

REAL ESTATE INVESTMENT FUNDS IN TURKEY

Through enactment of the Capital Market Act (“CMA”), published in Official Gazette dated 30.12.2012 and mostly became effective on the very same day, the principles regarding real estate investment funds have been attained a legal ground in Turkey. Capital Markets Act confers power to the Capital Markets Board of Turkey (“Board”) to identify principles regarding real estate investment funds. By using this power, the Board released Communiqué on Real Estate Investment Funds (“Communiqué”) which was published in Official Gazette dated 03.01.2014, No.28871 to regulate the principles regarding the establishment of the funds, sales of their units to qualified investors and activities of such funds. This note aims to explain legal framework of real estate investment funds in five questions.

1.) What is the Real Estate Investment Fund?

According to the Article 4/1 of the Communiqué, *“the real estate investment fund is an asset that is not a legal entity and permanently or temporarily established by portfolio management companies and real estate portfolio management companies in order to manage the portfolio that is comprised of assets and transactions, as specified in the Communiqué, with the money collected from qualified investors in return for fund units, in accordance with fiduciary ownership principles, and pursuant to the provisions of the Law. Provided, however, that the Fund shall be deemed as a legal person limited to registration in land registry revision, deletion and correction of registration in land registry.”*

Real estate investment funds *can solely be established by portfolio management companies or real estate portfolio management companies.*

Contrary to ordinary mutual funds, real estate investment funds cannot be established as umbrella fund; therefore *each real estate investment fund shall be established separately.*

Real estate investment funds can normally be established for investing in real estates and rights based on real estates, however they can also invest other financial market instruments to the extent permitted by the legal framework.

The real estate investment fund's assets are segregated from the assets of portfolio management company, portfolio depository as well as portfolio manager. The provisions aimed at the protecting the fund's assets are regulated by the legal framework.

2.) What are the Real Estate Investment Fund's Disclosure Documents?

Certain documents must be prepared in order to inform investors in connection with the establishment of the real estate investment funds and issuance of fund units. In this context, primary disclosure documents are *fund statute, issue document, and investor information form* which is not mandatory.

3.) How is a Real Estate Investment Fund Represented and Managed?

The founder portfolio management company is responsible for the representation and management of real estate investment funds, control of the management and performing the activities in accordance with fund statute and provisions of the issue document.

While performing all of its activities, the real estate investment fund is represented by the board of directors of the founder portfolio management company.

Founder portfolio management company *may delegate portfolio management to another portfolio management company or a real estate portfolio management company.*

An *investment committee*, consisting of at least three members; the ceo of the portfolio management company, a board member with a minimum five years of experience in real estate investments and an appraiser holding a real estate appraiser license, shall be established within the founder portfolio management company. If the fund portfolio is managed by another portfolio management company, the investment committee shall be established in that company.

4.) How are the Real Estate Investment Fund Units Purchased and Sold?

Real estate investment fund units *can only be purchased by the qualified investors.*

The fund units are sold through complete payment of fund unit value in cash by the qualified investors. The redemption of the fund units shall be realized through converting the investors' fund units into cash under the principles mentioned in the issue document.

Funds units do not have a nominal value. *Fund unit value is calculated by dividing the value of fund's net assets by the number of fund units.* Fund unit value shall be calculated and notified to qualified investors at least once a year.

An entry and exit commission may be charged in sales and redemption of fund units; however, the commission is recorded as revenue to the real estate investment fund.

In addition to redemption of fund units, fund units may be transferred among qualified investors. The transfers of fund units among qualified investors are completed by the exchange of fund units between the relevant investors.

Fund may distribute profit to fund unit holders under the principles mentioned in the issue document.

5.) What are the Principles regarding the Real Estate Investment Fund's Portfolio?

Within one year as of the starting date of sales of real estate investment fund units to qualified investors, *fund portfolio value shall reach a minimum size of 10.000.000-TL.* If the fund portfolio value does not reach the aforementioned minimum amount by the end of that period, the fund statute shall be deleted by the founder from the trade registry.

The cash collected from investors *shall be invested within the portfolio restrictions set forth and the principles regarding investments in the Communiqué.*

The transactions and assets to be purchased in a real estate investment fund's portfolio are listed in the Communiqué. These are real estates and property rights, private and public debt instruments, and shares of joint-stock companies established in

Turkey, foreign private and public sectors' debt instruments and joint stock company shares tradable within the framework of Governmental Decree no. 32, deposits and participation accounts, investment fund units, repurchase (repo) and reverse repurchase transactions, lease certificates and real estate certificates, warrants and certificates, money market instruments, cash collaterals and premiums of derivative instruments, specifically designed foreign investment instruments and loan participation notes deemed appropriate by the Board and other investment instruments deemed appropriate by the Board.

It is required that investment in real estates and property rights based on the real estates accounts for at least 80% of the fund's total asset value.

It is required to record the contractual rights of purchase, preemption and repurchase in favor of the fund, contracts providing rights for the fund such as real estate preliminary sales agreement, construction agreements on flat for land basis, and revenue sharing agreements, and rights of free advancement in rank of pledged receivables to the land registry.

The founder portfolio management company cannot commercially operate any hotel, hospital, shopping center, business center, commercial parks, commercial warehouses, residential sites, supermarkets, and similar type of real estates included in the fund portfolio. ***Operational services for the real estates included in the fund portfolio is received from operating companies.***

Construction works, such as repair and alteration, for the real estates included in the fund portfolio are required to be performed by contractors under a contract which is signed between the contractor and the founder and includes the mutual rights and obligations of both parties.

The market value and current rental amount of the assets and rights requiring appraisalment within the fund portfolio shall be determined by a real estate appraisal company.