COMMUNIQUE REGARDING THE PRINCIPLES ABOUT VENTURE CAPITAL INVESTMENT COMPANIES**

1) (Communiqué on Amending the Communiqué Regarding The Principles About Venture Capital Investment Companies Serial: VI, No: 16 was published in the Official Gazette dated 7 January 2004 numbered 25339.)

### **Repealed Communiqué**

(Communiqué No: 10 Serial: VI published in the Official Gazette dated 6 November 1998 numbered 23515 is overruled by a new Communiqué Serial: VI, No: 15 carrying the same name.)

**Serial : VI**

**No : 15**

## **SECTION ONE**

### **PURPOSE, SCOPE, LEGAL BASIS AND DEFINITIONS**

#### **Purpose and Scope**

ARTICLE 1 - The purpose of this Communiqué is to set the principles regarding the founders and formation procedures of venture capital investment trusts, registration to the board and public offering of venture capital investment trusts' shares, management and the required qualifications of the managers, scope of activities, portfolio restrictions and disclosure requirements of venture capital investment trusts.

#### **Legal Basis**

ARTICLE 2 - This Communiqué has been based on Article 22/(o), Article 36, and Article 39 of the Capital Market Law numbered 2499.

#### **Definitions**

ARTICLE 3 - For the purposes of this Communiqué, the following definitions shall apply;

- a) Board: Capital Markets Board,
- b) Ministry: Ministry of Industry and Trade,
- c) Law: Capital Market Law numbered 2499,
- d) TCC: Turkish Commercial Code,

- e) TTRG: Turkish Trade Registry Gazette,
- f) Corporation: Venture capital investment trust,
- g) Venture capital investment: The investments which comply with the principles explained in Article 20 of this Communiqué,
- h) Venture capital investment trust: The corporation which is incorporated as a registered capital company and directs its capital to venture capital investments,
- i) Venture firm: The firm established or will be established in Turkey, which has potential for growth and needs resources.
- j) Portfolio value: The total market value of venture capital investments, other securities traded at secondary markets and reverse repo contracts that the corporation has in its assets.
- k) Leading shareholder: The shareholder/s who has %25 of the venture capital investment trust's shares and fulfils the requirements listed at Article 5, and 6 of this Communiqué,
- l) Sophisticated investor: Mutual funds, pension funds, investment companies (securities / venture capital / real estate), brokerage houses, banks, insurance companies, special finance institutions, portfolio management companies, pension and aid funds, foundations, institutions founded based on Provisional Article 20 of Law Numbered 506, associations, other investors which will be considered by the Board as similar to these mentioned ones, and the investors that have at least 1 trillion Turkish Liras of securities at the time of public offering of venture capital investment trust's shares.

## **SECTION TWO**

### **PRINCIPLES REGARDING FOUNDATION AND CONVERSION**

#### **Requirements for Foundation**

ARTICLE 4- Venture capital investment trusts should be formed in accordance with the foundation procedure. Besides, companies with different activities should be transformed into venture capital investment trusts by amending their Articles of Association pursuant to the provisions of the Law and this Communiqué. For the approval of foundation of or conversion to venture capital investment trusts by the Board the following requirements must be fulfilled;

- A- In case of immediate establishment,
  - 1) Must be incorporated as a registered capital corporation,
  - 2) Initial capital should not be less than TL 5 trillion,
  - 3) Shares must be issued in return for cash,
  - 4) The trade name of the company must contain the "Venture

Capital Investment Trust" phrase,

5) The Articles of Association must comply with the provisions of TCC, the Law and this Communiqué,

6) Board members of the legal entity shareholders which have more than 10% of the shares of the corporation shall meet the requirements specified under Article 5 of this Communiqué,

7) Application must be made to the Board for dealing with activities listed under portfolio operations specified in subparagraph (f) of first paragraph of Article 30 of the Law,

8) At least one of the founders must be a leading shareholder,

B- In case of conversion,

1) Must have adopted the registered capital system or have applied to the Board for this purpose,

2) Paid-in (or initial) capital must be at least 5 trillion TL,

3) Application must be made to the Board for amending the trade name of the company so that it contains the "Venture Capital Investment Trust" phrase,

4) Application must be made to the Board for amendment of the Articles of Association according to provisions of TTK, the Law and this Communiqué,

5) Board members of the legal entity shareholders which have more than 10% of shares of the corporation shall meet the requirements specified under Article 5 of this Communiqué,

6) Application to the Board for dealing with activities listed under portfolio operations specified in subparagraph (f) of first paragraph of Article 30 of the Law,

7) At least one of the current shareholders must be leading shareholder,

The requirements listed in sub article (a)/6 and sub article (b)/5 shall not be relevant for public institutions and other institutions which are considered to be like public institutions. (This provision is added by the Communiqué numbered Serial: VI, No: 16)

All amendments in the Articles of Association after foundation or transformation of the company will also be also subject to the Board's approval.

### **Qualifications of The Founders**

ARTICLE 5 - At venture capital investment trusts;

a) Founders, and other shareholders who directly or indirectly hold 10% or more of the corporation's shares shall not have due debts to the taxation authority and the public pension system.

b) Founders who will have 10% or more of the corporation's shares, shall obtain the required financial resources through their own commercial, industrial or other legal activities without any disputes.

c) Shareholders who are natural persons;

1. and the institutions of which they are general partners must not be insolvent,

2. must fulfil the requirements listed at sub article (d) of first paragraph of Article 9 of the Communiqué Regarding Intermediary Activities and Intermediary Institutions.

### **Special Requirements for the Leading Shareholder**

ARTICLE 6 - Leading shareholders shall have the financial strength, reputation and experience necessary to be founder and shareholder of a venture capital investment trust.

If the trade name of the corporation contains the name or trade name of natural or legal persons or if it contains a phrase which denotes that the corporation has a relation with those natural or legal persons, then those natural or legal persons are required to be leading shareholders.

Leading shareholder shall have at least 25% of the total shares of the corporation and those shares shall be registered to the name of the leading shareholder.

### **Foundation and Conversion Procedures**

ARTICLE 7-The corporation requesting foundation or conversion shall apply to the Board with the foundation/conversion application form and the documents mentioned at the form.

The application package shall include a feasibility report which contains information on the target industries, the planned periods when the capital will be increased and shares will be offered to public, amount of planned capital increases, consultancy services which will be provided by or for the corporation, the investors targeted for public offering of shares.

The Board inspects the application in terms of compliance to provisions of the Law and this Communiqué and in case no contrary matter is found out, foundation or conversion request shall be approved.

In case the Board approves the application, then an application for approval of foundation or approval of the amendments at the Articles of Association and the certificates proving that the capital has been paid in accordance with the provisions of this Communiqué and other required documents shall be submitted to the Ministry.

The corporation established according to immediate foundation, shall be incorporated upon registration to trade registry pursuant to related provisions of TTK following foundation approval of the Ministry.

The companies to be converted into venture capital investment trusts shall convene general assembly of shareholders or if required, general assembly of preferred shareholders pursuant to provision of Article 389 of TCC in order to obtain approval of general assembly for amendment of the Articles of Association following approval of the Ministry. Upon approval of the amendments and registration to trade registry, conversion procedures shall be completed.

### **License for Portfolio Management Activity**

ARTICLE 8 - While licensing the corporation for engaging in portfolio management activities, the Board evaluates the existence of sufficient physical space, hardware, employees, organization and managers, and finally if it becomes sure that the corporation can successfully engage in portfolio management activities, the Board gives the license to the corporation.

Within fifteen days, licenses shall be registered to Trade Registry and disclosed at TTSG. Any amendment related to the license shall also be registered and disclosed in the same way.

The corporations that didn't submit the application for portfolio management license within six months after the registry of foundation or amendments to the Articles of Association of the corporation, and the corporations of which the Board rejected the application, shall not operate as a venture capital investment trust anymore.

Following the end of the six month period or the date when the corporation is informed about the Board's rejection decision, the corporation shall apply to the Board to amend its Articles of Association so that it can not operate as a venture capital investment trust and to exit the registered capital system within three months. In case the corporations do not apply for these amendments, they will be considered annulled as stated in the second and sixth sub articles of first paragraph of Article 434 of TCC.

## **SECTION THREE**

### **Principles Regarding Registration of The Shares By The Board**

#### **Application for Registration**

ARTICLE 9 - Within three years from the registry of portfolio management license to Trade Registry, a corporation that is founded as a venture capital investment trust or converted into a venture capital trust shall compose its portfolio and apply to the Board with the request of having its shares registered so that they can be offered to public.

The corporation that didn't submit the application for registration of its shares to the Board within three years after the registry of portfolio

management license to the Trade Registry, and the corporations of which the Board rejected the application, shall not operate as a venture capital investment trust anymore.

Following the end of the three year period or the date when the corporation is informed about the Board's rejection decision, the corporation shall apply to the Board to amend its Articles of Association so that it can not operate as a venture capital investment trust and to exit the registered capital system within three months. In case the corporations do not apply for these amendments, they will be considered annulled as stated in the second and sixth sub articles of first paragraph of Article 434 of TTK. On the other hand, upon the request of the corporation, the Board can grant a one year extension for the three year period in case of significant problems that occurred in the market where the shares of the corporation are supposed to be offered to public.

### **Public Offering**

ARTICLE 10 - In public offering of shares, the Board's general regulations on public offering and sale of shares shall be applied, where there is no relevant provision in this Communiqué.

### **Registration by the Board**

ARTICLE 11- The Board shall evaluate application for registry of shares in terms of public disclosure, in particular whether the offering documents contain the information required under the regulations about the corporation and the shares.

In case the Board gets the opinion that the offering documents are not sufficient and do not reflect the truths and therefore cause abuse of the public, then the registry of the shares to the Board may be rejected.

Registry of the shares to the Board does not mean that issued shares and the trust will have been guaranteed by the Board and cannot be used for advertisement purposes.

### **Quotation to The Stock Exchange Market**

ARTICLE 12 - The corporations shall apply to the Board for issuance of certificates required for quotation of issued shares to Stock Exchange Market within 15 days from end of sale period. Within 15 days following the date of these certificates, corporation is obliged to apply to stock exchange market with the request of quotation of the shares.

### **Notification to The Board**

ARTICLE 13 - The corporations shall be obliged to notify the following to the Board within six business days subsequent to:

a) the announcement date of Articles of Association of the Foundation, one copy of TTSG,

b) the publishing date, statement, circular, announcement regarding sales and advertisements about public offering,

c) the end of sale period, the information about new shareholders structure and sale results occurred after sale,

d) the signing date, one copy of agreement about investment to venture firms,

e) end of the quarter, quarterly portfolio table containing investments in trust portfolio.

In addition, the resolution of the board of directors about investment to venture firms shall be notified to the Board and the Stock Exchange Market where the shares are under transactions through the fastest communication means until 9:00 of the next business day.

### **Transfer of Shares**

ARTICLE 14 - Before public offering, transfer of shares shall be subject to the permission of the Board regardless of any ratio. Transfer of shares within the framework of the provisions in this article the new shareholders must fulfil the restrictions of the founders.

### **Issue of Preferred Shares**

ARTICLE 15 - The corporations cannot issue any securities providing privileges other than privilege to nominate 2/3 of candidates for members of the board of directors or privilege for dividend. If the number of 2/3 of board of directors is not an integer, the closest integer will be taken into account.

After public offering, no privilege, including nominating members for the board of directors and dividend, can be created.

## **SECTION FOUR**

### **Principles Regarding the Management of the Corporation**

#### **Member of the Board of Directors and General Director**

ARTICLE 16 - The members of the board of directors and the general director must have the qualifications specified under article 5, paragraph (a) and (c) of this Communiqué.

#### **Scope of Activities**

ARTICLE 17- The corporations,

a) can be shareholders of venture firms within the framework of the provisions in this Communiqué,

b) may take part in the management of venture firms, may offer consulting service for the mentioned firms,

c) may make investments in securities being transacted in secondary markets in order to have varieties in their portfolio,

d) may use short term credit ,which have a maturity of less than 1 year, in the amount of half of their equity capital, long term credit, which have a maturity of more than 1 year, in the amount of two times of their equity capital.

### **Investment Restrictions**

ARTICLE 18 - The corporations,

a) can not make investment into firms where the shareholders with more than %10 of the capital or the voting rights, members of board of directors and general director separately or collectively have more than 10% of the capital or the voting rights of corporation,

b) can not invest more than 50% of its portfolio value on securities other than the ones issued by venture firm and the being operated at secondary markets, investment to venture firms are considered as this kind of investment after ten years since the investment date,

c) can not invest more than 10% of its portfolio value on securities issued by one firm specified under subparagraph (b) above.

d) can not have more than 5% of voting rights or capital of one single firm specified under subparagraph (b)

e) can invest in securities appropriate with their investment objectives with the purpose of hedging of portfolio against currency, market and interest rate risks provided that their articles of association have a provision in this line, this issue mentioned in disclosure documents, and approved by the Board, for hedging purposes invest in forward, options and futures contracts.

### **Obtaining Consulting Services**

ARTICLE 19 - The corporations can obtain consulting services from specialized persons and foundations in connection with the matters related to their activities provided that their articles of association have a provision in this line and a resolution for this purpose has been taken by the board of directors.

One copy of contract with specialized persons and foundations must be notified to the Board within six business days following the signing date. If no staff will be assigned to the related departments within the period of contract, the contract must be approved by the Board.



### **Investment in Venture Firms**

ARTICLE 20 - The investments to be made in venture firms by corporations shall be made under the framework of an agreement to be executed by and between the parties. This agreement shall have provisions mainly about the management of the venture firm and rights and obligations of the venture firm.

The venture firms must aim to manufacture or develop, vehicles, tools, material, services or new products, methods, systems and production techniques having industrial and agricultural application potential as well as marketing potential or have the capacity to realize the specified objectives with management, technical or capital support

The corporations can be shareholders of venture firms or may purchase debt bonds to be issued by venture firms.

The corporations may make investment into securities issued by other venture capital corporations within the framework of the provisions in this article.

The corporations can make;

a) Contracts that give to the corporations the option to sell the shares of venture firms to the shareholders or the employees of venture firms,

b) Contracts that give the option to the shareholders or the employees of venture firms to buy the shares of venture firms,

c) Contracts that give the shareholders the option to buy the shares of venture firms,

d) Futures contracts regarding the sale of shares of venture firms to the shareholders or the employees of venture firms,

e) Futures contracts regarding the sale of shares of venture firms to the corporations by the shareholders or the employees of venture firms,

and other options and futures contracts regarding the investment activities of the corporations.

These kinds of contracts are considered as venture capital investments.

For these kinds of contracts corporations must obey the rules determined by the Board regarding the obligations of the parties, valuation principles of investment on venture firms, the scope of public disclosure, investment amount and etc.

Sufficient information about options and futures contracts must be disclosed in the disclosure documents.

**SECTION FIVE**  
**OTHER PROVISIONS**

**Principles Regarding The Sale of Shares To Sophisticated Investors**

ARTICLE 21 - If the shares of corporations will be sold only to sophisticated investors provided that their articles of association have a provision in this line and this issue mentioned in disclosure documents, the following principles would be valid.

a) Corporations have to obtain and keep regularly persuasive data and documents about the investors proving that they meet the sophisticated investor criteria within the framework of this Communiqué.

b) All the shares must be written down on its behalf. These shares can only be sold to the sophisticated investors. Corporations must obtain persuasive data and documents about the investors proving that they meet the sophisticated investor criteria. The sale of shares to the investors that does not meet the sophisticated investor criteria can not be registered to the share register.

c) In case of foundation and conversion the paid-in or initial capital must not be less than 1 trillion TL.

d) Corporations are not obliged to have a leading shareholder and the provisions regarding the leading shareholder are not valid for these corporations.

e) There is no need to have an investment portfolio prior to registration to The Board however the corporations that does not meet the specified criteria under article 18, paragraph (b) of this Communiqué within one year following the registration can not operate as a venture capital investment trust. Following the end of the one-year period, the corporation shall apply to the Board to amend its Articles of Association so that it can not operate as a venture capital investment trust within three months. In case the corporations do not apply for these amendments, they will be considered dissolved as second and sixth sub articles of first paragraph of Article 434 of TTK.

f) Article 12 and the last paragraph of article 13 of this Communiqué are not valid for these corporations.

g) In case of public offering paragraph (b) of article 5 and third subparagraph of article 6 of Communiqué On Principles Regarding Registration With The Capital Markets Board And Sale Of Shares Serial: I, No:26 published in Official Gazette dated 15/11/1998 and numbered 23524, second subparagraph of first paragraph of article 3 of Communiqué on Principles Regarding the Sales Methods of Capital Market Instruments Through Public Offering, Serial: VIII, No: 22 published in Official Gazette dated 27/10/1993 and numbered 21741 are not valid for these corporations.

h) There is no need of auditing, notification to the Board and disclosure for the six-month results of the corporations. However, year end financial statements and audit report must be submitted to the Board and disclosed at TTSG within one month following the date of annual general assembly.

Board can differentiate the public disclosure requirements of these corporations.

### **Being Subject to Related Regulation**

ARTICLE 22 - The corporations shall be subject to regulations of the Board in connection with the matters such as financial tables and reports, profit distributions, announcements and advertisements. In case this Communiqué does not have any provisions about a specific matter, then the regulations of the Board about publicly-held firms and other regulation provisions shall be applied.

### **The Fee to Be Deposited to The Fund**

ARTICLE 23 - Before the registry of the shares of corporation, the registry fee under Article 28 of the Law shall be deposited to the account of the Board in advance.

### **Documents Determined By The Board**

ARTICLE 24 - Board can determine the format, scope and principles of notification to the Board of prospectus, articles of association, application forms and portfolio tables mentioned in this Communiqué.

### **Amounts Determined By The Board**

ARTICLE 25 - Board can determine the amounts mentioned in the articles 3,4 and 21 of this Communiqué.

### **Evaluation of The Applications By The Board**

ARTICLE 26 - Documents regarding the application must be submitted fully to the Board in order to evaluate the application. Other documents and information to be requested must be submitted within the period determined by the Board.

### **Repealed Provisions**

ARTICLE 27 - "Communiqué Regarding the Principles About Venture Capital Investment Corporations" Serial: VI, No: 10, published in Official Gazette dated 6/11/1998 and numbered 23515, being in effect before this

Communiqué has been terminated.

Temporary Article - The principles regarding the leading shareholder and minimum paid-in capital will not be valid for the corporations founded before publishing date of this Communiqué.

**Entry into Force**

ARTICLE 28 - This Communiqué shall enter into force on the day of its publication.

**Execution**

ARTICLE 29 - The provisions of this Communiqué shall be executed by the Board.