

Turkey - New Regulation on Asset Management Companies

The Banking Regulation and Supervision Agency of Turkey (the "**BRSA**") issued a recent amendment to the Regulation on the Incorporation and Operation Principles of Asset Management Companies which was published in the Official Gazette dated 5 March 2016 (the "**Regulation**")

Increased Share Capital Requirements

Asset Management Companies (the "**AMCs**") are now required to maintain an increased level of share capital (*i.e.* TL 20,000,000). AMCs which have a share capital below this amount must increase their share capital by 31 December 2017.

Share Transfers

Previously the only share transfer transactions requiring BRSA clearance were direct share transfers above 50% and certain other specific types of transactions (such as transfer of privileged shares). Now, following the revised change of control definition, any transaction (including direct or indirect share transfers) which would result in a change of control in an AMC is subject to BRSA approval, which is in line with the definition in the Banking Law (No. 5411).

Documents Requested from Non-Turkish Individual Shareholders/Managers

The recent amendments to the Regulation introduce some flexibility for the documents required to be provided by non-Turkish individuals during the incorporation of an AMC. Accordingly:

- (i) if there is no authority or system in a relevant country to issue the documentation required to be provided by a non-Turkish individual, the relevant requirements may be evidenced to the BRSA through local documents obtained from the authorities of the relevant country; or

- (ii) if sufficient evidence to meet the BRSA's requirements in (i) above cannot be provided from the relevant country, the non-Turkish individual must provide a statement to the BRSA confirming this situation.

Appointment of General Manager and Board Members

Newly appointed board members and general managers will now be required to provide the documents listed in the Regulation to the BRSA, such as criminal record checks, university diplomas and standard statements annexed to the Regulation, within one month following their appointment.

If any board member or general manager is retired or dismissed from their duties the BRSA must be notified within one month following such dismissal/retirement.

Internal Control, Information Systems and Risk Management

AMCs are now required to establish internal control mechanisms to conduct their operations in an effective and efficient manner. Internal control activities must be reported to the board or to any board member (other than the general manager) authorised in this respect twice a year.

In addition, AMCs must maintain information systems in accordance with their scale and activities and must also take necessary measures for risk assessments and determination.

AMCs which do not have the necessary internal controls, information systems and risk management mechanisms must comply with the requirements of the amended

Regulation by 31 December 2016.

Cancellation of the Operation Licence

The amendment also introduces more favourable terms for the AMC's which are in breach of the requirements set out in the Regulation. As opposed to the previous automatic revocation of an AMC's licence, the BRSA now has discretion to cancel the operation licence of an AMC that is in breach of the Regulation after considering: (i) the characteristics of the breach; (ii) whether the breach arises from a just ground or a force majeure event; and (iii) whether the level of negligence in the breach requires cancellation of the licence or not.

Authors



Itir Sevim-Çiftçi
Partner

E: itir.ciftci
@yeginciftci.av.tr



Kemal Aksel
Counsel

E: kemal.aksel
@yeginciftci.av.tr

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. If you require legal advice, or further details on any matter referred to, please speak to your usual contact at our Firm.

Yegin Çiftçi Attorney Partnership, Kanyon Ofis Binası Kat 10, Büyükdere Cad. No. 185, 34394 Levent, İstanbul, Turkey
© Yegin Çiftçi Attorney Partnership 2016
Yegin Çiftçi Attorney Partnership is registered with the İstanbul Bar.
Registered office: Kanyon Ofis Binası Kat 10, Büyükdere Cad. No. 185, 34394 Levent, İstanbul, Turkey