



Original Contribution

INTERMEDIATION SERVICES OF TURKISH BANKS

P. Atila*

Ufuk University, Law Faculty, Department of Commercial Law, Balgat, Ankara-Turkey

ABSTRACT

“Intermediation” is interfering and helping to solve a work in general. In Capital Market Law, intermediation is described peculiarly. In Capital Markets Law, “Intermediation” is given a special meaning. According to this, intermediation is; commercial buying and selling by authorised organisations for ones own name and account, others name and account and ones name others account. In Turkish Law, banks have intermediation activities. While carrying out these activities, the banks should pay necessary care and attention.

Key Words: Banks, Capital Market, Intermediation, Intermediation Companies

1. THE TERM INTERMEDIATION

1.1 The Term Intermediation In The Code Of Obligations

In our Code Of Obligations, the main organisations prepared about intermediary activities in legal proceedings are “representation”, “brokerage” and “ordinary works middlemanship”(1,2).

1.2 The Term Intermediation In Capital Markets Law

Intermediation is interfering and helping to solve a work in general. And mediator is the person to carry out this act and enable reconciliation.

Intermediation system is necessitated in stocks and bonds market that supply direct financing opportunity to real sector for the importance operation expenses present. When this framework is taken into consideration, mediators will be understood to be effective actors in Capital Market. The main factor in revealing the mediators in Capital Market is Intermediation Companies to be expert in this matter (3). In Capital Markets Law, intermediation is given a special meaning. In the 2nd paragraph of 30th article of Capital Markets Law, the term Intermediation is

described as follows: “Intermediation is buying and , selling of capital market means by authorised organisations for ones own name and account, others name and account and ones name others account within the framework of 31st article”. Besides, the term intermediation is stated in V series 46 no 3rd article “Notification concerning the fundamentals of intermediation activities and companies”.

According to this, “Intermediation in capital market is buying and selling of capital market means by authorised organisations for ones own name and account, others name and account and ones name others account within the framework of 30th and 31st articles of the Law”.

Intermediation activities in capital market comprise of intermediation to public offering, intermediation to buying and selling and intermediation to carry out the buying and selling of similar means.

According to 2nd paragraph of 3rd article of the notification; “Activities such as Intermediation to public offering and intermediation to buying and selling can be carried out by the organisations which get certificate of authorisation according to article 11 of Law”. According to 34th article of the Law, Capital Market Committee is authorised to make

* **Correspondence to:** *Pelin ATILA, Ufuk University, Law Faculty, Department of Commercial Law, Balgat, 06520, Ankara-Turkey*

preparations for intermediation activities to be carried out by different organisations.

2. INTERMEDIATION ACTIVITIES

2.1 In General

Intermediation in Capital Market is buying and selling of Capital Market means by authorised organisations for ones own name and account, others name and account and ones name others account within the framework of 31st article of the Law.

Intermediation for others name and account: Buying and selling the capital market means within the framework of the agreement between his client and him but not being a party in operation. Parties are in the status of representative between bank and the client and this legal relationship at the same time gives the authority of direct representation. Banks, by getting certain amount of commission, intermediate buying and selling of certain amount of bond and share for the client's name and account. Required amount of cash is obtained from the accounts of the clients who want to buy bond or share. If the required amount of security is present in the billfold, it is delivered to the client. If the required security does not exist in the billfold, this amount will be bought for the name and account of the client (4).

Intermediation for one's name other's account: Market member banks transfer market commands they get from their clients to the market. Market members get a commission called "brokerage fee" for such services they give⁴. Bank is not a party in intermediation for other's name and account but in this intermediation bank is a party in external relationships. Rights and debts are first transferred into the bank, and based on internal relationships, transferred to the client. Namely, there is indirect representation relationship (5). If the representative carries out the operation for his name and the of represented account, it becomes indirect representation. Operational claims and debts in representation are transferred to the represented. Representative is obliged to transfer these real property and debt and the represented is obliged to take over them (6).

Intermediation for one's name and account: In times banks do not give credit, by investing their money to bonds and shares of reliable organisations, they commerce on securities. Thus, even they can not get the amount of profit they get from credits, they would have

made use of incomes and profits of bonds and shares as well as the price differences between buying and selling (7). Banks can buy and sell bonds and shares for having a value transferrable to money to be used in their further payments as well as investing their extra sources (8). Intermediation for one's name and account is the bank's buying promissory notes from export or second hand market and selling for its name (9).

2.2 Types Of Intermediation

2.2.1 Intermediation In Public Offering (Intermediation In First Hand Market).

It is the direct public offering of first hand market means by exporting company. Intermediation carried out in first hand market is Underwriting operation. The partnership that wish to export the capital market means by agreeing with one or more intermediation company and carry out the operation of public offering. Intermediation companies to get certificate of authority and banks can get active in first hand market.

Underwriting agreement is carried out in three ways (10).

- The Best Effort Underwriting: The intermediation company displays superior effort in the phase of public offering, and then sells the securities to name and account of the exporting partner without giving guarantee.
- Strict Underwriting: Intermediation company guarantees to buy the securities that are not sold at the end of certain period stated in law. It sells the securities for the name and account of the exporting company.
- Firm Commitment Underwriting: Intermediation company buys the whole of the exported security by itself or with other intermediation companies, then sells them for its own name and account.

Intermediation to public offering in capital market system can be facilitated by public offering intermediation operations such as "Best Effort Intermediation" and "Intermediation Undertaking" as mentioned in V series no 46

notification of article 38 of the Law. As for intermediation undertaking, it is carried out with the ways of; “Residue Undertaking”, “Whole Undertaking”, “Partly Residue Undertaking” or “Partly Whole Undertaking”.

Within the framework of public offering activities, works concerning export price, amount as well as public offering process will be carried out. Intermediation company prepares explanation letter and documents to register CMC. In order for sales to be carried out, box office service can be given, introductory activities can be facilitated.

According to V series 46 no notification in 40th article of the Law, Intermediation companies, while carrying out public offering intermediation activities, are obliged to; carry out their actions within the framework of the principles stated in intermediation agreement, pay the supreme effort to make a detailed investigation about exporters/shareholders and pay maximum attention for public offered price to demonstrate the value of capital market means precisely.

In the best effort intermediation, intermediation company markets the capital market means for the name and account of the exporting company. Intermediation companies have to show the best effort to meet the needs of small saving holders during public offering. The equivalents of the capital market means sold by intermediation company, if lesser duration isn't foreseen in the agreement, are paid wholly in cash to the exporters at most in the end of working day succeeding the sales of due date.

In V series 46 no notification of 38th articles of the law, the intermediation undertaking is carried out in three ways; they are “Residue Undertaking”, “Whole Undertaking” and “Partly Residue Undertaking”.

Residue Undertaking; It represents selling of capital market means by public offering and the whole equivalent of unsold part to be bought by paying in cash in the end of due date. Intermediation companies try to complete their sales within the determined duration. In the end of due date, they buy the unsold shares to their portfolio.

Whole Undertaking; Selling of capital market means by intermediation companies bought through paying wholly equivalent in cash before the sales starts.

Partly Residue Undertaking; Capital market means are marketed by public offering, the

equivalent of the unsold part is bought by intermediation company through whole in cash paying in the end of due date.

2.2.2 Intermediation In Buying And Selling

Intermediation to buying and selling represents intermediation to buying and selling of capital market means that are formerly exported. Intermediation companies should sign a “Framework Agreement” with the client before they start intermediation to buying and selling operations. After this agreement is prepared and signed, they can receive the commands of the client. The commands given for the stock market operations are dealt with the rules of stock market and as for operations out of the stock market, they can be carried out based on the commands stated in framework agreement. Intermediation companies should perform the command of the client within the framework of at most care. Intermediation companies can also be active in under-lot operations in second hand market out of the stock market. Some intermediation companies, and banks can get certificate of authority in order to make under-lot operations out of the stock market. Organisations that make such operations are obliged to declare buying and selling prices of capital market means they make operations on in their working places. Intermediation companies may inform their customers written or verbally about capital market means, exporters and market tendencies without directing them during the facilitation of buying and selling activities.

2.2.3. Intermediation To Repurchasing Agreement And Reverse Repurchasing Agreement Operations

Repurchasing agreement is selling of securities with the guarantee of being bought in determined term and price. Reverse repurchasing agreement is the buying of the security with the guarantee of selling back. In 30/d paragraph of Capital Markets Law, repurchasing agreement and reverse repurchasing agreement operations are arranged as buying and selling of Securities with the guarantee of being bought and sold. After the agreement is signed in the operation of repurchasing agreement, the value of the security is paid as stated. But as the delivery of the security is under consideration in reverse repurchasing agreement, based on the principles in framework agreement, by entrusting the securities under discussion, they

should be stored according to the preparations of Central Bank by authorised organisation.

2.2.4. Intermediation To Buying And Selling Of Similar Means

By V series 46 no Notification, intermediation activities in similar markets are reorganised. The activities in intermediation in buying and selling of similar means are; receiving the commands from the client about similar means directly or indirectly as the representative, directing these commands to other organisations of people and intermediation in agreements in order to make agreement and carrying out collecting and entrusting related to the activities made (12).

To bank or intermediary companies, based on the categories of similar means, certificate of intermediation to sell similar means “separately” or as a “whole” can be given by Capital Markets Committee. Pertaining to the similar means, it is necessary to;

- Receive the commands get from clients directly or the representative.
- Directing this command to other people.
- Opening a working place for this purpose.
- Signing a contract and
- Intermediation of the contract agreement.

The banks should have certificate of authority in order to intermediate buying and selling of similar means, adequate numbers of client representatives or accounting operation representative should be employed, there should be internal control and adequate hardware and service units should be constituted.

3. THE PRINCIPLES BANKS SHOULD COMPLY WITH CONCERNING INTERMEDIATION ACTIVITIES

Banks have to get “permission of activity” from Capital Markets Commission to get active in intermediation activities. The bank should have appropriate service units suitable for activity subjects chosen. Authority and responsibility of bank personnel related to this activity should be determined precisely. In order for intermediation companies to carry out reliable activity, they should have a well-planned administration. Besides, the company

should have accounting register, data and document system that comply with the arrangements of the Capital Markets Committee. Thus, in order for the communication to be carried out appropriately and in high quality, it is essential for technical equipments to be supplied, required organisation to be set up and necessary security measures to be taken.

REFERENCES

1. ÜNAL, Oğuz Kürşat (1): Sermaye Piyasası Hukuku ve Mevzuatı, Ankara, pp 450; 2005.
2. ÜNAL, Oğuz Kürşat (2): Aracı Kurumlar, Ankara, pp 54; 1997
3. KARAKOÇ, İ. Başak: İskontocu Aracı Kurumlar ve Ülkemizde Uygulanabilirliği, Sermaye Piyasası Kurulu Yayını, pp 2; 2003.
4. PALA, Fikri: Banka Muhasebesi ve Maliyet Sistemi, Bursa, pp 132; 1988
5. GÜCENME, Ümit: Türkiye’de Sermaye piyasasındaki Son Gelişmeler, Türkiye Bankalar birliği, Ankara, pp 127, 1994.
6. ÖNEN, Turgut: Borçlar Hukuku, Ankara, pp 67; 1981.
7. MÜFTÜOĞLU, Muharrem: Banka ve Muhasebesi, Anadolu Üniversitesi Afyon Meslek Yüksek Okulu Yayını No. 1., Eskişehir, pp.148; 1989
8. SİHAY, Jale/ SEVİLENGÜL, Orhan: Banka Muhasebesi, Ankara, pp 151; 1978.
9. MANAVGAT, Çağlar: Sermaye Piyasasında Aracı Kurumlar, BTHAE, Ankara, pp 66; 1991.
10. SUMER, Ayşe: Türk Sermaye Piyasası Hukuku ve Seçilmiş Mevzuat, İstanbul 2002, pp 78, 92; 2002.