

**LEGAL STRUCTURE OF INVESTOR COMPENSATION CENTER (ICC),
AS A CAPITAL MARKET INSTITUTION¹**

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ABSTRACT

The Investor Compensation Center (ICC) has played an important role during “dematerialization” in Turkey. The “dematerialization process” of capital market instruments, caused some serious legal problems, in almost every country.

Although the dematerialization of capital market instruments has been regulated by former Capital Market Law No. 2499 published in the Official Gazette number 17416 on July 30, 1981, The Investor Compensation Center was established by the Capital Market Law No. 6362, published in the Official Gazette number 28513 on December 30, 2012.

Structure, administration and representation of the ICC, alteration of traditional negotiable instrument law and physical system, the principles related to dematerialization established by the Capital Market Board, legal issues during dematerialization, scope of compensation, compensation procedure have been evaluated, in this paper.

The aim of the paper is to examine thoroughly the legal structure and operation of the ICC and its functions in Turkish Capital Market Law.

Keywords: Dematerialisation, Capital Market Act, Compensation, Investor

INTRODUCTION

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Investor Compensation Center has played a significant role during dematerialisation in Turkey. The definition of negotiable instrument, in Article 645 of Turkish Commercial Code, includes three main elements; negotiable instrument is in paper form, the rights attached it be claimed only by the paper and the rights attached it be transferred by delivery of the certificate.

This definition with regard capital market instruments, as share certificates has changed conjunction with appearance of paperless negotiable instruments³. Transition process is called as “dematerialization”. “Dematerialisation” is the move from physical certificates to electronic book keeping⁴. “Dematerialisation” is the process through which an investor’s physical share certificate gets converted to electronic format which is maintained in an account with the depository participant⁵.

Investor Compensation Center has two major obligations on investors and investment institutions. The obligations related to investors are classified as for the investors who haven’t delivered their capital market instruments to Investor Compensation Center promptly or for the investors who haven’t take any action on their receivables, since ten years. The obligations related to investment institutions are also classied as for institutions which haven’t delivered their capital market instruments or institutions which haven’t carried out their monetary obligations related with capital market instruments.

1. BACKGROUND OF DEMATERIALISATION IN TURKEY

Dematerialisation history began in 1995, in Turkey. Communiqué on Principles Related to Intermediary Transactions and Intermediary Institutions (Series:V, Nu.:19), 1995, regulated the custodian service for securities.

«*The custodian service for securities*» has been given by intermediary institutions or mostly, securities were preserved by their owners, in Turkey, until 1995.

In 1995, custodian obligation has been brought to authorised Depository Trust Company (Takasbank), for both securities belong to intermediary institutions and securities belong to customers.

The duty of regulation of capital market instruments’ dematerialisation and supervision have given to Capital Market Board, by the added provision to repealed Capital Market Law, 2499 within the context of a Statutory Decree, numbered 558, which was published on July,27,1995. Constitutional Court cancelled the Statutory Decree, numbered 558.

Capital Market Board published the Communiqué on Principles Concerning with Dematerialisation of Capital Market Instruments, by the authority granted to it (Series:IV,

³ POROY, Reha/TEKİNALP, Ünal, Kıymetli Evrak Hukuku Esasları, İstanbul 2013, p.50

⁴ <https://www.investopedia.com/terms/d/dematerialization.asp>.

⁵ http://www.business-standard.com/article/pf/what-is-dematerialisation-of-shares-113072500477_1.html

Nu.:22). Then, Council of State cancelled the Communiqué on Principles Concerning with Dematerialisation of Capital Market Instruments.

In 1999, a provision, determines the frame of dematerialisation (Art.10/A), has been added to repealed Capital Market Law, numbered 2499, by the Law numbered 4487. At the same time, by aforementioned provision, it has been regulated that capital market instruments and related rights will be tracked by Central Registry Agency (Merkezi Kayıt Kuruluşu), which has a private legal personality⁶.

Listed share certificates started to be tracked from the date of November 28,2005 by Central Registry Agency, upon the decision of Capital Market Board, dated October, 28, 2005 and numbered 43/1318.

Therefore, traditional negotiable instrument law and physical system maintained their presence for share certificates until the date of November 28, 2005 and Settlement and Custody Bank (Takasbank) maintained its preservation duty until this date.

Capital Market Law, numbered 6362, which was published in Official Gazette, dated December 30,2012 and numbered 28513, rescinded Capital Market Law, numbered 2499.

Art.13 of Capital Market Law, numbered 6362 regulates dematerialisation of capital market instruments. In principle, capital market instruments which are decided to be dematerialised must be delivered according to the principles established by the Board. Delivered capital market instruments shall automatically become invalid.

An investor whose investment fund participation shares, to bearer, which have been dematerialised by the Capital Market Board, because of the shares haven't been delivered till December 31,2012, has applied to Ankara 7. Administrative Court.

Ankara 7. Administrative Court decided that the Art.13 (4) of Capital Market Law, numbered 6362 has infringed the Constitution of the Republic of Turkey.

Then, the plaintiff applied to the Constitutional Court. Following the application, the Constitutional Court cancelled the said provisions of Capital Market Law.

Fourth, fifth and sixth sentence of Article 13 (4) of Capital Market Law was cancelled by the decision of Constitutional Court, dated 22.10.2015 and B.2015/29, D.2015/95, published in Official Gazette, dated 12.11.2015, numbered 29530. The cancelled provisions are below;

Undelivered capital market instruments cannot be traded on exchange after the dematerialisation decision, intermediary institutions cannot provide intermediary services for the purchase and sale of these capital market instruments and fund units cannot be redeemed.

⁶ POROY/TEKİNALP, p.51; for detailed knowledge and various issues see TEKİNALP, Ünal, Nama Yazılı Payların Devrinde Merkezi Kayıt Kuruluşunun Kayıtlarının Etkisi ve Niteliği, İstanbul 2000, p.537.

Capital market instruments which are not delivered until the end of the seventh year following the date when they started to be monitored on records shall be transferred to the ICC. The limited real rights on them shall be automatically regarded as terminated. They shall be sold within three months starting from the date when they have been transferred to the account of ICC .

This provisions of Capital Market Law were cancelled because of that they are contrary to Articles 13 and 35 of the Constitution of the Republic of Turkey. According to the Article 13 of the Constitution;

“II. Restriction of fundamental rights and freedoms

ARTICLE 13- (As amended on October 3, 2001; Act No. 4709) Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality.”

The other provision which the Constitutional Court relied on, is the Article 35 of the Constitution;

“XII. Right to property

ARTICLE 35- Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest.

The exercise of the right to property shall not contravene public interest.” Therefore, «ownership issue» which has arisen upon the cancellation decision, related to the process of dematerialisation of capital market instruments, was become a current issue. The reason of the Decision was based on «ownership right», which was regulated and preserved by the Constitution.

According to the decision of Constitutional Court;

“The State has also a «positive obligation», shaped like to prevent interferences, which may come from third persons, besides a «negative obligation»; shaped like to respect the ownership right of individuals and not to intrude.

Generally, right to property encompasses the authority enjoying the way that he/she wants, saving, transferring to someone, changing the using pattern, spending and consuming, even extinguishing, proving that do not harm somebody and obey the legal restrictions.

Owned capital market instruments have the characteristics of right to claim and they are within the scope of property rights.

Regulations, concerning with dematerialisation have been brought in for protection from some risks like loss, robbery and forgery and disposal.

Regulations on delivering of capital market instruments and some restrictions are based on legitimate bases. Although the said legitimate bases, interference against property rights of individuals and motivated legitimate aim must be proportional.

Touching the essence of fundamental rights and freedoms conflicts the requirements of social order and constitutes a contradiction to the principle of proportionality.”

There is no doubt that dematerialisation is based on legal bases, but on the other side restrictions towards capital market instruments should be evaluated in the context of «right to property».

the Constitutional Court has based on.

The Constitutional Court also based on European Convention On Human Rights Protocol No. 1. According to Article 1, titled “*Protection of property*”, “*This article lays down a general rule followed by two specific rules to protect the right to property.*” As, general rule; “*Every natural or legal person is entitled to the peaceful enjoyment of his possessions.*” “*Possession*” concept, undoubtedly includes capital market instruments. In cases of interference with property rights that do not obviously fall under one of the two specific rules, the Court has applied the general rule and implied into it a test of “fair balance” between the individual and the general interest. Deprivation of property is only permitted if it is:lawful; in the public interest; in accordance with the general principles of international law; reasonably proportionate (“fair balance” test).

As it is seen, preservation of «right to property» of individuals is a generally accepted principle according to the Constitution of Turkish Republic and Protocol No: 1 to the European Convention on Human Rights, of which Turkey is one of the State Party.

After cancelling fourth, fifth and sixth sentence of Article 13 (4) of Capital Market Law, by the decision of Constitutional Court, individuals have applied to courts for their rights, included limited real rights, like pledge, generated from their capital market instruments.

After cancellation decision, any regulation hasn’t been brought instead of cancelled provisions.

Transational Provision 10 was added with Article 28 of an Act, dated 14.04.2016, numbered 6704, concerning with the procedure and principles on payments which will be made to owners of capital market instruments, of which possessions were transferred to Investor Compensation Center;

Return of capital market instruments, applications of right owners, payment procedure and principles, rules on annulment and destruction of capital market instruments and obligations of issuers are determined by Capital Market Board.

Capital market instruments, transferred to Investor Compensation Center;

i. If they haven't been sold yet, they are paid in kind,

ii. If they have been sold, they are paid in cash over their sale price and return.

Transactions related to payments and created records related to those transactions and prepared documents are exempted from stamp tax.

2. COMPENSATION PROCESS

Compensation process may be summarized as follows;

- Compensation Decision About Investment Institutions Of Capital Market Board
- Notification Of The Decision To Investor Compensation Center
- Announcement Of Investor Compensation Decision
- Investors send their compensation requests in written form with documents which prove their right ownership to Investor Compensation Center within one year from the announcement day.

When it is determined that investment firms are unable to fulfill their obligations regarding cash payment or capital market instruments delivery or that they will not be able to fulfill them within a short period of time, the Board shall decide to compensate investors. This decision shall be taken within three months starting from the determination of the situation. The authority of the Board to take measures in the context of this Law shall be reserved (Art.82 (1), CML).

The Board shall take the opinion of the Banking Regulation and Supervision Agency in order to take the compensation decision about banks according to the first paragraph. The provisions of the Capital Market Law related to the compensation of investors shall not be applied to cash payment obligations which are considered as deposit or participation fund according to banking legislation (Art.82 (2), CML).

Investors shall make their compensation claims to the ICC in writing. The right to make a compensation claim shall lapse after one year starting from the announcement of the compensation decision to the public (Art.85 (1), CML).

The ICC is obliged to make necessary preparations in order to compensate as soon as possible the investors which have been entitled for compensation and to make payments within three months after determining the right holders and compensation amounts. In compulsory

cases, this period may be extended for a maximum of three months with the approval of the Board (Art.85 (2), CML).

Compensation claims of investors shall be calculated upon the cash payment and capital market instrument delivery obligations which have not been fulfilled by investment firms. Capital market instruments kept in the name of investors shall primarily be distributed to right holders. These capital market instruments shall be deducted on the basis of each account and especially for unfulfilled clearing obligations. The compensation amount shall be determined by also taking into account deduction and similar requests of investment firms based on legal and contractual conditions. The principles and procedures related to the calculation of investor receivables shall be determined by the Board (Art.85 (3), CML).

After the completion of the investor compensation process, the Board shall decide to close the compensation process upon the notification of the ICC. The ICC shall present the results of the compensation process to the Board along with its reasoned proposal on whether requesting the gradual liquidation or bankruptcy of those about whom an investor compensation decision had been taken is beneficial or not. The gradual liquidation or bankruptcy decision shall not prevent the operation of the compensation process. The ICC shall be the successor to rights of investors with the compensation amount it has paid (Art.85 (4), CML)

Those the investors of whom have been compensated partially or totally are obliged to make payments and expenses made by the ICC and arising from the compensation including the principal and legal interest in order to be able to relaunch investment services and activities, without prejudice to other conditions required by legislation (Art.85 5), CML)

Without prejudice to the issues regulated in other articles of this Law, the principles and procedures regarding the notification and announcement of the compensation decision, the operating procedure of the compensation, obligations of firms for which a compensation decision has been taken against the ICC, sanctions to be imposed in cases where these obligations are not fulfilled, principles regarding the protection of investors in domestic or foreign branches, obligations regarding the notification of investors by those for whom an investor compensation decision had been taken, rights and obligations of the ICC, issues regarding the investment of the assets of the ICC, financial statements, books and reports of the ICC as well as other issues shall be determined with a by-law to be issued by the Board in the context of general provisions (Art.85 (6), CML).

3. GRADUAL LIQUIDATION

Gradual liquidation has been regulated specifically with a by-law. This procedure is outside the general liquidation procedure in Turkish Commercial Code and Enforcement and Bankruptcy Law. For those about whom an investor compensation decision has been taken

according to Article 82, the Board may also take the decision of gradual liquidation along with the decision to close the compensation process, with the exception of banks. In this case gradual liquidation operations shall be conducted by the Investor Compensation Center. (Art.86 (1); CML).

The purpose of gradual liquidation is to pay remaining receivables of investors which have not been compensated within the context of the investor compensation process established in Article 85 as well as the receivables of the Investment Compensation Center arising from its position as successor to investors, through the allocation of assets of those who have been subject to a gradual liquidation decision or the allocation of the amount obtained by liquidating these assets into cash. Provisions of the Law numbered 6102, the Law numbered 2004 and provisions of other legislation related to liquidation shall not be applicable to gradual liquidation decisions and operations. The principles and procedures regarding gradual liquidation shall be determined with a by-law prepared by the Capital Market Board (Art.86 (2), CML).

The duties and authorities of the statutory bodies of those about whom a gradual liquidation decision has been taken by the Board shall be fulfilled by the Investor Compensation Center, starting from the gradual liquidation decision until the finalisation of the liquidation. Among the operations made, those which have to be registered shall be registered and announced upon the request of the Investor Compensation Center, without being subject to charges. At the date of announcement of the finalisation of the gradual liquidation, the legal organs present prior to the decision of gradual liquidation shall assume their duties and authorities, without the need for any further operation (Art.86 (3), CML).

The payments of those about whom a gradual liquidation decision has been taken shall be suspended and solely the Investor Compensation Center can dispose of all their assets. The Investor Compensation Center shall determine the assets and liabilities of those subject to gradual liquidation. Rights and obligations of related persons deriving from their contracts which become due after the gradual liquidation decision, shall also be determined as of their maturity dates. Guarantees provided according to legislation shall also be considered within assets. The default interest to be applied during the period between the compensation and the liquidation process shall be determined by the Board. In cases where a gradual liquidation decision has been taken, no bankruptcy decision shall be taken until the decision on the closing of this liquidation. No proceedings shall be made in the scope of the Law numbered 2004 and the Law on Procedures of Collection of Public Receivables dated 21/7/1953 and numbered 6183 about those for whom a liquidation decision has been given, proceedings which have started previously shall stop; statutes of limitation and lapses of time which can be interrupted by a proceeding and foreclosures shall not apply (Art.86 (4), CML).

The Investor Compensation Center shall identify actual right holders in the context of liquidation as well as the amounts of their receivables and debts on the basis of information and documents obtained during the compensation process. The receivables of the Investor Compensation Center as a successor to investors, and its liquidation expenses shall also be

considered as receivables of the Investor Compensation Center. The cash assets of those about whom a gradual liquidation decision had been taken, shall be used directly in the payment of these receivables while those which are not in cash shall be used after being liquidated.

Primarily the receivables of customers shall be paid from the assets. In the event that the totality of customers' receivables cannot be met, a pro-rate payment shall be made. After all receivables have been paid first a pro-rata payment shall be made for public receivables from the remaining amount and then the receivables of the Investor Compensation Center deriving from the payments it has made in the context of Article 85 and its liquidation expenses shall be paid from the residual. The remainder shall be allocated to other creditors. Other issues with regard to principles and procedures relating to the liquidation of the non-cash assets belonging to those about whom a gradual liquidation decision has been taken as well as pro rata payments to be made shall be established with a by-law to be issued by the Board (Art.86 (5), CML).

The Board may decide on the transfer the management of portfolios managed by those about whom a gradual liquidation decision has been taken, to another investment firm (Art.86 (6); CML).

Without any delay, the Investor Compensation Center shall request from the shareholders holding directly or indirectly, alone or together, the management and audit of investment firms about whom a gradual liquidation decision has been taken with the compensation decision as well as from real person shareholders holding more than five percent of the capital of his legal entity shareholders to make a declaration of properties showing real estate and participations, attachable movable properties, rights and receivables, securities and all kinds of earnings and revenue which belong to themselves, their spouse and their children under guardianship; as well as the real estate, attachable movable properties, rights, receivables and securities that they have acquired or transferred gratuitously or non-gratuitously within two years prior to the declaration of the liquidation. It is obligatory to submit the declaration of property requested according to the provisions of this paragraph to the Investor Compensation Center within seven days at the latest. The Investor Compensation Center is authorised to request from the related court to take all kinds of conservation measures necessary for the interests of creditors including cautionary injunction and cautionary attachment decisions without requiring any guarantee on the assets of shareholders holding management and audit directly or indirectly, alone or in concert, as well as a ban on leaving the country for related persons. The related provisions of the Law numbered 2004 shall be valid for the provisions and consequences of this declaration of property. In the event that no lawsuit has been filed or no demands for execution or bankruptcy proceedings have been made within six months starting from the injunction and attachment decisions taken in the framework of this paragraph, these decisions shall be cancelled automatically (Art.86 (7),CML).

The Capital Market Board shall decide to close the gradual liquidation upon the application of the ICC. In the event that it is determined that the assets of those about whom a gradual liquidation decision has been taken are not adequate to meet receivables of right holders in the scope of the liquidation purpose, payments made in the context of the compensation, and

liquidation expenses, the Investor Compensation Center may also request the bankruptcy of related persons with the assent of the Capital Market Board (Art.86 (8), CML)..

4. THE LEGAL NATURE OF INVESTMENT COMPENSATION CENTER

The Investor Compensation Center is not an independent administrative authority, it depends on Capital Market Board. The Investor Compensation Center is managed and represented by Capital Market Board.

The Investor Compensation Center which is a public legal entity established with the purpose of executing compensation decisions taken by the Capital Market Board pursuant to the Capital Market Law in cases where investment firms fail to fulfill their cash payment and capital market instrument delivery obligations deriving from investment services and activities (Art.3 (1) of CML). It's center is in İstanbul, Turkey.

The Investor Compensation Center possessing a public legal identity has been established for the purpose of investor compensation in the context of the conditions specified in Capital Market Law. International Compensation Center shall be administered and represented by the Capital Market Board in the framework of a by-law to be issued by the Board. In principle, the operations and transactions to be carried out by the Investor Compensation Center shall be performed by the Board staff and staff to be employed for this purpose. The principles and procedures regarding this issue shall be determined with a by-law to be issued by the Capital market Board (Art.83 (1), CML).

It's service departments are those;

- a) Asset Administration Department
- b) Finance and Account Department
- c) Compensation and Liquidation Department
- d) Department of Legal Affairs
- e) Support Services Department

Temporary or permanent working groups may be established by the decision of Board of Directors, to provide performing the activities of the Center, effectively and efficiently

Investment firms are obliged to participate in the Investor Compensation Center. The principles and procedures regarding the participation of investment firms to the Investor Compensation Center as well as their obligations to pay entrance fees, annual fees and additional fees shall be established with a by-law to be issued by the Capital Market Board. In this by-law, different principles may be specified in the determination of the fee amount depending on types and risk conditions of firms (Art.83 (2), CML).

When deemed necessary by the Investor Compensation Center, with regard to firms for which an investor compensation decision has been taken by the Board, it may be decided to suspend the payments of the firm and to grant the Investor Compensation Center sole authority to dispose of all of its assets. With regard to banks, this provision shall be applied to the cash payment and capital market instrument delivery obligations of banks arising from their capital market activities (Art.83 (3), CML).

All kinds of deposits and receivables arising from investment services and activities shall be recorded as a revenue to the Investor Compensation Center in cases where they are not claimed and collected within ten years starting from the date of the last claim, transaction or any written order of the account holder and starting from the liquidation date for investment funds and investment companies with variable capital. The principles and procedures relating to this issue shall be determined by the Capital Market Board (Art.83 (4), CML).

The assets of the Investor Compensation Center cannot be; used outside their purpose, provided as guarantee, attached even for public receivables, pledged, included in the bankruptcy estate and be subject to any cautionary injunction (Art.83 (5), CML).

The transactions to be made by the Investor Compensation Center in the scope of the Capital Market Law shall be exempt from charges and the documents it would issue shall be exempt from stamp duties. A commercial enterprise in terms of the Corporate Tax Law dated 13/6/2006 and numbered 5520 shall not be deemed to be formed due to the activities of the ICC performed in the context of the Capital Market Law (Art.83 (6), CML).

5. SCOPE OF COMPENSATION

The scope of compensation consists of claims arising from failure to fulfill cash payment or capital market instrument delivery obligations with regard to assets belonging to investors kept or managed by investment firms in the name of the investor in relation to investment services and activities or ancillary services (Art.84 (1), CML).

The investors of investment firms subject to an investor compensation decision, are entitled to claim compensation in the framework of the Article 84). Losses incurred by investors due to investment advice or price movements in the market are not included in the coverage of compensation (Art.84 (2), CML).

Claims of investors sentenced due to crimes mentioned in Articles 106 and 107 or the laundering of crime proceeds, shall be outside the scope of compensation in what regards receivables in relation to the mentioned actions. Payments to be made to persons for whom an indictment has been made due to the mentioned crimes shall be suspended from the beginning of

the investigation on the related crimes until the finalisation of the court decision (Art.84 (3), CML).

Persons and institutions listed below shall not be compensated (Art.84 (4):

a) Members of board of directors, managers, personally liable shareholders of investment firms for which an investor compensation decision has been taken, their shareholders holding a share of five percent or more, members of their board of auditors or persons who are in similar positions in other companies in the same group with the related investment firm as well as their spouses, relatives by blood or marriage up to second degree and third parties acting on behalf of those persons

b) Other companies in the same group with investment firms for which an investor compensation decision has been taken

c) Companies where real persons and legal entities mentioned in sub-paragraph (a) of this paragraph hold a share of twenty five percent or more

d) Persons that have caused investment firms to enter into financial distress or persons liable for actions having an important impact in the deterioration of the financial status of investment firms or those acquiring benefit from these actions

The maximum compensation amount to be paid to each right holder investor shall be 100.000.-TL (one hundred thousand) Turkish Liras. This amount shall be increased at the rate of the revaluation coefficient announced each year. The total compensation amount may be increased up to five times by the Council of Ministers upon the proposal of the Board. This limit includes all the claims of an investor from the same investment firm, regardless of the currency or the number or type of account. In the event that the amount exceeding the maximum amount to be paid by the Investor Compensation Center has been transferred in order to be paid to another investor, no payment shall be made by the Investor Compensation Center to the transferee (Art.84 (5), CML).

Year	Maximum Compensation Amount (TL)
2014	103.930
2015	114.437
2016	120.823
2017	125.451
2018	143.604
2019	177.681

6. LEGAL RESPONSIBILITY OF INVESTOR COMPENSATION CENTER

All the lawsuits for damages and actions for debts filed or to be filed against the legal representatives, managers and staff of the ICC due to the pursuance of their duties shall be filed against the Investor Compensation Center. On the other hand, the provision of Article 133 shall be applied for criminal lawsuits to be filed against the Investor Compensation Center staff. Investor Compensation Center staff may not be held responsible for the public debts of firms the gradual liquidation of which they are carrying out, the debts of these firms to social security institutions and their other financial obligations which have incurred or will incur during gradual liquidation operations.

Investor Compensation Center staff shall not have any obligation to make a notification to the court due to the loss of capital of capital market institutions which have been decided to be gradually liquidated and/or due to the fact that they are heavily in debt. The provisions of Article 179, 277 and the following as well as Article 345/a of the Law numbered 2004 shall not be applied to these persons due to not making a notification; no personal liability lawsuit may be filed against them according to Article 341 of the Law numbered 6102.

The Investor Compensation Center shall reserve its right of recourse action against staff having gross negligence or deliberation (Art.86 (9), CML).

Investor Compensation Center's right to file a lawsuit due to those about whom a gradual liquidation decision has been taken shall be subject to the general statute of limitations. In the presence of the circumstances mentioned in Articles 278, 279 and 280 of the Law numbered 2004, the ICC may file a lawsuit without requiring to submit a certificate of insolvency. While performing its tasks arising from this Article, the ICC is authorized to request cautionary injunction and cautionary attachment exempt from all kinds of guarantee (Art.86 (10), CML).

The disputes between Investor Compensation Center and investors may be solved by alternative dispute resolution methods, as arbitration, in future. The Turkish Capital Market Association (TCMA) is tasked with and authorised to establish and manage the necessary infrastructure regarding the resolution of disputes arising from the activities of its members within the scope of Capital Market Law through arbitration (Art.74 (2),g, CML). Works on

preparing substructure of arbitration have been continued by Turkish Capital Market Association⁷.

REFERENCES

ER, Ali Sami, Renewed Communique and Guide for Disclosure of Material Events, <http://www.erdem-erdem.av.tr/publications/law-post/renewed-communiqu%C3%A9-and-guide-for-disclosure-of-material-events/>

POROY, Reha/TEKİNALP, Ünal, Kıymetli Evrak Hukuku Esasları, İstanbul 2013.

ÖCAL, Öykü, Sermaye Piyasası Araçlarında Kaydileştirme ve Mülkiyet Sorunu, <https://tr.linkedin.com/pulse/sermaye-piyasas%C4%B1-ara%C3%A7lar%C4%B1nda-kaydile%C5%9Firme-ve-m%C3%BCkiyet-%C3%B6yk%C3%BC-%C3%B6cal>

ÖZDEMİR, Elif Demirel, Sermaye Piyasası Uyuşmazlıklarının Alternatif Yöntemlerle Çözümünde Tahkim, Uzmanlık Tezi, Ekonomik Modelleme ve Konjonktür Değerlendirme Genel Müdürlüğü, Mart 2019, <http://www.sbb.gov.tr/wp-content/uploads/2019/04/Sermaye-Piyasas%C4%B1-Uyu%C5%9Fmazlıklar%C4%B1n%C4%B1n-Alternatif-Y%C3%B6ntemlerle-%C3%87%C3%B6z%C3%BCm-%C3%BCnde-Tahkim.pdf>

TEKİNALP, Ünal, Evraksız Kıymetli Evraka veya Kıymet Haklarına Doğru, BATİDER, C.XIV, S.3, s.1 vd.

TEKİNALP, Ünal, Nama Yazılı Payların Devrinde Merkezi Kayıt Kuruluşunun Kayıtlarının Etkisi ve Niteliği, Prof.Dr.Tahir Çağa'nın Anısına Armağan (İstanbul Çağa Vakfı), İstanbul 2000, s.537.

TURANBOY, Asuman, Varakasız Kıymetli Evrak, Ankara 1998.

TURKISH CAPITAL MARKET ASSOCIATIONS, Handbook of the Turkish Capital Markets, 2016, <https://www.tspb.org.tr/tr/handbook-of-the-turkish-capital-markets-yayinlandi/>

⁷ See ER, Ali Sami, Renewed Communique and Guide for Disclosure of Material Events,