

Asset covered bonds

The Capital Markets Board of Turkey has recently amended the communiqué on covered securities aiming to encourage the issuance of covered bonds.

After issuing a new communiqué on covered securities (**Communiqué**) on 21 January 2014, the Capital Markets Board of Turkey (**CMB**) has amended the Communiqué (**Amended Communiqué**) in order to make the covered bond market more effective.

Following our note from February 2014, this briefing note also focuses on the amendments relevant to asset covered bond (**ACB**) issuances.

Asset pool

The Communiqué had already permitted derivative instruments to be included within the security register and provided a list of the institutions that need to be counterparties of derivative transactions in order for those to be included in the security register.

The Amended Communiqué adds international finance corporations to the list of counterparties and clarifies that all institutions being the counterparty of derivative transactions need to have international investment grade. For institutions incorporated in Turkey, however, local rating grades may be used.

Issuance

The Amended Communiqué clarifies that there is no minimum nominal value requirement for private placements to be conducted outside Turkey whereas for private placements in Turkey the minimum nominal value per ACB is preserved as TL 100,000 (approximately USD 45,000).

The Amended Communiqué requires that the maximum amount and the way of issuance (e.g. public offering, private placement, sale to qualified investors or sale outside Turkey) is included in the relevant board resolution regarding the issuance.

Management and protection of the secured assets

The Amended Communiqué cancels the requirement of having a separate bank account for cash-flow activities in relation to the ACBs. It indicates that cash generated from the secured assets can be used freely as long as secured asset compliance principles are not breached and the issuer fulfils its obligations arising from the Communiqué.

The Amended Communiqué also introduces the concept of "management of secured assets" and clarifies what it entails (e.g. establishment of the secured assets, collection of the cash generated from the secured assets).

The main principle to substitute an asset ceasing to be eligible to be included in the asset pool is preserved in the Amended Communiqué. The Amended Communiqué enables the issuer to take such assets out from the security register without replacing them with eligible assets as long as the remaining asset pool satisfies the secured assets compliance principles and the issuer continues to fulfil its

obligations arising from the Communiqué.

The Amended Communiqué states that the issuer, provided that it remains primarily responsible for its obligations arising from the Amended Communiqué, may outsource services to third party institutions subject to CMB approval in order to manage effectively its obligations with respect to secured assets. It is the issuer's obligation to make sure that the third party service provider has the adequate infrastructure, financial ability, know-how etc to conduct these services.

The CMB is entitled to appoint another bank, security register, an audit company or any other specialised company it considers fit to administer the issuer and the funds, in the event of;

- transfer of the management or supervision of the issuer to public institutions;
- bankruptcy of the issuer; and
- cancellation of the issuer's certificate of activity.

Security register (*Teminat Defteri*)

Definition of the security register is extended to include rights and obligations arising from the derivative instruments.

The requirement to keep a security register electronically or in writing in order to separate the underlying assets for ACBs from the other assets

is extended to include the cash generated from such assets. This would appear to be an important clarification point since cash assets which (being of fungible nature) may have otherwise co-mingled with the remaining cash held by the issuer are included in the ring-fencing nature of the structure.

The Amended Communiqué also regulates the provisions relating to any updates with respect to the security register to be transmitted to the Central Registry Agency on a same day basis and also provides exemptions of such requirement.

Security representative (*Teminat sorumlusu*)

The Amended Communiqué sets forth when the security representative needs to check the security register and its compliance with the security compliance principles. Accordingly the Amended Communiqué requires any such compliance check to have been completed for public offerings as of the application to CMB and for private placements, sales to qualified investors and offerings outside Turkey following the establishment of security register.

The security representative is also required to check the security compliance principles every three months for the ACBs issued via public offering and every six months offered without public offering or outside Turkey.

For issuances that are not publicly offered or issuance conducted outside Turkey in the event that the issuer has a security register established as part of a programme, the security register is exempt from the certain requirements when the issuer only applies to CMB for a new issuance ceiling (*ihraç tavanı*).

Security principles

The Amended Communiqué made a few clarificatory changes on compliance requirements in respect of the secured assets. Under nominal value requirement, the Amended Communiqué states that the contract value of the derivative instruments shall not be taken into account.

Breach of security compliance principles

The Amended Communiqué obliges the issuer to inform the security representative about a breach of the security compliance principles immediately as soon as the issuer notices such non-compliance.

Public disclosure

In relation to the issuance outside Turkey, the Amended Communiqué clarifies that the issuer is entitled to determine how to make the requested disclosures as set forth in the Communiqué.

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