

GENTEMIZER

Amendment to the
Communiqué on Principles
Regarding Real Estate
Investment Funds

2024

Introduction

The Communiqué on Principles Regarding Real Estate Investment Funds (III-52.3) (“**Communiqué**”) regulates the establishment and operating principles of real estate investment funds (“**REIFs**”), issuance of participation shares and investor disclosures.

On 17 July 2024, significant amendments were made to the Communiqué with the aim to contribute to housing production and effective management of application processes.

These changes, with significance (among others); **(a)** allows REIFs established as “project REIFs” to invest in real estate projects other than (in addition to) those developed by the public authority and businesses determined in Article 18(3) of the Communiqué; **(b)** removes investor information form from REIF information documents and requires REIFs to sign a fund issuance contract with participation shareholders; and **(c)** similar to security investment funds, allows founding of “umbrella funds” whose participation shares cover several (and all) REIFs issued under a single bylaw (umbrella fund bylaw).

Please find below our assessments regarding the important amendments to the Communiqué.

Significant Amendments

Special purpose “project REIFs” may invest in real estate projects.

- a) REIFs are authorised to manage money, real estate, independent units within the scope of **real estate projects defined in Article 18(3) of the Communiqué**, rights to real estate, and assets defined in Article 4(3) of the Communiqué collected from qualified investors, on behalf of participation shareholders on the basis of fiduciary ownership. However, separate from managing these assets, under Article 18(2)(a) of the Communiqué, REIFs may not invest in real estate projects, personally undertake the construction of real estate and acquire personnel or equipments for this purpose.
- b) As mentioned above, pursuant to the exception in Article 18(3) of the Communiqué, independent units within the scope of projects with construction permits and developed by the Presidency, Housing Development Administration (TOKİ), İller Bankası A.Ş., municipalities and their



subsidiaries and affiliates and/or companies which they have the privilege of nominating the board of directors, may be included in the REIF portfolio, regardless of the level of completion of the construction.

c) According to Article 18/A added to the Communiqué with the amendment, it was made possible to establish funds to invest exclusively in real estate projects which half of the total gross area of independent units is reserved for residential use (as determined by a report prepared by independent real estate appraisal companies); in other words, project REIFs are incorporated to our laws as a special purpose REIF. However, the restrictions present in (a) and (b) above shall remain to be applicable for REIFs other than project REIFs to be established pursuant to the conditions below.

d) According to Article 18/A(1) of the Communiqué, following principles apply to project REIFs to be established:

- » The title of the project REIFs shall include the statement “project real estate investment fund”.
- » The portfolio of project REIFs may consist of project lands, real estate projects, monies and investments of such funds in investment fund participation shares (bearing the statement of being short-term and for money markets), reverse repo, lease certificates issued by Ministry of Treasury and Finance Varlık Kiralama Anonim Şirketi, public debt instruments, time deposits and participation accounts. Furthermore, real estate developments that are incomplete on the date of project investment may remain in the portfolio following completion.

» Project REIFs may include in their portfolio real estate projects developed on land they own, lands owned by public or by other persons through revenue sharing or agreements of land sale in return for flats, or they may invest in real estate projects by procuring construction rights or purchasing independent residential units from ongoing developments.

» The rights of project REIFs arising from revenue sharing agreements should be attached to a mortgage, guarantee, surety or other collateral deemed appropriate by the Capital Markets Board (“**Board**”). It is the responsibility of the founder to ensure the mortgage, guarantee or surety has sufficient protection of the rights of the project REIF.

» Real estate projects to be added to the portfolio of the project REIF must be determined by independent real estate appraisal companies as having all permits required by law, approved architectural projects and all documents required, in full and as accurate, for the commencement of construction.

» In addition, (save where public banks and certain administration and undertakings¹ are counterparties) the real estate project should be

¹ Banks established within the scope of the Law on Ziraat Bankası of the Republic of Türkiye, Türkiye Halk Bankası Anonim Şirketi and Türkiye Emlak Bankası Anonim Şirketi dated 15 November 2000 and numbered 4603 or the Law on Türkiye Vakıflar Bankası Türk Anonim Ortaklığı dated 11 January 1954 and numbered 6219, the Savings Deposit Insurance Fund (TMSF), the Housing Development Administration (TOKİ), İller Bankası A.Ş., municipalities and their subsidiaries and affiliates and/or companies which they have the privilege of nominating the board of directors.

collateralised by at least one of the following: building completion insurance, bank letter of guarantee, progress payment system or other methods deemed appropriate by the Board.

- » Project REIFs should meet all legal requirements (including the above) to start the construction of the real estate project within three (3) years of registration of the project land in the name of the project REIF before the land registry.
- » All kinds of construction and similar works in real estate projects should be undertaken pursuant to contracts signed between the founder (representing the project REIF) and a developer holding either type A or type B developer's authorisation certificate, which represent the parties' mutual rights and obligations arising from construction works. The contract should at least cover the obligations of the developer; terms of payment, liability from defects and withdrawal from contract; employer's right to compensation and conditions regarding termination of contract.
- » The founder shall appoint the developer in consideration of developer's experience and financial status, size of the real estate project and similar conditions, and the appointment of developer as well as terms of contract shall be approved by the founder's board of directors.

Amendments regulate the structure of organization of the REIF founder, or if present, portfolio manager and the establishment and working principles of the “investment committee”.

- a) REIFs are managed by portfolio management companies, real estate portfolio management companies or real estate and venture capital portfolio management companies that have obtained operating licences from the Board according to Communiqué on Principles Regarding Portfolio Management Companies and Activities of These Companies (III-55.1) (“**Portfolio Management Communiqué**”). REIF founder may perform the management of the REIF itself or may obtain portfolio management services from other portfolio management companies (without prejudice to its own responsibility).
- b) If the REIF portfolio is managed by the founder, founder, otherwise the portfolio manager should fulfil certain conditions specified in Article 11 of the Communiqué in addition to the conditions specified in the Communiqué on Portfolio Management. Prior to the amendment, the founders and/or managers of real estate portfolio management companies complied with this article by default within the scope of Communiqué on Portfolio Management and were excluded from this article. However, with the amendments made to the requirements of Article 11, all founders or portfolio managers are subject to the amended Article.

- c) Accordingly, founders (or if present, managers) should establish an investment committee consisting of at least three (3) members, including a board member with at least five (5) years of experience in real estate investments (other than trading), a licensed real estate appraisal expert and a general manager.
- d) Pursuant to the amendment, the real estate appraisal expert should be employed full-time or part-time, or instead, a licensed board member with at least three (3) years of experience in real estate appraisal should be included in the committee.
- e) Furthermore, Article 11 clarifies that in addition to being licensed, the real estate appraisal expert should meet the conditions in the Communiqué on Real Estate Appraisal Experts to Operate in Capital Markets (III-62.3).
- f) Unless there is an aggravating provision in the REIF information documents, investment committee convenes with the majority of the members (provided above-mentioned three (3) members are present) and decides with the majority of the votes cast at the meeting.
- g) Pursuant to Communiqué Article 7(3), articles 502 to 514 of the Turkish Code of Obligations numbered 6098 regarding the agreement of mandate shall be applied by analogy to the relations between the founder and the participation shareholders. However, the amendment states that members of investment committee shall be responsible for the management of the real estate investment portfolio, **limited to the decisions they take.**

Investor information form was removed from REIF information documents, and it was foreseen to sign fund issuance contracts with participation shareholders.

- a) With the Amendment, the provisions regarding “investor information form”, which shows the structure, investment strategy and risks of the REIFs and which may be prepared on a voluntary basis, have been abolished. Accordingly, information documents will now consist only of fund bylaws and issuance document.
- b) In addition, but not to constitute an information document, prior to the sale of REIF participation shares, a standard contract should be signed between the REIF and participation shareholders, either individually or collectively, which contains the minimum content requirements set out in Annex-4 of the Communiqué (“**Fund Issuance Contract**”).
- c) Accordingly, the content of Communiqué Annex-2 “Minimum Elements Required To Be Included in the Issuance Document” have been amended and certain elements previously required to be included in the issuance document have been moved under Annex-4 “Minimum Elements Required To Be Included in the Fund Issuance Contract”.
- d) Fund Issuance Contract;
 - » Should not contain provisions that seriously undermine investor rights and grant unilateral extraordinary rights in favour of the REIF founder,

- » Should not contain records that place the burden of proof on the investor,
 - » Should be drafted in a clear and understandable language and characters and font sizes that may make it difficult for or prevent the investor from reading should not be used,
 - » Should not contain provisions contrary to the Communiqué, fund bylaw and the issuance document.
- e) In case of signature or amendment of the Fund Issuance Contract, a copy of the contract will be made available on the Public Disclosure Platform (KAP) page of the REIF, and one copy will be communicated to the portfolio custodian providing portfolio depositary services.

Amendments contain explanatory provisions on amendments to REIF information documents.

- a) In case amendments to REIF information documents are of a nature that may affect the investment decisions of the investors and require prior information, amendments should be notified to the participation shareholders at least thirty (30) days before the effective date by the most convenient communication instrument. The relevant “most appropriate means of communication” have been defined as Public Disclosure Platform, electronic mail, short message, telephone, fax and similar communication tools with the amendment. In case there are investors who wish to return their participation shares to the REIF within this period, effective date of the
- amendments are postponed to the first date where participation shares may be returned to the REIF.
- b) According to the amendments, in REIFs where participation shares may only be returned at the end of the REIF term, it is mandatory to grant participation shareholders a right of exit from the REIF before the effective date by an investment committee or founder board of directors resolution.

Amendments allow the establishment of “umbrella funds” and the issuance of participation shares under umbrella funds.

- a) Prior to the amendment, establishing REIFs under an umbrella fund structure was prohibited under Article 12(1) of the Communiqué. According to Article 12/A added to the Communiqué, it was made possible to issue several REIFs under a single bylaw (umbrella fund bylaw), and to issue participation shares that cover all issued REIFs (i.e. to establish “umbrella funds” in parallel to securities investment funds and to issue participation shares under the umbrella fund).
- b) In this context, it is possible to create REIFs under an umbrella fund with separate assets and liabilities by issuing a separate issuance document for each participation share.
- c) First application to issue a REIF under an umbrella fund should be made within six (6) months from the registration of the umbrella fund bylaw. Otherwise (and if an additional six (6) months period is not granted by

the Board upon reasonable grounds), an application is made to the Board for permission to remove the umbrella fund bylaw from the trade registry.

information documents shall be effective without Board approval under Article 14(2) (b) of the Communiqué.

Special provisions were made for the transition period to apply the amendments.

- a) Amendments will be applicable for conclusion of applications that have not been decided by a resolution of the Board as at the date of amendments.
- b) Founders of REIFs who issued participation shares as of the amendment date and whose portfolio complies with Communiqué Article 18/A, may apply to the Board for an amendment of information documents (title change to include the “project” statement) in order to operate as a project REIF within a month (until 17 August 2024), subject to statement that a Fund Issuance Contract have been signed with all participation shareholders.
- c) Funds who issued participation shares as of the date of amendment shall comply with Article 13(3) of the Communiqué (provisions regarding Fund Issuance Contract) and the provisions of amended Annex -2 (Minimum Elements Required To Be Included in the Issuance Document) by 31 December 2024. In the event of reasonable grounds to be approved by the Board, this period may be extended up to six (6) months.
- d) Subject to statement by founders that a Fund Issuance Contract was signed within this period, required amendments of REIF

Conclusion

In connection with the developments in the real estate market, it has become necessary that participation shares can be issued under umbrella funds and investing in real estate project is made possible to increase demand for financial investments. In this respect, it is understood that the amendments also target to popularise REIF investments and to protect investors with the most convenient methods. However, the implementation should be monitored in view of the expectations for the amendments to lead the transformation for a more dynamic and sustainable structure in the real estate sector.

GenTemizer is a Turkish law firm based in Istanbul, Türkiye. We advise various businesses in relation to their investments, M&A, competition law/antitrust, project financing and construction projects as well as on operational and dispute resolution matters in the context of the Turkish regulatory framework. We have also advised investors in relation to government sponsored privatisation projects.

We are listed in *Legal 500*, *IFLR1000* and *Chambers and Partners* as one of the leading law firms in Türkiye. Each of our partners have also been recognised as one of the leading lawyers in Türkiye. We understand and can meet the demanding requirements and innovative, responsive thinking required for an investment transaction in Türkiye.

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