

The Changing Dynamics of the Turkish Debt Markets under the New Amendments to the Debt Instruments Communiqué

On 27 November 2015, Turkey's securities regulator, the Capital Markets Board (the "**CMB**"), announced certain changes to the Debt Instruments Communiqué (*Borçlanma Araçları Tebliği*) — the primary body of rules that govern the issuance of debt securities in Turkish capital markets. The rule changes, which became effective on 18 February 2017, deal with a wide range of issues in relation to debt offerings and constitute an important step in strengthening the depth and liquidity of the Turkey's developing debt markets by providing issuers greater flexibility in structuring and managing their debt instruments.

Among other things, most importantly the changes offer greater flexibility for issuers in areas such as liability management, project bonds and contingent convertible/convertible bonds. The rules also stipulate a new minimum face value rule in relation to private debt offerings and other changes in relation to disclosure requirements.

Liability Management

Alterations to be made in issuance conditions

Prior to the new amendments, save for legal obligations and actual impossibilities, the Debt Instruments Communiqué did not allow any alteration to be made in issuance conditions (e.g. price, interest, maturity) prior to the maturity of the bonds. Despite preserving this as the general rule, the new amendments have introduced two exceptions. Accordingly, (i) alterations to be made for bonds distributed by way of

domestic non-public sales will be effective for investors who give their written consent to such alterations, and (ii) the CMB will be authorised to determine the principles for alterations to be made for domestic public sales. For off-shore issuances, the terms and conditions can be amended without the approval of the CMB.

Buy back right

Prior to the changes, the majority of debt issuers were prohibited from repurchasing debt instruments that they had issued. Buy-back activity was only allowed for banks subject to the condition that any repurchase of the relevant debt instrument could not

be done in a way that would amount to early redemption. The new amendments have removed this restriction, and under the new rules buy-backs are allowed for all issuers without any limitations. Furthermore, a repurchased debt instrument can be (i) re-sold before maturity, (ii) retained by the issuer, or (iii) cancelled before the maturity date by carrying out the relevant procedures before the Central Securities Depository of Turkey (*Merkezi Takas Kuruluşu*) (the "CSDT"). The new amendments require buy-back and re-sale prices in relation to over the counter transactions to be disclosed on the issuer's website. In relation to issuances to be made off-shore,

issuers and investors are afforded freedom to decide on buybacks and the appropriate practices — of course, subject to the laws of the country where the issuance will be made or the rules of the relevant exchanges).

Early redemption

Prior to the new amendments, the rules contained onerous requirements in relation to the exercise of early redemption rights and required the filing of a notification containing detailed information regarding the early redemption. This has now been abolished by the new amendments, which rather set out general principles that will apply to domestic and foreign sales. Accordingly, (i) early redemption conditions (if any) must be addressed in prospectus or issuance certificate in relation to domestic sales, and (ii) issuers and investors can freely determine the early redemption conditions for foreign sales (subject to the laws of the country where the issuance will be made).

Repayment of bonds and promissory notes

Before the amendments, the principal of bonds (*tahvil*) and promissory notes (*finansman bonosu*) could only be repaid at their maturity date. The new amendments will allow issuers to elect alternative repayment structures, in which the principal face value of bonds (*tahvil*) and promissory notes (*finansman bonosu*) could also be repaid in instalments (amortising payments). Please see our note on Liability Management for more information. ([link](#))

Project Bonds for the Healthcare PPPs

PPP in the health sector

The provisions of the Debt Instruments Communiqué related to issuance limits will not be applicable for the projects under the scope of the Law No. 6428 on the Construction and Renovation of Facilities and the Procurement of Services through Public Private Partnership Model by the Ministry of Health and the Amendment of Certain Statutory Decrees. Please see our note on Project Bonds for more information. ([link](#))

Contingent Convertible and Convertible Bonds

Contingent Convertible Bonds

It has now been clarified that the Debt Instruments Communiqué's provisions on convertible bonds will not be applicable to the regulatory capital issuances of banks. Instead, the terms and conditions of contingent convertibles will be separately determined by the CMB. The Banking Regulation and Supervision Agency has also been working on draft legislation to encourage the contingent convertible issuance by Turkish banks by adding clarity to the conversion mechanism.

Convertible Bonds

The Debt Communiqué now allows the CMB to deviate from the provisions under the Debt Communiqué and to apply different terms than the outlined under the Debt Instruments Communiqué for convertible bonds to be issued (i) off-shore or (ii) through private placement; or (iii) to be sold to qualified investors. This may finally pave the way to convertible bond issuances in Turkey and allow issues to apply the terms and conditions expected by the international investors.

Other Amendments

Minimum face value requirement for private placements

Debt instruments can be issued by public or private offerings involving domestic or off-shore sales. Any domestic sale made (i) to qualified investors, or (ii) by way of a private placement, shall meet the domestic private sale standard, which is subject to more lenient disclosure requirements than public sales. The leniency of the disclosure requirements for non-public sales made to qualified investors are justified, since the qualified investors are deemed to have sufficient investing experience and knowledge to weigh the risks and benefits of investment opportunities. In order to prevent unqualified investors, who do not meet the sophistication standards from involving in non-public sales, and to mitigate the risks in relation to private placements that involve a direct or indirect (down the chain of distribution) sale to unqualified investors, the new amendments have

introduced a minimum face value per unit requirement. Accordingly, debt offerings can only be made by way of private placement, if the nominal value of each debt instrument is no less than TRY 100,000 (app. USD \$28,000).

Off-shore issuances

Previously, although exemptions could be granted by the CMB upon the request of issuers, debt instruments to be offered abroad were required to be registered in dematerialised form with CSDT. However, the new amendments have abolished this form requirement. Accordingly, issuers are now only required to send a notice containing certain information regarding the issuance (e.g. issued amount, issue date, currency, maturity date, depositary institution) to the CSDT within the three days following the issuance.

New CMB authority to unilaterally impose further conditions and reduce the previously approved offering amount upon request

In relation to debt instruments, the CMB is now authorised to (i) request the provision of a guarantee (issued

by a bank or another financial entity) for the payment obligations, (ii) impose restrictions on sale conditions and/or buyer qualifications, or (iii) shorten the validity period of the issuance certificate (but not the prospectus). Furthermore, the new rules provide CMB with the authority to cancel a previously approved issuance ceiling (*ihraç tavanı*, the total value of the issuance as approved by the CMB) in whole or in part upon the request of an issuer, who has been previously granted with an issuance ceiling approval.

Content of the board resolutions

Board resolutions in relation to debt issuances shall contain information regarding (i) the maximum total value of the debt instruments planned to be issued; and (ii) the type of sale to be made (i.e. domestic public sale, domestic non-public sale or sale abroad). In case the issuer intends to issue (i) exchangeable bonds, (ii) convertible bonds, or (iii) any special type of debt instrument (other than the traditional bonds (*tahvil*) or promissory notes (*finansman bonosu*)), the characteristic features of the relevant debt instrument must also be expressly specified in the authorised body's resolution. If the relevant resolution only contains a

general reference to debt instruments, the CMB will deem that the application has been made for the issuance of bonds (*tahvil*) or promissory notes (*finansman bonosu*).

Disclosure documents

Previously, an issuer was required to disclose only the issuance certificate on its website or the Public Disclosure Platform (the "PDP"). With the new amendments, however, respective annexes of the issuance certificate are also required to be disclosed on the issuer's website or the PDP along with the issuance certificate.

In addition, if an issuer plans the debt instruments issued through private offerings to be traded in Borsa Istanbul, then the latest audited financial statements of the issuer and the application form shall also be disclosed on the PDP along with the issuance certificate and its respective annexes.

Issuance ceiling

The table below shows the relevant financial statements that should be taken into consideration when calculating issuance ceilings as per the filing date of the issuance application.

Application Date	Audited/Limitedly Audited Financial Statements to be taken into consideration
1 January – 15 March	Latest annual financial statements, or, if not applicable, semi-annual interim financial statements of the previous year.
16 March – 15 August	Latest annual financial statements.
16 August – 31 December	Semi-annual interim financial statements of the present year.

The amendments also provide that, upon the request of the issuer, fully or partially audited financial statements concerning the next term may be taken into consideration for the calculation of the issuance ceiling. However, if the financial statements concerning the next term indicate a loss in equities, the CMB will *unilaterally* give special consideration to such financial statements, even if such financial statements have not been audited.

The amendments also removed the CMB's authority to increase issuance ceilings in relation to non-bank financial institutions. Previously, the issuance ceilings granted to banks and financial institutions, which obtained a top-three level long-term investment rating from rating

agencies, could be increased by 100%. However, with the new amendments, from 31 December 2017 onwards, this increase can only be made in relation to banks (and not other financial institutions), which obtain a top three level long-term investment rating. Banks which are granted an issuance ceiling increase are required to inform the CMB, if their investment rating drops below the top-three rating tranches.

Also, additional issuance limit (up to 50%) could previously be granted to banks and other financial institutions that issue debt instruments to be sold abroad. This has been abolished with the new amendments and will no longer be applicable.

In addition, the new amendments stipulate that the nominal values of

(i) the issuer's debt instruments and guaranteed securities (*teminatlı menkul kıymet*), which are in circulation and/or not yet been sold under the issuance ceiling, and (ii) lease certificates (*sukuk*) (which are based on trading transactions and management agreements that are in circulation) fund user of which is the issuer will be decreased from the issuance ceiling.

CMB fee

The CMB fee for debt instruments with a maturity more than 730 days will now be fifteen basis points (0.0015) based on the issuance value instead of the previous ratio of twenty basis points (0.002). In addition, capital market institutions will no longer be subject to 75% fee exemption.

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