



Securities Finance 2012

Contributing editor:

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Cravath, Swaine & Moore LLP

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Subscriptions@
GettingTheDealThrough.com

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Anna Andreoli
Davet Hyland

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

Securities Finance 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
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ISSN 1744-0939

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Turkey

Halide Çetinkaya Yılmaz and Nilay Göker*

Kinstellar

Statutes and regulations

- 1 What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

The Capital Markets Law No. 2499 (CML) is the primary legislation governing securities offerings. The Capital Markets Board (CMB) is the regulatory body with primary responsibility for the administration, supervision and regulation of the Turkish securities markets.

The CMB regulates the capital markets and securities by issuing communiqués and giving decisions known as ‘principle decisions’. Along with general legislation, the Turkish capital markets are regulated by the CML and communiqués, regulations and principle decisions issued by the CMB (CMB Regulations). The CMB’s jurisdiction extends to all securities sold in Turkey, sold to Turkish investors or sold by issuers domiciled within Turkey.

The Istanbul Stock Exchange (ISE) is currently the only securities exchange in Turkey providing trading in equities, bonds and bills, revenue-sharing certificates, private sector bonds, foreign securities and real estate certificates. It is supervised by the CMB. There are four markets within the ISE, namely the stock market, the emerging companies market, the bonds and bills market and the foreign securities market. The stock market has eight submarkets, namely the national market, the collective products market, the fund market, the second national market, the new economy market, the watchlist companies market, the primary market and the wholesale market.

All securities to be issued or offered to the public must first be registered with the CMB. The CMB regulates the registration of:

- shares, through the Communiqué on Principles Regarding Sale and Registration of Shares which regulates initial public offerings (IPO), secondary public offerings (SPO) and the registration of a company’s shares that are treated as offered to the public because the number of shareholders in that company exceeds 250 (Share Registration Communiqué); and
- debt instruments, through the Communiqué on Principles Regarding Sale and Registration of Debt Instruments which regulates the issue of debt instruments such as bonds, convertible bonds, exchangeable bonds and commodity-linked bonds (Debt Instruments Communiqué).

The Communiqué on the Principles Regarding Sale Methods of Securities Through Public Offering regulates the methods to be used in the offering of securities, both equity and debt, to the public (Sale Methods Communiqué). The methods set out in this regulation are ‘sale on ISE’, ‘book building’ and ‘sale without book building’. This regulation also covers sub-categories of the book-building method, namely book building at a fixed price, book building by price range and book building through price bids.

The listing of securities on the ISE is optional. Any company wishing to list securities on the ISE must comply with the listing requirements set out in the Regulation Regarding Listing on the

Istanbul Stock Exchange (the Listing Regulation) issued by the CMB. The ISE is the sole authority for evaluating listing applications.

Public offerings

- 2 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

Filings

All securities to be offered to the public in Turkey must first be registered with the CMB. The CMB Regulations require the issuer or the selling shareholder, as the case may be, to enter into an underwriting agreement with a brokerage house that holds a public offering intermediary licence in the case of:

- an initial public offering of the issuer’s shares by way of capital increase;
- an offering to the public of shares held by shareholders, regardless of whether the company is public or not; and
- an offer to the public of newly issued shares by a public company if existing shareholders do not exercise their pre-emption rights.

Under the CMB Regulations the underwriter is responsible for conducting the offer of securities in compliance with the applicable CMB regulations and for the accuracy of the information in the prospectus disclosed to the public. Furthermore, underwriters are required to act diligently regarding the accuracy of the information in the prospectus and the other documents disclosed to the public as part of the offer.

The documents required to be filed with the CMB along with the application for registration vary according to the structure of the offer, but must include a prospectus, any corporate documentation necessary to amend the articles of association of the company to satisfy the CMB Regulations and all agreements relating to the underwriting and over-allotment arrangements. The content of the corporate documentation may change if the issuer is proposing to adopt the registered capital system. The registered capital system may only be adopted by public companies, companies established for the purpose of being public or companies that will become public within one year after the adoption of the registered capital system. The CMB has discretion to decide whether or not a company may adopt the registered capital system. In order for companies that have not adopted the registered capital system to increase their share capital, a general assembly of shareholders must convene and pass a resolution with a special quorum set out in the Turkish Commercial Code. Adopting the registered capital system allows the board of directors of a company to increase the share capital of the company without convening a general assembly of shareholders. The board’s authority in such a case permits it to increase the issued share capital up to the registered capital amount. It also permits the board to restrict exercise of the pre-emption rights of existing shareholders or to issue privileged shares if such authority is granted to it by the general assembly in accordance with the articles of association.

An application to the ISE is required if the securities are also to be listed and traded on the ISE. The Listing Regulation sets out the application process and the requirements for listing. The application is made by submitting a detailed form, which includes information about the issuer and the securities to be listed. The issuer is also required to submit other documents, such as financial statements and independent audit reports which will be included within the prospectus within the framework of the CML and an independent legal opinion addressed to the ISE. The issuer must pay a fee for the initial listing and annual listing fees so long as the securities remain listed.

Companies wishing to be listed must also obtain an International Securities Identification Number (ISIN) by making an application to the Central Registration Agency (CRA).

Information to be provided to investors

The Share Registration Communiqué and the prospectus guidelines issued by the CMB prescribe the content of a prospectus for an offer of securities to the public. The prospectus must include all information reasonably necessary to enable a prospective investor to assess the merits of the issuer, the securities being offered and the proposed investment, including but not limited to risk factors, material financial information, material litigation and profit expectations.

The issuer is responsible for the fair reflection of the facts and information contained in the offering documents and the issuer is required to immediately inform the CMB of any substantial changes in the information disclosed to the public in a prospectus and new facts which occur before or during trading. Financial statements relating to the last three financial years and other periodical financial statements, depending on the timing and structure of the offering, all audited by independent auditors, are also required to be attached to the prospectus. Pursuant to the Share Registration Communiqué the underwriter is required to co-sign the prospectus and is liable for the accuracy of the information disclosed in it. The prospectus must be published in the locations required by the CMB Regulations, such as newspapers and various websites.

In addition to the prospectus, which must be registered with the trade registry and published in certain locations as mentioned in question 3, a Turkish circular must also be prepared. The information to be contained in the circular is limited compared to that of the prospectus and it describes the structure of the offering. Private placements and sales directed to qualified investors only are exempt from the need to prepare a prospectus and a circular – see question 7.

- 3 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

All securities to be offered to the public must first be registered with the CMB.

Offering of shares

Before the application is made to the CMB for registration, the company whose securities are to be offered to the public is required to ensure that its articles of association comply with the CMB Regulations. In order to ensure compliance with the CMB regulations and to adopt the registered capital system, the issuer makes the first application to the CMB with the proposed amendments to the articles of association and other documents listed in the Share Registration Communiqué. After obtaining approval from the CMB, the amendments also require approval from the Ministry of Industry and Commerce.

The second application to the CMB is for the registration of the application and the list of application documents is set out in the Share Registration Communiqué and includes the draft of the prospectus and the circular. The prospectus and the circular must comply with the format and guidelines issued by the CMB. During the application process the CMB may request that additional

information be included in the prospectus. The draft prospectus is uploaded to the website of the CMB and announced on the website of the company, if one exists, within five days after submitting the registration application. If it is a secondary offering, the draft prospectus is also announced on the Public Disclosure Platform (PDP).

In addition to submitting a registration application to the CMB, a company wishing to be listed on the ISE must apply to the ISE. The listing application is submitted simultaneously with the second CMB application, because the CMB will ask the ISE on which ISE market the shares will be traded. Both the CMB and the ISE conduct their own due diligence procedures, including meetings with the company. Detailed forms in the format announced by the ISE must also be submitted to the ISE. An amendment in the Share Registration Communiqué will enable companies whose shares are traded on the ISE to make an application requesting that any of their shares which are registered with the CMB but not traded on the ISE become trading shares through an application by an intermediary institution after the registration fee has been paid to the CMB. Another major document submitted to the ISE is the report of an independent legal adviser of the company. Both the CMB and the ISE may request additional documents and information, as well as changes to the submitted forms. The CMB and the ISE have the discretion not to register or list the shares, respectively, depending on the outcome of their review of the submitted documents and their due diligence investigations.

Within 15 days after the CMB approves the registration, the prospectus in the format approved by the CMB must be registered with the trade registry and published in the Trade Registry Gazette. The approved prospectus and the circular must also be published on the PDP and websites of the CMB and the company. The company is also required to publish the circular in newspapers if the offering is an IPO. The book-building period, which may be from two to 30 days, may only begin on the second business day following the approval by the CMB and publication of the circular.

Provided that there are no missing documents in the application or issues with the company, a straightforward application takes the CMB six weeks to review and approve the registration. The ISE is required to finalise its review process within 60 days from the submission of the listing application. Such period excludes the timing required for the submission of missing documents. In practice, if applied simultaneously, both applications are finalised in about the same time frame, with the ISE finalising later because it requires the company to submit the CMB's registration decision in order to issue its listing decision. Therefore, the listing decision may only be given upon completion of the registration of the securities with the CMB. The process may vary depending on the specific details of the company and whether or not the company operates in a regulated industry.

Offering of debt instruments

The rules for offers to the public of debt instruments are similar to the process for offers to the public of shares, except that no application is required for the amendment of the articles of association. The application process may change where the offer of securities to the public is not going to be made immediately after registration of the debt instruments with the CMB. In such a case, a second application would be required 10 days before the offer is made with a set of documentation which is not as comprehensive as the registration documentation and includes the circular. The application to be made to the ISE for registration of the debt instruments for trading purposes on the ISE must be made simultaneously with the application to the CMB for registration.

- 4 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Publicity restrictions

The CMB Regulations require that any announcements directed to the public in connection with an offering of securities must not include inaccurate, misleading, groundless or exaggerated information or omit any material information. The CMB has authority to prohibit the publication of advertisements which it considers misleading. The Share Registration Communiqué and the Debt Instruments Communiqué also require the advertisements that are published during the period between registration of the shares with the CMB and publication of the prospectus include a statement that the prospectus has not yet been issued. Upon the publication of the prospectus, publicity about the offering must state where the prospectus has been published. The information included in advertisements must not be broader than or in conflict with the contents of the prospectus and must represent the current status of the issuer and the securities fairly. The information must also be transmitted by means that each investor can access equally. The same principles apply to any announcements about the offering made by individuals during the offering process.

Making misleading statements in connection with any offering of securities in Turkey is a criminal offence for directors of the issuer. In addition to criminal liability, civil liability under general Turkish law principles may also arise for providing misleading or inaccurate information.

Research reports

There are no detailed guidelines on the use or content of research reports. However, the Communiqué Regarding Brokerage Houses requires research reports prepared by brokerage houses to be objective. Consequently, inaccurate information and subjective analysis may lead to liability for brokerage houses. To avoid incurring liability, the advice provided in a research report should not constitute investment advice under the Communiqué Regarding Investment Advisory.

- 5 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Under the CMB Regulations, the rules applicable to IPOs and SPOs do not differ materially.

Under Turkish legislation all existing shareholders have statutory pre-emption rights, unless otherwise provided in a company's articles of association. It is possible to restrict the exercise of such pre-emption rights in public and non-public companies by passing an appropriate shareholders' resolution or, if the company has adopted the registered capital system, a board resolution. The board must specifically have been granted such authority within the articles of association. These procedures are possible for both IPOs and SPOs.

A prospectus is required for both IPOs and SPOs. However, there may be differences regarding the required information to be included in the prospectus, and the process of preparing a prospectus for an SPO is simpler. If the shares of a company are already listed on the ISE, then no listing application to the ISE would be necessary, and so some of the documents referred to in question 2, such as an independent legal opinion and a listing application, would not be required.

Lastly, for both IPOs and SPOs, the exercise of pre-emption rights of existing shareholders would have to be restricted if the offer to the public is to be made through a capital increase.

- 6 What is the typical settlement process for sales of securities in a public offering?

All listed securities are in uncertificated, dematerialised form. An issue of new securities must be registered with the CRA on the business day following the registration of the prospectus with the trade registry and any off-exchange sales must be registered with the CRA by the next business day following sale.

All settlement services for listed securities are handled by the ISE Custody and Settlement Bank (Takasbank). All issuers, brokerage houses, investors and funds are required to establish a sub-account with Takasbank before buying or selling listed securities. The ISE has issued rules for the settlement of the sale of shares, convertibles and bonds as well as foreign securities. All share sale transactions take place on a cash basis and settlement must take place on the second business day after the execution of a trade, whereas other security types have different settlement rules.

Private placings

- 7 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Private placings are regulated by the Share Registration Communiqué which exempts a private placing from the need to publish a prospectus. A private placing is the issue or sale of existing shares of a company, or the shares arising from an increase in the share capital of a company, directly to persons, located abroad or in Turkey or directly over ISE, without offering them to the public. A placement of shares will be private if it is made to less than 100 people. The companies whose shares are traded on the ISE and companies whose shares are traded on the Emerging Companies Market must carry out a private placing through an increase in the share capital in the relevant market of the stock exchange.

An application to make a private placing must be filed with the CMB and must contain the information and documents stated in the Share Registration Communiqué, such as the articles of association of the company, related corporate resolutions, share purchase agreements, if any, and information regarding the calculation of the price of the securities the subject of the private placing. The CMB may ask for additional information and documents.

The CML limits the time period for a private placing and states that the private placing must be launched within 30 days following the registration of the placing with the CMB and completed within one week following its launch.

Other instances where a prospectus is not required include an offer to qualified investors only.

- 8 What information must be made available to potential investors in connection with a private placing of securities?

There is no official requirement regulating the information to be provided to potential investors in a private placing. However, as mentioned above, specific information and documents must be provided to the CMB.

- 9 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

No restrictions apply to the transferability of listed securities acquired in a private placing. No mechanisms may be used to enhance the liquidity of securities in a private placing because price stabilisation is prohibited for issuers under the CMB Regulations, but is permitted to brokerage houses on IPOs or SPOs, which is explained in detail in question 18.

Offshore offerings

- 10** What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

The CMB Regulations apply to offerings of securities, equity or debt, to persons outside Turkey by an issuer domiciled in Turkey. Consequently, the securities would need to be registered with the CMB before their offering. In particular, the CMB has set out different documentation requirements for debt instruments being offered offshore in the Debt Instruments Communiqué where it is stated that offshore offerings of debt instruments cannot be made before registration of those securities with the CMB. Local security laws must be considered when offering securities to people outside Turkey.

The CMB Regulations set out a minimum domestic offering threshold for offers of securities, both equity and debt, to the public. The threshold is 10 per cent and so 10 per cent of the securities to be offered must be offered to domestic individual investors and an additional 10 per cent to domestic institutional investors. These thresholds exclude the exercise of any over-allotment option.

The CMB Regulations provide an exemption to such threshold rules for offers to the public carried out by the method of 'sales on the ISE'.

Particular financings

- 11** What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Common characteristics of the debt instruments are highlighted as follows:

- All debt instruments must be registered with the CMB, which requires certain corporate and financial documentation to be submitted. Offshore private placing must also be registered with the CMB.
- Securities can be issued by way of public offering or private placing. In the case of a public offering, a prospectus or circular should be prepared; however, for private placing, there is no such obligation.
- The size of the issue is limited to certain thresholds by a Decree of the Council of Ministers.
- To issue these securities, using a brokerage house is obligatory.
- Book-building length is limited.
- The offers to the public may be made in stages with different interest schemes and repayment structures, within one year after registration of the debt instruments with the CMB; however, 10 days before each offering the issuer must submit a new circular to the CMB. The sale may not take place without the CMB's approval.

There are specific CMB Regulations governing offers of convertible bonds, exchangeable bonds and warrants. For warrants and convertible bonds, pre-emption rights of existing shareholders are limited. Moreover, in the case of a private placing of these securities, there is no requirement for a full prospectus; however, the bondholder number is limited to 100, excluding qualified institutional investors. The issue size is also limited by the Council of Ministers with a decree.

For rights offerings, general rules are applicable as explained in question 2.

Underwriting arrangements

- 12** What types of underwriting arrangements are commonly used?

Pursuant to the CMB Regulations the underwriting arrangements for an offer of securities to the public may be on a best efforts or an underwriting basis. The best efforts method requires the return of those securities which have not been taken up within the sale period specified in the prospectus to the issuer or seller and the sale

of those securities to those people who have committed to purchase the unsold securities.

The underwriting basis has two sub-categories, namely a firm underwriting and a standby underwriting, both of which can be undertaken wholly or partially. Under the firm underwriting basis, the underwriters purchase all (or a portion of) the securities by paying cash before the offer to the public is made. Under the standby underwriting basis, the underwriters commit to purchase all or part of the unsold portion of the securities by paying the consideration in cash following the offer to the public. The partial standby basis is often used in Turkey.

- 13** What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

Market practice on the content of underwriting agreements is partly dictated by the detailed guidelines issued by the CMB on the matters that must be covered in an underwriting agreement. These guidelines require an underwriting agreement to contain, among other things:

- the type of underwriting;
- the rights and obligations of the parties (which may include indemnity provisions);
- the procedure and the means of the sale;
- details of any success fee payable; and
- the post-sale transactions, such as over-allotment and price stabilisation arrangements.

Indemnity provisions

It is common in underwriting agreements covering offers of securities to the public in Turkey for the issuer, or the selling shareholder and the issuer, to indemnify the underwriters against any loss, damage or penal liability, etc, arising from any breach of representations and warranties in the underwriting agreement and any untrue statement or omission in the prospectus or any non-compliance with any regulation of the CMB or the ISE or any relevant authority.

Force majeure clauses

Underwriting agreements commonly contain provisions that grant the parties the right to discontinue or postpone or terminate the agreement. These provisions are mostly based on events that result in performance of the obligations of the underwriters under the agreement becoming impossible or very difficult as a result of:

- the decisions of judicial authorities, executive bodies or other bodies authorised to take decisions regarding capital markets; or
- war, fire and acts of God, such as earthquakes or floods, that might affect the public offering.

Success fees

Success fees are a matter of negotiation. However, the CMB guidelines require that details concerning the calculation and payment of any success fees are set out in the underwriting agreement and the prospectus.

Over-allotment provisions

Underwriting agreements usually include provisions regarding the allotment of further shares if the final subscriptions exceed the number of offered shares. In addition to the over-allotment option, price stabilisation arrangements are usually agreed between the underwriter and the selling shareholder or the issuer. Details of both the over-allotment option and the price stabilisation arrangements must also be included in the prospectus.

- 14** What additional regulations apply to underwriting arrangements?

Apart from the need to comply with the CMB Regulations that affect underwriting arrangements, there are provisions in the

Commercial Code and Code of Obligations that apply to underwriting arrangements.

Before the launch of the offering, the underwriting agreement must be submitted to the CMB which may request changes to ensure compliance with the CMB Regulations. The percentage of the total offering which is to be underwritten amount must be disclosed in the prospectus, as stated above.

Ongoing reporting obligations

15 In which instances does an issuer of securities become subject to ongoing reporting obligations?

The CMB Regulations contain different requirements for the ongoing reporting obligations of:

- listed companies;
- public but not listed companies that have adopted the registered capital system;
- public but not listed companies that have not adopted the registered capital system;
- issuers of debt instruments;
- companies wanting to be listed; and
- companies wanting to issue debt instruments, in terms of the disclosure to the public of financial information.

Various CMB Regulations require issuers to disclose events that may affect investors' decisions regarding the value of the securities traded on stock exchanges and material events in connection with the utilisation of the rights related to such securities. The scope of the disclosure required to be made by an issuer that has issued non-listed securities is lower than the disclosure requirement in relation to listed securities.

Listed companies are subject to ongoing reporting and disclosure requirements imposed by the ISE.

There are also certain circumstances when shareholders of a public company become obliged to make public disclosures. These relate to changes in their shareholding in the company that exceed or fall below certain thresholds.

16 What information is a reporting company required to make available to the public?

The CMB Regulations require listed companies to deliver to the CMB and the public their audited annual and semi-annual financial statements and related audit reports and their quarterly balance sheet and income statements. Public but non-listed companies are also required to disclose to the public certain of their financial statements, the extent of the disclosure depending upon whether or not they have adopted the registered capital system and the amount of their issued share capital.

Listed companies are required to submit their annual financial statements and minutes of general assemblies to the ISE. Listed companies must also inform ISE of certain changes in the shareholding structure of its subsidiaries and of itself and changes in the amount of shares held by managers of the issuer and by their relations. These disclosures are made to the public through the PDP.

Issuers are obliged to disclose to the public any information that may affect investors' investment decisions or the value of the securities issued by them. The CMB has issued guidelines as to what type of information must be disclosed. Several Communiqués require issuers of listed securities to disclose changes in their shareholding structure that exceed or fall below certain thresholds, to explain unusual price movements and to comment on the accuracy of news or media reports about the issuer. In addition, a list of real and legal persons who have access to 'inside information' must be prepared and announced to the public. Non-listed public companies have much more limited disclosure obligations.

All disclosures to the public must be made promptly.

Anti-manipulation rules

17 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The main rules prohibiting manipulative practices under the CMB Regulations concern market manipulation and insider trading. Persons committing manipulation offences are at risk of imprisonment as well as administrative and judicial fines.

Market manipulation

Market manipulation is regulated by two types of offence, manipulation with trading and manipulation with information under article 47/A 2, 3 of the CML.

The offence of manipulation by means of trading is committed when real persons or the authorised persons of legal entities buy or sell securities with the intention of:

- affecting the demand and the supply;
- creating an impression of an active market;
- stabilising the price of securities at a certain level; or
- increasing or decreasing the prices of securities.

The offence of manipulation by means of information is committed when real persons or the authorised persons of legal entities give and disseminate misleading, false or deceiving information, news or comments, or do not disclose information that should have been disclosed that may affect the value of the securities.

Any persons acting together with the persons carrying out manipulative practices are subject to the same penalties as if they were also manipulating the market.

Authority of ISE chairmanship

Apart from the authority vested in the CMB with article 47/A of CML, the chairman of the ISE is also authorised under the ISE Regulation to procure a transparent, organised and fair securities exchange market. Accordingly if a breach of the relevant manipulation rules is detected by the board of directors of the ISE, the board may take all necessary precautionary steps in terms of the market or shares and in relation to the relevant real persons or legal entities.

Insider trading

Insider trading under the CMB Regulations is defined as gaining a benefit, eliminating a loss or conferring a benefit on a third party by using non-public information that has the effect of damaging the equality of treatment between traders in the capital markets.

The prerequisite for committing the offence of insider trading is using information that has not been disclosed to the public that can affect the value of the securities.

Price stabilisation

18 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Price stabilisation measures are regulated under the Share Registration Communiqué which permits the underwriter who is named in the prospectus as the stabilising manager to buy shares within a maximum period of 30 days following the commencement of trading of the offered shares if the share price falls below the offer price. During the stabilisation period the stabilisation manager is not allowed to buy or sell shares at a price higher than the initial offer price. The Communiqué also allows stabilisation to be effected by the stabilisation manager using the shares available to it under any 'greenshoe' arrangement. However, if the greenshoe option is used, the stabilisation activities must be conducted by the same underwriter.

The stabilisation manager is only permitted to carry out stabilisation activities in the manner described in the prospectus and in compliance with CMB Regulations and the ISE trading rules. The stabilisation manager must keep records of the stabilisation

transactions for five years following the completion of the stabilisation activities.

Liabilities and enforcement

19 What are the most common bases of liability for a securities transaction?

The CMB has a broad supervisory authority. Within the scope of such supervisory authority and by virtue of the CML, the CMB is authorised to take any measures it deems necessary in relation to a breach of the CMB Regulations. For example, the CMB has authority to terminate securities transactions and offers of securities to the public if such transactions do not comply with applicable registration requirements. Furthermore, the CMB may request the civil courts to grant a precautionary injunction or attachment and may initiate law suits against transactions that are in violation of the CML or CMB Regulations or result in a decrease or loss of capital of a company.

The CML contains detailed provisions about the penalties, including imprisonment and fines (both administrative and judicial), which can be imposed for breaches of the CMB Regulations. The offences discussed in question 17 are punishable by imprisonment and the imposition of significant fines.

Breach of the requirement to register securities offered to the public with the CMB may lead to imprisonment and the imposition of judicial fines imposed on the real persons and the authorised signatories of the legal entities. The following are punishable by imprisonment and the imposition of judicial fines:

- not providing requested information or giving incomplete or false information to an authorised officer of the CMB; and
- not delivering books and documents requested by an authorised officer of the CMB, or destroying or concealing such books and documents.

Breach of the obligation to register securities with the CRA can also lead to a judicial fine. Furthermore the CRA, issuers and the brokerage houses are responsible for damages arising due to errors in their records.

Furthermore, issuers are responsible for the accuracy of the information in the prospectus and the circular and are liable for compensating for false statements contained in the prospectus or circular and may be subject to judicial fines. Damages that have not been indemnified by the issuers may be claimed from the brokerage houses involved that have failed to operate with due diligence.

In addition to judicial fines, the CMB may impose administrative fines for breaches of the CMB Regulations or decisions made by the CMB.

Update and trends

Bearing in mind the substantial changes to the Turkish Commercial Code, the Turkish Code of Obligations, and the Turkish Code of Civil Procedure recently enacted or about to come into effect, and to achieve conformity with EU legislation and global developments, it is also thought that there will be progress in the capital markets legislation which has not been significantly amended since it was enacted in 1981. Recently the president of CMB announced a draft law on CML and the draft was published on the website of CMB for public review up to 30 March 2012. The draft has been prepared as framework legislation and enables the regulatory authority to prepare relevant secondary legislation. The topics regulated in the draft include capital market instruments and issuers (new rules with regards to the prospectus and the information to be disclosed to the public, issuance of debt instruments etc have been regulated), capital market activities, underwriters, self-regulatory institutions (financial markets infrastructure, central counterparty and trade repositories are regulated) and market offences (drafted in accordance with the EU directive).

20 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

As mentioned in question 19 there are three types of penalties, imprisonment, judicial fines imposed by the criminal courts and administrative fines imposed by the CMB.

A legal prosecution relating to offences where the penalties may be imprisonment or judicial fines can be initiated by the CMB with written submission from the Public Prosecutor's Office.

Administrative fines are imposed by the CMB as mentioned in question 19. However, proceedings may be brought before the administrative court to challenge the decisions of the CMB with regard to administrative fines.

** The authors would like to thank Charles Dunn for his assistance with this chapter.*

KINSTELLAR

**Halide Çetinkaya Yılmaz
Nilay Göker**

**halide.cetinkaya@kinstellar.com
nilay.goker@kinstellar.com**

Yıldırım Göker Cad Maya Plaza
4th Floor Akatlar
Besiktas
Istanbul
Turkey

Tel: +90 212 349 50 00
Fax: +90 212 349 50 50
www.kinstellar.com

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