

Proposed Changes to Turkish Debt Instruments Regime

On 27 November 2015, the Capital Markets Board of Turkey (the "**CMB**") announced a draft amendment to the Debt Instruments Communiqué (Serial No. II-31.1) (the "**Draft Amendment**"). This draft amendment aims to introduce a variety of changes concerning both domestic and cross-border issuances, including changes to the relevant provisions governing (i) the exemption from the tranche issuance certificate approval and the CRA registration; (ii) the issuance limits; and (iii) the buy-back options for debt instruments. We understand that this amendment is intended to increase compliance with international standards; however, it may have adverse impact on the domestic issuances due to the additional requirements, in particular those on the issuance limits. It is not yet certain when the Draft Amendment will come into force.

■ Tranche Issuance Certificate

In cross-border private placements, issuers will no longer be required to have a tranche issuance certificate approved by the CMB before the issuance of each tranche allowed within its approved issuance limit. Instead, a prior notification to the CMB through the electronic platform will be sufficient.

■ Central Registry Agency (the "**CRA**")

The Draft Amendment replaces the registry requirement with the CMB with the requirement to notify within three (3) business days following the issuance date. Accordingly, in cross-border issuances, issuers will no longer be required to obtain a specific prior clearance from the CMB to be exempted from the registration with the CRA.

■ Issuance Limits

Under the current legislation, the issuance limit is determined as three times of equity for privately held joint-stock companies and as five times of equity for publicly held joint stock companies. For banks and

financial leasing companies, factoring companies and financing companies these issuance limits can currently be increased by one hundred per cent. provided that the highest three rates of a long-term investment grade have been obtained (as set out in the below table). Nevertheless, the Draft Amendment contemplates that this increase option can only be enjoyed by the banks and does not include other financial institutions. Separately, the Draft Amendment sets out transition periods for those financial institutions which have already made debt instrument issuances to be excluded from these new issuance limit restrictions which will allow such other financial institutions to proceed with their existing issuance limits.

■ Mandatory Credit Rating

Although currently it is not mandatory, issuers will be required to obtain a long-term national credit rating before domestic issuances as a pre-condition. There are five levels set for different scales of credit ratings. Accordingly, additional requirements (such as bank guarantees or selling restrictions) may be imposed on domestic issuers, depending on their credit rating as set out in the following table:

Level	Rating	Private Placement	Public Offering
1 st level	1 (Prime grade)	No additional requirements	No additional requirements
2 nd level	2,3,4 (High grade)		
3 rd level	5,6,7 (Upper-medium grade)		
4 th level	8,9,10 (Lower-medium grade)	Bank guarantee for payment obligations <u>or</u> restrictions with respect to the eligibility of the prospective buyers and/or additional sale conditions, if the financial statements do not satisfy certain requirements	Bank guarantee for payment obligations <u>or</u> restrictions with respect to the eligibility of the prospective buyers and/or additional sale conditions,
5 th level	11,12,13 (Non-investment grade)	Bank guarantee for payment obligations	

■ Buy-Backs of Debt Instruments

The current legislation allows a buy-back option for debt instruments only if the issuer is a bank. Nevertheless, in the Draft Amendment issuers other than banks are also allowed to engage in debt instrument buy-backs. Issuers engaging in buy-backs would on the other hand also be responsible for ensuring that investors are not made subject to unequal treatment during this process.

■ ACB and Sukuk

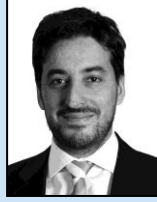
The Draft Amendment attempts to introduce further securities to be deducted from the issuance limit. It states that (i) asset-covered bonds; (ii) lease certificates (sukuk) where the issuer is also the fund user; and (iii) lease certificates (sukuk) based on trading and management agreements (payments of which have not been guaranteed) will also be

deducted from the issuance limit, together with other items.

■ Other Notable Developments

In addition, on 15 December 2015, the Turkish Prime Ministry announced a circular on the establishment of the non-interest finance coordination council, demonstrating its increasing interest in the use of Islamic financing instruments in Turkey. The relevant council will be convened at least three times a year and will comprise relevant ministers and heads of certain public institutions, including the Undersecretariat of Treasury, the CMB and the Banking Regulatory and Supervision Agency. The establishment of the non-interest finance coordination council will accelerate the influx of funds through prospective diversified investors – in particular from the Gulf region.

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