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NEWSLETTER

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Upcoming Changes in Debt Instruments Legislation

A draft amendment (the "**Draft Amendment**") to the Debt Instruments Communiqué numbered II-31.1 and published in the Official Gazette dated 7 June 2013 and numbered 28670 (the "**Debt Instruments Communiqué**") was published by the Capital Markets Board (the "**CMB**") on 27 November 2015.

Should the Draft Amendment is adopted by the CMB in its current content; the significant changes on the Debt Instruments Communiqué will be as follows:

- According to the current version of Article 6 of the Debt Instruments Communiqué, in respect of debt instrument issuances to be made outside of Turkey, the issuers have to obtain two issuance certificates from the CMB. One of those certificates is the "issuance certificate" (*in Turkish ihraç belgesi*), and the other is the "tranche issuance certificate" (*in Turkish tertip ihraç belgesi*). The issuance certificate is in relation to the whole issuance limit granted to the issuers by the CMB during one year. During the pendency of the issuance certificate, before each issuance of a tranche of debt instruments, the issuers have to apply to the CMB in order to obtain a tranche issuance certificate. While the Draft Amendment will keep the requirement of the issuance certificate regarding the whole issuance limit, it will remove the tranche issuance certificate requirement concept from the Debt Instruments Communiqué. Therefore, during the pendency of an issuance certificate, the issuers will not have to obtain a tranche issuance certificate before each issuance. Instead of such concept, in order to make debt instrument issuances outside of Turkey, the issuers will notify the CMB electronically regarding each issuance. We would like to highlight that the Draft Amendment does not clarify the required documents and procedures in relation to the electronic notification to the CMB, but only generally refers to the principles and procedures to be designated by the CMB.
- According to the current Article 8 of the Debt Instruments Communiqué, the debt instruments to be issued outside of Turkey must be issued in an

electronically registered form in the Central Registry Agency (*Merkezi Kayıt Kuruluşu*) (the "**CRA**") and the rights therein recorded in the CRA; *however*, upon the issuers' request, the CMB may resolve to exempt the relevant debt instruments from this requirement if the debt instruments are to be issued outside of Turkey. The Draft Amendment envisages to remove this requirement from the Debt Instruments Communiqué and only requires the issuers to notify the CRA within three business days as of the issuance date regarding the information on the relevant issuance (the issuance amount, issuance date, ISIN code etc.).

- The Draft Amendment introduces the mandatory credit rating concept for issuances to be made in Turkey and obliges the issuers to obtain a credit rating for domestic issuance of the debt instruments. Under the current Debt Instruments Communiqué, the credit rating is optional for both domestic and the cross-border issuances.
- The Draft Amendment envisages that the CMB may request the issuers to provide a bank guarantee for its payment obligations regarding the relevant debt instruments in case:
 - (i) the credit rating falls below the top three investment grades for public offerings to be made in Turkey,
 - (ii) the credit rating falls below the investment grade to be made for debt instrument issuances to the qualified investors to be made in Turkey, or
 - (iii) the credit rating is equal to the fourth level investment grade and the issuer's financial statements do not satisfy the financial conditions specified in the Draft Amendment (in terms of the issuer's equity, net profit and cash flow) for the issuance of debt instrument to qualified investors to be made in Turkey.
- The Draft Amendment sets forth a new requirement in relation to the minimum unit denomination in the private placements to be made in Turkey, which are not currently subject to any

threshold. In this respect, the Draft Amendment contemplates that the unit denomination should be at least TL 100,000 for each private placement to be made in Turkey.

- Lastly, the Draft Amendment revises the required documentation for the CMB application(s) in respect of debt instruments issuances (to be made in Turkey (with or without public offering) or outside Turkey). In this respect, we would like to highlight that as per the Draft Amendment, the authorized body resolution (i.e. general assembly or board of directors' resolution) for the issuance of the debt instruments should be in the form expected to be published by the CMB. Please note that the relevant resolution form has not yet been shared by the CMB on its website.

A New Regulation on Repo Transactions of Banks

The Regulation on Repo and Reverse Repo Transactions of Banks (the “**BRSA Repo Regulation**”) has been published in the Official Gazette dated 6 December 2015 and numbered 29554 (the “**Official Gazette**”) and entered into force on the same date. Under the BRSA Repo Regulation, the Banking Regulation and Supervision Authority (the “**BRSA**”) imposes new rules applicable to repo and reverse repo transactions (the “**Repo Transactions**”) of Turkish banks.

The scope of the BRSA Repo Regulation covers Repo Transactions to which at least one bank established in Turkey is a party. On the other hand, apart from the rules on transaction limits, the BRSA Repo Regulation does not apply to foreign over-the-counter (OTC) market transactions entered into with another bank or financial institution under a master netting or master repo agreement. Furthermore, the BRSA Repo Regulation does not apply at all to the Central Bank of Turkey (the “**Central Bank**”) or to open market transactions entered into between the Central Bank and another Turkish bank.

Pursuant to the BRSA Repo Regulation, financial instruments that may be used as repo collateral are mainly as follows:

- debt instruments issued by Turkish sovereign and state institutions;
- liquidity bills issued by the Central Bank;
- debt instruments, sukuks, asset/mortgage backed bonds and covered bonds issued by Turkish issuers;
- stocks which are allowed to be used as repo collateral in the markets of Borsa İstanbul A.Ş. (“**Borsa İstanbul**”);
- financial instruments issued by non-Turkish issuers which are trading on foreign exchanges or other organized markets (only in Repo Transactions with non-Turkish counterparties); and
- other financial instruments determined by the BRSA (if any).

Banks are required to deposit repo collaterals (other than those provided in respect of foreign repo transactions and traded on exchanges or other organized markets outside Turkey) in the accounts at İstanbul Takas ve Saklama Bankası Anonim Şirketi (“**Takasbank**”) or Takasbank’s correspondents. Furthermore, banks are also required to notify Takasbank of the Repo Transactions that are not made on Borsa İstanbul.

The BRSA Repo Regulation also sets forth principles on collateralization and valuation of repo collaterals in respect of Repo Transactions other than those made on an exchange or those involving central counterparty clearing (for transactions made on exchange or transactions involving central counterparty clearing, rules of the relevant exchange or central counterparty apply).

The BRSA Repo Regulation provides an overall transaction limit that restricts the difference between total repo balance and reverse repo balance. The BRSA Repo Regulation also sets an upper limit for the difference between repo balance and reverse repo balance for Repo Transactions (except transactions on Borsa İstanbul) entered into with the same counterparty.

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A New Communiqué on Repo Transactions of Intermediary Institutions

Another piece of repo legislation published in the Official Gazette is the CMB’s Communiqué on Repo and Reverse Repo Transactions of Intermediary Institutions (III-45.2) (the “**CMB Repo Communiqué**”), which abolished the Communiqué on Repo and Reverse Repo Transactions (Series: V, No: 7). The scope of the CMB Repo Communiqué covers Repo Transactions to which at least one

intermediary institution established in Turkey is a party, yet excludes open market Repo Transactions entered into with the Central Bank.

Adoption of the CMB Repo Communiqué seems to be a concerted effort of the CMB with the BRSA, as the rules imposed by the CMB on intermediary institutions under the CMB Repo Communiqué are almost identical with those imposed on banks by the BRSA under the BRSA Repo Regulation.

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Yours faithfully,

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