



THE NEW COMMUNIQUÉ ON CROWDFUNDING HAS BEEN INTRODUCED BY THE CAPITAL MARKETS BOARD

The Communiqué on Crowdfunding (“**Communiqué**”) numbered III-35/A.2 introduced by the Capital Markets Board (“**Board**”) has been published in the Official Gazette dated 27 October 2021 and numbered 31641 and the existing Communiqué on Equity-Based Crowdfunding (“**Abrogated Communiqué**”) has been abrogated. As per Article 35/A of the Capital Markets Law numbered 6362, the Board adopted the new provisions regarding debt-based crowdfunding under the Communiqué and certain amendments have been made in the principles and procedures regarding equity-based crowdfunding.

EXECUTIVE SUMMARY

Principal amendments regarding the crowdfunding system stipulated under the Communiqué may be summarized as follows:

- (i) **Debt-based crowdfunding system has been introduced.** Equity-based crowdfunding system was the sole regulated crowdfunding system in the scope of the Abrogated Communiqué. In addition to the equity-based crowdfunding model, debt-based crowdfunding system has been introduced to be realized “*in exchange for debt instrument*” with the Communiqué.
- (ii) **Conditions for establishing of platforms have been regulated.** Establishment of the crowdfunding platforms and their authorization to engage in crowdfunding activities are subjected to the approval of the Board and certain conditions for establishment have been introduced in parallel with the former conditions which were required for to be listed under the Abrogated Communiqué.
- (iii) **Definitions of “venture capital firm” and “entrepreneur” have been amended.** Within the scope of the Abrogated Communiqué the scope of the definition of “venture capital firm” was limited with joint stock companies; limited liability companies have been added to the definition provided that to be converted into a joint stock company before the transfer of the collected funds to the blocked account which were opened in the depository.

Maximum investment amounts based on investor types and the procedures regarding collection of funds have been stipulated. Limit of the maximum investment amount to be applied for the real persons that are not qualified investors have been introduced under the Communiqué.

I. AMENDMENTS ON DEFINITIONS OF “ENTREPRENEUR” AND “VENTURE CAPITAL FIRM”

Under the Communiqué, the term of Funded Company has been introduced and defined as “*the joint stock company constituted by entrepreneurs or the venture capital firm which the collected funds are transferred to the account opened in the depository*”.

In the definition of Venture Capital Firm, limited liability companies have been added in addition to the joint stock companies which have development potential and require funding for the projects and will maintain its activities without the obligation of constitute a joint stock company. Moreover, limited liability companies **shall be converted into a joint stock company** before the transfer of the collected funds to the blocked account opened in the depository.

The definition of the Entrepreneur also has expanded by addition of real persons residing in Turkey and legal entities which are limited liability or joint stock companies seeking funds for their project through equity-based and/or debt-based crowdfunding.

II. CONSTITUTION PROCEDURE AND SHAREHOLDING STRUCTURE OF THE PLATFORMS

Crowdfunding platforms which their definition amended as institutions that acting as intermediary in crowdfunding activities and provide services via electronic platforms (“**Platforms**”) were required to fulfill certain conditions and apply to the Board in order to be listed as a Platform to perform its activities under the Abrogated Communiqué.

Within the scope of the Communiqué, Platforms required to apply for the permission of the Board for establishment and fulfill the conditions, which have been stipulated in parallel with the abovementioned former listing conditions as per the Abrogated Communiqué, here below:

- (i) must be a joint stock company,
- (ii) must have share capital of 1.000.000 Turkish Liras at least and fully paid in cash and its capital and shareholders’ equity shall not be less than this threshold,
- (iii) all of the shares must be registered shares,
- (iv) trade name should contain the phrase “*Crowdfunding Platform*”,
- (v) the clause pertaining to its fields of business of articles of association should specify that platform will exclusively perform intermediation activity for equity-based and/or debt-based crowdfunding activities,
- (vi) shareholders must satisfy the conditions specified in Article 6 of the Communiqué,
- (vii) board of directors shall be comprised of minimum 3 members.

Platforms shall apply to the Board for listing within 6 months following the foregoing permission of the Board, otherwise, the Platform will lose its right to be listed. In addition, the Platform shall be removed from the list ex officio by the Board, if a campaign application is made within 6 months following the listing and the Platform did not begin to operate in order to execute the campaign process.

In the event that any change to be made in shareholding structure of the Platforms will be within the scope of the changes listed below, it is **mandatory to obtain the approval of the Board**:

- (i) In the event that a person becomes Platform shareholder by acquiring shares representing 10% or more of capital or voting rights directly or indirectly or
- (ii) share acquisitions leads to a shareholder's share ratio will be exceeded 10%, 20% or 50% in the platform capital or voting rights and share transfers resulting in shares of a shareholder falling below the abovementioned ratios,
- (iii) transfer of privileged shares providing the right to be represented in the board of directors regardless of the ratio,
- (iv) changes in the shareholding structure leads to the exceeding of shareholding ratios 10%, 20% or 50% in the capital of a legal entity which is owner of the privileged shares giving the right to be represented in the board of directors of the Platform,
- (v) transfer of shares of the legal entities holding more than 10% of capital or voting rights of Platforms providing the privilege of representation in the board of directors.

III. NEW MODEL: DEBT-BASED CROWDFUNDING

Pursuant to the Abrogated Communiqué, equity-based crowdfunding model was the sole regulated crowdfunding model. With the Communiqué, debt-based crowdfunding model has been introduced to capital market legislation. Accordingly, it has been regulated that debt-based crowdfunding may only be made **based on sale of the debt instruments** and may not be made through debt or loan agreement or any other agreement that creates obligation or in exchange for any capital market instrument other than a debt instrument. All funds collected from investors in exchange for debt instrument shall be paid in cash.

It has been regulated that funds may be collected through two campaigns at the most within any twelve-month period over Platforms for by an entrepreneur or venture capital firm debt-based crowdfunding. Aforementioned limitation is also regulated for the equity-based crowdfunding model. Additionally, amount of funds collected in this period may not exceed the issuance limit which is exempted from the prospectus requirement by the Board and announced through the Board Bulletin every year.

Repayment obligation of debt instruments may be fulfilled by giving the share of the funded company or as stated in the information form instead of cash, providing that it was stated in the information form and the consent of the investors has obtained during the fulfilment of the obligation.

Following conditions have been stipulated for the investment committee to be appointed in the Platform that will carry out debt-based crowdfunding:

- (i) Must include at least one member who holds a credit rating licence defined under the capital market regulations,
- (ii) The majority of the members shall have at least 5 years of experience in any of the fields of statistics, risk appraisal and management, financial analysis, rating and valuation, in addition to the work experience requirement.

IV. INVESTMENT RESTRICTIONS

It has been regulated that, real persons who are not qualified investors,

- May invest a minimum 50.000 Turkish Liras within a calendar year through equity-based crowdfunding. However, it has been regulated that this limit may be applied as 10% of the annual net income of the investor was declared to the platform, providing that investment does not exceed 200.000 Turkish liras.
- May invest a maximum of 50.000 Turkish Liras within a calendar year through **debt-based crowdfunding** and this limit may be applied as 10% of the annual net income of the investor declared to the platform, providing that investment does not exceed 200.000 Turkish liras.
- Moreover, real persons who are not deemed as qualified investors may invest a minimum of 20.000 Turkish Liras in **a project** through **debt-based crowdfunding**.

Moreover, certain other prerequisites and principles have been introduced regarding transfer of funds, collection of funds and campaign processes under the Communiqué.

The control regarding the application of the investment restrictions will be carried out by the Central Registry Agency for each member based on the latest qualified investor declaration was submitted.

Please contact us for detailed information.



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This newsletter has been prepared as of November 3, 2021 for informative purposes regarding the Communiqué on Crowdfunding numbered 35/A.2 which has entered into force by being published in the Official Gazette dated October 27, 2021 and numbered 31641.

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