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NEWSLETTER
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New Regulation on Notification via Electronic Means

The Regulation on Notification via Electronic Means (the "**Regulation**") was published in the Official Gazette numbered 30617 and dated 6 December 2018 and entered into force on January 1, 2019.

The Regulation is prepared pursuant to the Law numbered 7201 (the "**Law**") and sets forth principles and procedures regarding electronic notifications that will be made by the authorities and institutions that are authorized to serve notifications through Posta ve Telgraf Teşkilatı Anonim Şirketi ("**PTT**") as per Article 1 of the Law. In this respect, Article 7/a of the Law requires that the notifications by such authorized institutions (e.g. courts, tax authorities, ministries, Banking Regulation and Supervision Agency, Capital Markets Board, Social Security Institution) to certain public and private legal entities and individuals are made electronically. The respective article also entered into force on January 1, 2019.

In its essence, such new practice regarding notifications is aims to increase efficiency, make notifications cheaper and overcome the problems regarding protection of data.

Accordingly, it will be mandatory for the individuals and legal entities indicated under Article 7/a of the Law and the Regulation to be served via electronic notification. Such individuals and legal entities include all private legal entities (e.g. joint stock companies, limited liability companies), attorneys registered with the bar, notaries public, local administrations, public economic enterprises and their subsidiaries and enterprises. These individuals and entities must apply to PTT within one month starting from the effective date, January 1, 2019 to obtain an electronic notification address. Private legal entities should include their Central Registration System (MERSİS) number and system information in their application. PTT may ask for additional information or documents from the applicants. Further, all individuals and legal entities stated under Article 5 of the Regulation shall determine at least one (ten at the most) primary process official(s) to execute the transactions regarding their electronic notification addresses and notify PTT.

Individuals and legal entities who are not subject to the Regulation may also obtain electronic notification addresses upon request. In that case, they shall also be obliged to receive notification via electronic means.

Pursuant to the Regulation, a National Electronic Notification System (*Ulusal Elektronik Tebligat Sistemi* - "**UETS**") shall be established and managed by PTT. Furthermore, PTT is also responsible for the security and operation of the UETS. According to Article 9 of the Regulation, PTT shall convey the message to the electronic notification address of the addressee with a time stamp and encode the relevant electronic notification for confidentiality purposes. The electronic notification shall be deemed to be made at the end of the fifth day following the delivery. In addition, Article 12 states that the UETS shall keep records of the delivery information of these notifications and inform the sender within 24 hours. These records are accepted as "evidence records" (*delil kayıt*) which means that they qualify as conclusive evidence. The addressees may ask to be informed by PTT via SMS or e-mail regarding a delivery. However, this shall only be for informative purposes and have no effect upon the validity of the actual electronic notification.

It should be also noted that, as per the announcement made by PTT on 13 December 2018, after the commissioning of UETS, electronic notification service will not be provided from existing Registered Electronic Mail (*Kayıtlı Elektronik Posta* – "**KEP**") addresses and new electronic notification addresses must be obtained. However, notifications that are included in the scope of Article 18/3 and correspondences stated in Article 1525/1 of the Turkish Commercial Code shall continue to be sent through the existing KEP system. For example, notices and/or notification to put the other party in default, termination or avoidance of a contract in relation to commercial activities will still be made via existing KEP addresses.

Mandatory Mediation in Commercial Litigation

The Law on Initiating Proceedings for the Collection of Monetary Receivables Arising Out of Subscription Agreements (the "**Law No. 7155**") was approved in the Grand National Assembly of Turkey and published in the Official Gazette on 19 December 2018. Even though the primary purpose of Law No. 7155 is to set forth the integration of the respective execution proceedings into the National Judiciary Informatics System (*UYAP*), it also introduces amendments through its Article 20 to the Turkish Commercial Code numbered 6102 ("**TCC**") regarding implementation of a mandatory mediation process.

Pursuant to this amendment, applying to mediation process shall be a pre-condition to file a lawsuit in terms of

commercial cases regarding a claim for compensation or receivable. This means that a lawsuit shall be dismissed on procedural grounds if an application to mediation process has not been made beforehand. This provision entered into force on January 1, 2019, but will not apply to the pending cases at first instance courts, regional courts of justice or the Court of Appeal.

In addition, Article 23 of the Law No. 7155 brought a new provision to the Mediation on Legal Disputes Law numbered 6325 and states that the original or a copy approved by the mediator of the final minutes showing that the parties could not reach an agreement through mediation must be included in the petition. Otherwise, the court will grant the plaintiff a peremptory term of one week for the submission of this document.

Furthermore, the Law No. 7155 stipulates that the mediator shall finalize the mediation process within six weeks after the application and this period may be extended for a maximum of two weeks in compulsory situations.

Lastly, it is worth underlining to note that, the provisions in relation to mandatory mediation process will not apply to cases where the parties agreed on arbitration or another alternative dispute resolution mechanism or if an obligation is stipulated under the laws regarding mandatory application to arbitration proceedings for certain disputes.

Amendments to the Communiqué on Asset and Mortgage-Backed Securities numbered III-58.1 and Communiqué on Covered Bonds numbered III-59.1

The Capital Markets Board (the "**CMB**") amended the Communiqué on Covered Bonds numbered III-59.1 (the "**Covered Bonds Communiqué**") and the Communiqué on Asset-Backed and Mortgaged-Backed Securities numbered III-58.1 (the "**AMBS Communiqué**"). The amendments were published in the Official Gazette numbered 30592 on November 11, 2018 and entered into force on the same date. Significant changes introduced by such amendments include the following:

- Funds established by banks, mortgage finance institutions ("**MFI**") and broadly authorized intermediary institutions may now issue asset-backed securities ("**ABS**") by way of purchasing covered bonds issued by banks and MFIs.

- Covered bonds issued in Turkey or abroad by banks or MFIs may be included in the fund portfolio in issuances of ABS. By the date covered bonds issued in Turkey are included in the portfolio, they must have been in dematerialized form before the Central Registry Agency and transferred to the account opened in the name of the fund. In addition, signing of a transfer agreement between the originator bank and the fund issuing the ABS is not required anymore.

- The risk retention liability is amended for originator institutions. If there is more than one originator institution, each originator's liability shall be limited to the tranches associated with the assets transferred by it.

- In terms of the issuance ceiling which will be determined by the CMB for AMBS issued without a public offering or abroad, if there is more than one originator institution transferring their assets to the funds, the issuance ceiling may not exceed (i) twice the value of the founder's total assets or (ii) twice the cumulative value of the total assets of the originator institutions in proportion to the assets transferred by them to the fund, whichever is higher.

- Unless the AMBS issued within the scope of an issuance ceiling previously determined by the CMB are fully redeemed, the issuer may not apply for a new issuance ceiling through the same fund.

- As for the issuance of mortgage-backed securities, the portion of loans and receivables arising from housing finance, exceeding 80% of the mortgage value of the loans and receivables will not be taken into consideration. Before the changes, such ratio was 75%.

- Issuances to be made within the scope of the Covered Bonds Communiqué and AMBS Communiqué will not be subject to the CMB's fees until 31 December 2019.

Through the amendments to the respective communiqués, the CMB has aimed to diversify the asset types that can be used as the underlying asset of ABS and mortgage-backed securities. In this respect, the CMB also intended to facilitate financial institutions to acquire funds by securitizing their assets with low liquidity.

Amendment to the Material Events Disclosure Communiqué numbered II-15.1

The Communiqué Amending the Communiqué on Material Events Disclosure numbered II-15.1 (the "**Amendment Communiqué**") was published in the Official Gazette numbered 30598 on November 17, 2018.

As per Article 12/1-(a) of the Communiqué on Material Events Disclosure numbered II-15.1, if and when direct or indirect shares or voting rights of an individual or legal entity or of other individuals or legal entities acting together with such persons in the share capital of a publicly traded company reach or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95%, such persons shall disclose this

change in the share capital structure and management control of such company on the Public Disclosure Platform.

Before the amendment, the respective shareholders and the Central Registration Agency ("**CRA**") used to have a mutual obligation to make such disclosure. The amended Article 12/4 sets forth that any acquisition or sale resulting *directly* in exceeding or falling below the abovementioned thresholds in the shareholding of a publicly traded company will be disclosed to the public solely by the CRA. However, if an individual or a legal entity exceeds or falls below the same thresholds indirectly, based on voting rights or by acting in concert, the public disclosure must be made by the respective shareholders.

Furthermore, Article 23/7 formerly required periodic disclosures to be made in 60-days intervals, starting from the latest disclosure, regarding ongoing matters even if there has not been any development in relation thereto. The amended Article 23/7 does not require a periodic disclosure regarding matters that are not finalized anymore, provided that there has not been any recent development concerning such matter.

Recent Amendments to the Capital Movements Circular

The Capital Movements Circular (the "**Circular**") has been amended by the letters (i) numbered 30275 and dated 20 November 2018 and (ii) numbered 31659 and dated 21 December 2018 of Ministry of Treasury and Finance of the Republic of Turkey.

Under the Communiqué on the Protection of the Value of Turkish Currency 2008-32/34 and the Circular, as a general rule, individuals and legal entities resident in Turkey may obtain foreign currency loans only from banks and financial institutions. With the amendment, an exemption to this rule is granted for group companies.

As per the amended Article 38 setting forth general principles on obtaining domestic loans, companies within the same group may transfer foreign currency equivalent of the loan amounts to each other provided that (i) lending and its follow-up is made in Turkish Lira; and (ii) the transfer is made pursuant to the written statement of the lending company.

This amendment to Article 38 facilitates Turkish resident companies to make transactions in foreign currency to their Turkish resident affiliates and brings flexibility for intragroup transactions.

In addition, Article 24 on revolving loans was also amended. Under Article 22 of the Circular, certain loans obtained from abroad are exempted from the general obligation of utilization of such loans in Turkey through a Turkish resident bank. (e.g. utilization of loans outside of Turkey that are obtained from abroad in relation to works to be conducted abroad) The amendment to Article 24 stipulates that for the cases within the scope of Article 22, Turkish residents may use revolving loans obtained from abroad in relation to their work conducted outside of Turkey provided that (i) the loan is repaid abroad with the income gained from such work; and (ii) there shall be no resource transfer from Turkey in relation to the repayment. The added paragraph to Article 24 also states that the income used for the repayment of such revolving loans may not be declared as foreign exchange income within the context of the Circular.

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Yours faithfully,
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