

Secured Bond Communiqué

February 2022



Dear Clients, Colleagues and Friends,

Following an amendment to the Capital Markets Law No. 6362 (“**CML**”) on 25 February 2020, Capital Markets Board of Turkey (“**CMB**”) had presented the Draft Communiqué on Secured Capital Markets Instruments to public opinion on 22 April 2020. Finally, the Communiqué on the Procedures and Principles Regarding the Issuance of Secured Capital Markets Instruments No. II-31/B.1 (the “**Communiqué**”) is published in the Official Gazette on 26 January 2022 numbered 31731 and entered into force on the same date.

The Communiqué fundamentally sets forth the procedures and principles regarding the issuance of secured capital markets instruments, type of assets, which can be subject to security and introduces and recognises the concept and use of security agent and security management agreements.

Issuance of Secured Capital Markets Instruments

In line with the Communiqué, capital market instruments specified therein can be secured for the fulfilment of payment and other obligations regulated in the prospectus or issuance certificate. Type of assets as listed in the Communiqué can be transferred to the security agent or right in rem over such assets can be granted to the security agent to secure such obligations provided that, a security management agreement is executed with the security agent fulfilling the requirements mentioned in the Communiqué. Relevant capital markets instruments can only be sold after completion of transfer of the assets which will be the security of such instruments to the security agent or right in rem over these assets are granted to the security agent acting to the benefit of investors.

Assets which can be subject to security

Type of assets which can be subject to security pursuant to the Communiqué are listed below provided that, as a general rule, there is no encumbrance or other restriction for the transfer of these assets or the establishment of a right in rem at the time of transfer or establishment of security. In addition to the general rule, there are also certain additional rules with regards to the location and valuation of some of these assets.

Cash (Turkish lira/convertible currencies),

- a. Assets such as the receivables of Turkish banks and financing companies arising from consumer loans and commercial loans and receivables arising from financial leasing agreements that can be included in the fund portfolio, according to the Communiqué on Asset-backed and Mortgage-backed Securities No. III-58.1,
- b. Foreign currency bonds, domestic government bonds and lease certificates (*sukuk*) issued by the Ministry of Treasury and Finance,
- c. Shares listed on Star Market of Borsa Istanbul A.Ş.,
- d. Debt instruments issued by banks excluding those to be included in banks' equity calculation,
- e. Bank letter of guarantees with first demand payment provisions,
- f. Mutual fund participation shares,
- g. Standard precious metals listed on Borsa Istanbul A.Ş.,
- h. Mortgage-backed securities and asset-backed securities,
- i. (i) Receivables, (ii) income and revenues (iii) licenses and permits whose registration is not required, (iv) rental incomes, (v) tenancy rights, (vi) vehicles, equipment, tools, construction equipment, movable equipment of the enterprise such as all kinds of electronic devices including electronic communication devices, (vii) commercial enterprise or enterprise of craftsman according to the Law on Pledges over Movable Assets in Commercial Transactions,
- j. Insured real properties,
- k. Rights in rem that can be established over the above-mentioned assets that can be accepted as security, and
- l. Other assets that can be deemed appropriate by the CMB.

Security Agent and Security Management Agreements

As per the Communiqué, the security agent must be an independent investment institution authorized to conduct custody services as per the Communiqué on Principles Regarding Investment Services and Activities and Ancillary Services No. III-37.1 and it should keep a security book for the assets which are subject to the security.

The Communiqué requires a security management agreement to be signed between the issuer and the security agent and be submitted to the CMB together with the application documents for the issuance. Mandatory components/provisions of a security management agreement such as payment and other obligations of the issuer, maturity date of payment obligations, possession of secured assets, agency and management fees, responsibility with regards to the tax and expense obligations and termination events of such agreement are also listed in the Communiqué.

General Principal of the Communiqué stipulates that the assets of the security agent and assets which are granted to the security agents as a security for the capital markets instrument are monitored separately and are segregated and ring-fenced so that they should not be confiscated, pledged, included in the bankruptcy estate or become a subject of any injunctive relief against the security agent for security agent's debts (including public debts).

Default

Failure of the issuer to pay principal, interest or similar amounts of the capital markets instruments within the period stipulated in the related prospectus/issuance certificate shall be deemed as an event of default and in addition to non-payment event, the parties are entitled to agree on other events triggering the default to liquidate the securities under the security management agreement.

In case an event of default occurs as per the prospectus/issuance certificate, the agent is authorized to sell the assets granted to them as a security of the relevant instrument and distribute the proceeds among the investors without being obliged to serve a notice or warning, grant any extensional time to the issuer or obtain permission/approval from any judicial or administrative authority.

Public Disclosure Requirements

As per the Communiqué, other than the events that may be deemed necessary by the CMB on a case-by-case basis, events listed below must be disclosed to the public by the security agent via Public Disclosure Platform:

- a. Amendments to the security management agreement,
- b. Independency of the security agent is affected,
- c. Decrease in the value of the respective assets,
- d. Breach of obligations by the issuer under the security management agreement,
- e. Repayment of secured obligations from the securities.



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