Structured finance and securitisation in Turkey: overview

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MARKET AND LEGAL REGIME

1. Please give a brief overview of the securitisation market in your jurisdiction. In particular:

- **How developed is the market and what notable transactions and new structures have emerged recently?**
- **What impact have central bank programmes (if any) had on the securitisation market in your jurisdiction?**
- **Is securitisation particularly concentrated in certain industry sectors?**

The securitisation market began developing in the second half of the 1990s in Turkey. Until the last few years, compared to many developed countries, securitisation was mostly undertaken by the banking sector, and the asset classes were limited to credit card receivables, cheque receivables, diversified payment right receivables and leasing receivables. Due to changes in the tax regulations, transactions in the banking sector have decelerated, but this is expected to change following the Capital Markets Board's (CMB) commitments to deepen capital markets through diversification of financial instruments for raising more funds through alternative and less costly methods. Therefore, Turkey offers much potential for the securitisation market.

In this respect, in November 2018 certain amendments were made to the securitisation legislation and in December 2018 an asset finance fund was established by the Turkish Development and Investment Bank (TDYB). It used mortgage-based securities of four Turkish banks as underlying assets for a securitisation transaction which collected a demand 2.43 times higher than originally planned, in an amount of TRY3.15 billion. Following the success of this first, TDYB issued its second securitised assets in March 2019, using mortgage-based securities of Turkish banks and as underlying assets for its own securitisation. Also notable was the first securitisation transaction by a Turkish non-banking institution, Volkswagen Doguş Finansman A.Ş. (51% owned by Volkswagen Financial Services AG and 49% owned by the Turkish conglomerate Dogus Group), which issued TRY5 billion of asset-backed securities backed by the company's auto loans receivables.

The development of the Turkish sukuk market, for example ijara sukuk, provided an excellent basis for securitising a pool of ijara financings originated by Turkish Islamic banks. There have been a couple of "onshore" securitisation structures in the past where Kuveyt Türk, Bank Asya and Turkiye Finans issued lease certificates (*sukuk ijara*) which attracted a great amount of attention, but so far these remain the only transactions of their kind. Turkish Islamic banks, such as Albaraka, Turkiye Finans and Kuveyt Turk, have also issued and offered sukuk to investors outside Turkey in 2019, which initially started back in 2012 with Kuveyt Turk tapping international markets with the very first sukuk issuance through a Turkish SPV.

2. Is there a specific legislative regime within which securitisations in your jurisdiction are carried out? In particular:

- **What are the main laws governing securitisations?**
- **What is the name of the regulatory authority charged with overseeing securitisation practices and participants in your jurisdiction?**

Main laws

The main laws governing securitisations are the:

- Communiqué on Asset-Backed and Mortgage-Backed Securities, Serial: III, No. 58.1, published in the *Official Gazette* dated 9 January 2014.
- Communiqué on Principles of Mortgage Finance Institutions, Serial: III, No. 60.1, published in the *Official Gazette* dated 17 July 2014.
- Communiqué on Lease Certificates, Serial: III, No. 61.1, published in the *Official Gazette* dated 7 June 2013.

Regulatory authority

The CMB is the regulatory and supervisory authority in charge of the capital markets in Turkey (*www.cmb.gov.tr*). The CMB aims to ensure the safe, fair and orderly functioning of the capital markets and to protect the rights and benefits of investors.

REASONS FOR DOING A SECURITISATION

3. What are the main reasons for doing a securitisation in your jurisdiction? How are the reasons for doing a securitisation in your jurisdiction affected by:

- **Accounting practices in your jurisdiction, such as application of the International Financial Reporting Standards (IFRS)?**
- **National or supra-national rules concerning capital adequacy?**
- **Risk retention requirements?**
- **Implementation of the Basel III framework in your jurisdiction?**

Usual reasons for securitisation

The main reasons for doing a securitisation transaction are:

- Transfer of risk.
- Having an off-balance sheet alternative to raise funds (giving balance sheet benefits).
- Accessing the capital markets without necessarily being listed.

- Providing investors with an alternative exposure to credit risk.
- Cheaper source of funding (for lower rated originators).
- Adjusting operations to reflect regulatory capital requirements (applicable to financial institutions).

Accounting practices

The Turkish Accounting Standards Board published its financial reporting standards in 2005, which are mostly identical to the International Financial Reporting Standards (IFRS). Turkish companies listed on Borsa Istanbul must prepare their financial statements according to these standards. The new Commercial Code, which entered into force on 1 July 2012, has also taken a similar approach.

Capital adequacy

The new Commercial Code provides capital thresholds that companies must sustain to avoid technical bankruptcy, although a company has a period of time to remedy any capital inadequacy.

There is no authority which regulates and supervises capital adequacy of companies in Turkey. However, the CMB issues capital adequacy regulations for capital market entities such as brokerage houses and asset management companies, and is responsible for the implementation of these rules.

To implement the rules of Basel III into Turkish law, the Banking Regulation and Supervision Agency (BRSA) (the regulatory and supervisory authority in the banking sector) has been issuing capital adequacy rules and principles for the banks in accordance with Basel III regulations and monitors their implementation. These have been in effect from 2013.

Risk retention requirements

The originator or founder must repurchase asset-backed securities/mortgage-backed securities corresponding to 5% of the nominal value of the asset-backed securities/mortgage-backed securities issued, and retain this value until maturity. If the asset-backed securities/mortgage-backed securities are issued in classes, this requirement applies either:

- When the asset-backed securities/mortgage-backed securities classes do not have a credit rating or have the same credit rating, on a *pari passu* or pro rata basis for each class.
- To the class or classes having the lowest credit rating, if there are different asset-backed securities/mortgage-backed securities classes with different credit ratings.

The CMB is authorised to vary the above ratio depending on the type of assets or on the originators or founders, but the ratio cannot exceed 10%.

If there are more originators, following changes in the legislation in November 2018, the risk retention requirement will apply to tranche issuances related to the assets transferred by each originator.

THE SPECIAL PURPOSE VEHICLE (SPV)
Establishing the SPV

4. How is an SPV established in your jurisdiction? Please explain:

- **What form does the SPV usually take and how is it set up?**
- **What is the legal status of the SPV?**
- **How the SPV is usually owned?**
- **Are there any particular regulatory requirements that apply to the SPVs?**

A securitisation governed by the Capital Markets Law and implementing communiqués on asset-backed securities requires incorporation of an asset/housing financed fund, which is subject to strict requirements of the CMB.

Asset-financed funds are defined as a separate asset pool formed by the proceeds of the asset-backed securities sold. They do not have a legal personality and must be managed according to fiduciary ownership principles. Therefore, there is no legally recognised shareholding right in a fund, but an ownership right over the issued asset-backed securities.

Asset-backed funds operate under the rules stated in the internal bye-laws of the fund, which includes:

- General terms about management of the fund.
- Custody of the assets.
- Valuation principles.
- Conditions for investing in the fund.

Funds can only be established in the specific forms defined by the CMB communiqués, by certain entities listed in the regulations (for example, banks, financial leasing and finance companies, and brokerage houses).

The fund must have a board with at least three members, internal controllers, and must enter into agreements with a service provider and custodian entity for the fund's assets. There are restrictions on the quality and qualifications of assets that can be included in the fund's portfolio. For ordinary asset-backed securities, for example, only the following assets can be included in the fund's portfolio:

- Receivables of banks and financing corporations arising from consumer loans and commercial loans.
- Receivables arising from financial leasing agreements entered into pursuant to the Law on Financial Leasing, Factoring and Financing Companies.
- Receivables arising from the sale of real estate property by the Housing Development Administration of Turkey (TOKI), based on instalments and contracts.
- Commercial receivables attached to deeds or collateral, arising from invoiced sales by joint stock companies engaged in the production of goods and provision of services to their customers, excluding financial institutions.
- Short-term deposits with a maturity of less than three months, participation accounts, reverse repo transactions, money market funds, funds for short-term debt securities and Settlement and Custody (*Takasbank*) Bank Money Market transactions, destined to invest the cash originating from the assets available in the fund portfolio.
- Assets in the reserve accounts.
- Covered bonds issued by banks and mortgage finance institutions.
- Assets, other than capital market instruments, as may be approved by the CMB.

Asset-backed securities sold through a public offering or private placement must also be registered with the CMB. While it is mandatory to prepare disclosure documents (such as an offering circular) for public offerings, it is mandatory to prepare an issue document for private placements or sale to qualified investors.

The security holders are beneficial owners of the asset portfolio managed by the service provider. Since there is no trust concept under Turkish law, the relationship between the fund and its investors can be defined as a sort of agency relationship (fiduciary ownership).

5. Is the SPV usually established in your jurisdiction or offshore? If established offshore, in what jurisdiction(s) are SPVs usually established and why? Are there any particular circumstances when it is advantageous to establish the SPV in your jurisdiction?

A CMB-governed issue requires incorporation of an onshore fund, which is subject to strict restrictions. For tax reasons, most recent securitisations have been done through offshore SPVs incorporated in the Cayman Islands or similar jurisdictions, and are not subject to Turkish legislation.

Ensuring the SPV is insolvency remote

6. What steps can be taken to make the SPV as insolvency remote as possible in your jurisdiction? In particular:

- **Has the ability to achieve insolvency remoteness been eroded to any extent in recent years?**
- **Will the courts in your jurisdiction give effect to limited recourse and non-petition clauses?**

Funds (the form of SPV that must be used in a Turkish securitisation, see *Question 4*) are insolvency remote vehicles. Due to restrictions on the quality and quantity of fund assets (*see Question 4*), the operations of the fund and the expenditures to be made, it is unlikely that a fund would become insolvent. To the best of the authors' knowledge, such insolvency remoteness has not been eroded in recent years.

In addition, it is possible for the originator to guarantee to pay the part of obligations that cannot be paid by the fund itself.

The Turkish courts give effect to the structures that are agreed between the parties unless they are against public policy rules.

Ensuring the SPV is treated separately from the originator

7. Is there a risk that the courts can treat the assets of the SPV as those of the originator if the originator becomes subject to insolvency proceedings (substantive consolidation)? If so, can this be avoided or minimised?

There is no risk that the courts will treat the assets of the SPV as those of the originator. Legal ownership of assets must pass to the fund and those assets cannot be subject to insolvency proceedings of the originator. A guarantee can be used as a tool to ensure payment of obligations that cannot be paid by the fund itself (*see Question 6*). However, if the originator cannot fulfil its obligation for the guaranteed part of the payments, the investors can attend the liquidation process of the originator for this part *pari passu* along with the other creditors.

THE SECURITIES

Issuing the securities

8. What factors will determine whether to issue the SPV's securities publicly or privately?

From the limited number of securitisations that have taken place, securities are usually issued privately to qualified investors.

9. If the securities are publicly issued:

- **Are the securities usually listed on a regulated exchange in your jurisdiction or in another jurisdiction?**
- **If in your jurisdiction, please identify the main documents required to make an application to list debt securities on the main regulated exchange in your jurisdiction. Are there any share capital requirements?**
- **If a particular exchange (domestic or foreign) is usually chosen for listing the securities, please briefly summarise the main reasons for this.**

Publicly issued securities are generally listed on foreign stock exchanges, such as in Luxembourg, London or Ireland.

If the securities are publicly issued in Turkey (asset-backed securities and mortgage-backed securities), they must also be listed on Borsa İstanbul. For the listing requirements, see *www.listingistanbul.com*.

Constituting the securities

10. If the trust concept is not recognised in your jurisdiction, what document constitutes the securities issued by the SPV and how are the rights in them held?

The SPV can only be in the form of a fund (see *Question 4*) and the asset-backed security issued by the fund to each investor represents the investor's beneficial ownership in the fund assets.

TRANSFERRING THE RECEIVABLES

Classes of receivables

11. What classes of receivables are usually securitised in your jurisdiction? Are there any new asset classes to have emerged recently or that are expected to emerge in the foreseeable future?

Types of assets and receivables that can be subject to securitisation include:

- Consumer loans.
- Commercial loans.
- Receivables arising from financial and operational leasing agreements.
- Receivables arising from factoring transactions.
- Receivables arising from export transactions.
- Receivables arising from loans that are provided to small and medium-sized enterprises (SMEs).
- Receivables arising from real estate sales contracts.
- Receivables arising from real estate sales by the Housing Development Administration (TOKI).
- Substitute assets.
- Covered bonds issued by banks and mortgage finance institutions.
- Other assets whose quality is to be determined by the CMB.

In the last couple of years, most Turkish retail banks have securitised their diversified payment rights through offshore SPVs, such as Akbank through ARTS Ltd, a company established under the laws of Jersey, which issued five tranches with five different international banks in an amount of USD795 million, as part of its diversified payment rights securitisation programme in April 2018. Such a deal structure is used extensively by major Turkish banks to access more hard currency funding, and these deals have increasingly relied on demand from institutions such as the European Bank for Reconstruction and Development, the International Finance Corporation and the European Investment Bank.

Transferring receivables from the originator to the SPV

12. How are receivables usually transferred from the originator to the SPV? Is perfection of the transfer subject to giving notice of sale to the obligor or subject to any other steps?

The originator, as the owner of the receivables, creates a pool of the receivables, which is then transferred to the fund through a written assignment agreement (so that it constitutes a true sale (*see Question 16*)). However, to perfect the transfer of mortgages, commercial enterprise pledges and pledges on motor vehicles, the transfers must be registered at the land, commercial enterprise and motor vehicle registries.

A written assignment agreement is not required for covered bonds to be included in the fund, but these assets must be in electronic form and be transferred to the fund's account.

Although notification to the debtors is not required to perfect the assignment, it is recommended that the agreement include a provision obliging the originator to notify its debtor(s) of the assignment and to request an acknowledgment of no prior ranking assignments or counterclaims from the debtor(s). The debtor cannot then raise a good faith claim for the payments directly to the originator after they have received the assignment notice. In other words, the debtor, following receipt of such notice, is legally barred from discharging its payment obligations to the originator. Serving a notification and requesting an acknowledgment of no prior ranking assignments or counterclaims from the debtor of the relevant receivable should also assure the SPV that the receivables were not previously assigned or subject to counterclaims.

13. Are there any types of receivables that it is not possible or not practical to securitise in your jurisdiction (for example, future receivables)?

Generally, receivables are freely transferable under Turkish law, except for certain health care/social security-related receivables. Additionally, it is not possible to securitise future receivables that are not identifiable, and it is not recommended to securitise receivables that are not:

- Homogeneous.
- Collected in instalments.
- Providing a constant cash flow.

14. How is any security attached to the receivables transferred to the SPV? What are the perfection requirements?

In principle, securities attached to the receivables automatically pass to the SPV with the assignment agreement. However, perfection of mortgages, commercial enterprise pledges and pledges on motor vehicles requires registration at the land, commercial enterprise and motor vehicle registries, respectively.

Prohibitions or restrictions on transfer

15. Are there any prohibitions or restrictions on transferring the receivables, for example, in relation to consumer data?

There is no prohibition on the transfer of receivables as long as all the requirements are met (for example, a written agreement and perfection requirements).

Contractual restrictions

Depending on the mutual agreement between the parties, certain contractual restrictions may exist. Therefore, due diligence on the underlying contract is important.

Legislative restrictions

Under the Data Protection Law No. 6698, the transfer of personal data requires, in principle, the prior approval of the data subject (that is, the owner of the personal data/debtor), unless a legal exemption applies. The transfer of debtors' personal data that is strictly required to establish or claim a debt is not subject to the debtors' prior consent. Therefore, there is no need to obtain the prior approval of the debtors for an assignment/transfer in a securitisation transaction if the transfer is limited to personal data that is strictly necessary to effect the transfer of loans and exercise recourses against the debtors.

If the debtors' personal data is transferred outside Turkey within the scope of a securitisation transaction, the principles applicable to international data transfers under the Data Protection Law No. 6689 must be complied with. As the transfer of the debtors' personal data falls under the scope of an exemption from the requirement to obtain explicit consent, the applicability of any further conditions to the transfer depends on whether there is an adequate level of protection of personal data in the country to which the personal data is transferred. The Data Protection Board has not yet issued a list of countries recognised as providing an adequate level of protection. If the destination country has not been recognised as providing an adequate level of protection, the data exporter in Turkey and the data importer in the destination country or countries must undertake in writing to provide an adequate level of protection, and the transfer is subject to the prior approval of the Data Protection Board.

Avoiding the transfer being re-characterised

16. Is there a risk that a transfer of title to the receivables will be re-characterised as a secured loan? If so:

- **Can this risk be avoided or minimised?**
- **Are true sale legal opinions typically delivered in your jurisdiction or does it depend on the asset type and/or provenance of the securitised asset?**

There is no risk that a transfer of title to the receivables (that is, a true sale) will be re-characterised as a secured loan (*see Question 12*) as long as the parties' intention is the sale of the receivables without recourse to the seller. There is no legal requirement to deliver a true sale legal opinion, but the CMB has the authority to request such an opinion during the application process.

Ensuring the transfer cannot be unwound if the originator becomes insolvent

17. Can the originator (or a liquidator or other insolvency officer of the originator) unwind the transaction at a later date? If yes, on what grounds can this be done and what

is the timescale for doing so? Can this risk be avoided or minimised?

Transactions cannot be unwound at a later date. The Execution and Bankruptcy Law has specific provisions regulating the procedure for unwinding transactions.

The following transactions are voidable if made within one year before the declaration of bankruptcy of an insolvent party:

- The creation by the insolvent party of an encumbrance over its assets to secure an existing debt where that person had not previously promised (or is under no contractual obligation) to execute such an encumbrance.
- Any payments made by the insolvent party other than with money or ordinary payment methods.
- Prepayment of debts that are not yet due.
- Registrations made with the title deed registry to strengthen contractual rights.

The court will not declare such arrangements void if third parties that benefit from the security arrangements prove that they were not aware of the financial condition of the insolvent party.

Additionally, transactions that can be invalidated include those made for no consideration (including donations) or for a consideration that is significantly less than the actual value of the transaction. The clawback period for such action is two years (prior to the insolvency).

Disposals made intentionally to impair the interest of creditors can be challenged by the creditors within five years after the date of such disposals.

Establishing the applicable law

18. Are choice of law clauses in contracts usually recognised and enforced in your jurisdiction? If yes, is a particular law usually chosen to govern the transaction documents? Are there any circumstances when local law will override a choice of law?

In principle, the parties to a contract are free to determine the governing law of the contract. Generally, English law is chosen for cross-border security issuances. A choice of English law to govern the transaction documents is valid under Turkish law and the courts of Turkey will recognise and give effect to English law as the governing law of the transaction documents, except where this would clearly be against Turkish public policy rules.

SECURITY AND RISK

Creating security

19. Please briefly list the main types of security that can be taken over the various assets of the SPV in your jurisdiction, and the requirements to perfect such security.

Movable assets

Security taken over movable assets must be by means of a pledge. Pledges can take the following forms, each requiring different methods of perfection:

- **Share pledge.** To perfect the pledge:
  - if there is a physical share certificate, it must be delivered to the lender (in addition to the endorsement in the case of registered-form share certificates);
  - if there is no physical certificate, the pledge must be registered in the share ledger.
- **Asset pledge.** To perfect the pledge, the asset must be delivered to the lender.
- **Commercial enterprise pledge.** To perfect the pledge, it must be registered with the Ministry of Commerce on the online system for commercial enterprise pledges (TARES). The ranking among commercial enterprise pledge holders is determined according to the date of registration with the trade registry.
- **Pledge over receivables.** To perfect a pledge over receivables, a written contract is required to establish the pledge (and the debtor must be notified accordingly to avoid debtors discharging payment obligations to the originator).
- **Pledge over motor vehicles.** To perfect a pledge over a motor vehicle, a registration must be made at the motor vehicle registry for the benefit of the lender.

For asset/housing finance funds, the fund is party to these perfection processes, for example by:

- Receiving the assets from the original lender.
- Being annotated in the motor vehicles registry.
- Executing a contract with the original lender for pledges on the receivables.
- Notifying the debtor accordingly.

Real estate

A mortgage over real estate can take the form of either:

- **A fixed mortgage.** Under a fixed mortgage, the total indebtedness secured by the real estate is registered with the Land Registry Office.
- **A maximum amount mortgage.** Under a maximum amount mortgage, the maximum amount of security provided by the relevant real estate is specified, but the precise amount of indebtedness is not revealed.

A piece of real estate can be mortgaged more than once. Mortgages can be registered in a ranking order such as first, second, and third. The first-registered mortgage has priority over later mortgages.

20. How is the security granted by the SPV held for the investors? If the trust concept is recognised, are there any particular requirements for setting up a trust (for example, the security trustee providing some form of consideration)? Are foreign trusts recognised in your jurisdiction?

Asset-backed securities issued by funds are held directly by the investors. This relationship is governed by rules of fiduciary ownership (*see Question 4*).

The trust concept is not legally defined under Turkish law. However, it is widely accepted that trust provisions in agreements are enforceable under the general provisions of law. However, so far this has not been tested in the Turkish courts.

Credit enhancement

21. What methods of credit enhancement are commonly used in your jurisdiction? Are there any variations or specific

issues that apply to the credit enhancement techniques set out in the Guide to a standard securitisation (Guide)?

A Turkish law governed issuance must fully comply with the CMB's strict requirements that increase the creditworthiness of the transaction (*see Question 4*). The regulations also define some credit enhancement mechanisms that originators can apply. These mechanisms include the following:

- The fund can enter into an insurance, guarantee, letter of guarantee or other similar types of security arrangements with the originator or another third party.
- The fund can diversify the securities with different rights and classes.
- The fund's assets in excess of its liabilities can be transferred to reserve accounts (known as creating retained spread).
- Any other mechanism approved by the CMB.

Risk management and liquidity support

22. What methods of liquidity support or cash reservation are commonly used in your jurisdiction? Are there any variations or specific issues that apply to the provision of liquidity support as set out in the Guide?

The only methods defined in the regulations are securing loans and creating reserve funds to manage periodic payments. These methods were used in the recent limited number of securitisations. Loans can be secured from anyone, including the originator, as long as the terms of the loan are determined on an arm's-length basis.

CASH FLOW IN THE STRUCTURE

Distribution of funds

23. Please explain any variations to the cash flow index accompanying Diagram 9 of the Guide that apply in your jurisdiction. In particular, will the courts in your jurisdiction give effect to "flip clauses" (that is, clauses that allow for termination payments to swap counterparties who are in default under the swap agreement, to be paid further down the cash flow waterfall than would otherwise have been the case)?

There is no swap counterparty or liquid support provider in the structures defined in the CMB's regulations although these elements can be used in practice.

The parties listed as taking part in a securitisation under the regulation are the:

- Originator (obligor).
- Fund (with its board manager and internal controller).
- Security holders.
- Service provider.
- Custodian.
- Credit enhancement provider.
- Banks, which are also natural participants due to their role as payment vehicles.

All the fund expenditures must be made on an arm's-length basis. The list of allowed expenditures is as follows:

- Compulsory registration and announcement fees.
- Fees to be paid to the fund employees and to the providers of legal, accounting, custody, settlement and other management services.
- Servicing fees to be paid to the service provider.
- Fees paid to audit firms.
- Fees paid to rating agencies.
- Fees, commissions and other payments paid to credit enhancement providers.
- Underwriting and brokerage fees and commissions.
- Accruals to reserve accounts.
- Legal fees for the issuance.
- Tax charges of the fund (*see Question 26*).
- Expenses associated with cash management loans.
- Other expenses that are approved by the CMB.

(*CMB regulations.*)

There must be information in the offer documents presented to investors about what will happen to any remaining assets of the fund after all of the fund obligations are fulfilled.

To the best of the authors' knowledge, enforceability of "flip clauses" under the swap agreements have not been tested before the Turkish courts.

Profit extraction

24. What methods of profit extraction are commonly used in your jurisdiction? Are there any variations or specific issues that apply to the profit extraction techniques set out in the Guide?

Expenses paid to the originator for credit enhancement guarantees and similar methods and service fees can be used as profit extraction tools.

THE ROLE OF THE RATING AGENCIES

25. What is the sovereign rating of your jurisdiction? What factors impact on this and are there any specific factors in your jurisdiction that affect the rating of the securities issued by the SPV (for example, legal certainty or political issues)? How are such risks usually managed?

The recent sovereign ratings are:

- **Moody's.** Long-term, foreign currency: Ba1; local currency: Ba1.
- **Fitch.** Long-term, foreign currency: BB+; local currency: BBB.

The ratings of SPVs are mostly linked to the asset quality. The rating of the originator is also another factor that has an impact on the SPV's rating.

TAX ISSUES

26. What tax issues arise in securitisations in your jurisdiction? In particular:

- **What transfer taxes may apply to the transfer of the receivables? Please give the applicable tax rates and explain how transfer taxes are usually dealt with.**
- **Is withholding tax payable in certain circumstances? Please give the applicable tax rates and explain how withholding taxes are usually dealt with.**

- **Are there any other tax issues that apply to securitisations in your jurisdiction?**
- **Does your jurisdiction's government have an inter-governmental agreement in place with the US in relation to FATCA compliance, and will this benefit locally-domiciled SPVs?**

For tax purposes, offshore securitisation structures are treated as lending arrangements and SPVs are defined as financing institutions. Therefore, the following tax treatment applies:

- Given the regulation for a special tax regime, withholding tax is, in principle, applicable at the level of the Turkish resident seller that will act in a tax agent capacity. However, effective from 21 March 2019, the reduced rate of applicable withholding tax to be taken into consideration relating to interest to be paid by the issuer to the investors is 0%. Therefore, no income tax will be payable through withholding in this particular respect.
- VAT and stamp duty exemptions apply (that is, VAT and stamp duty never apply on a securitisation). According to a Ministry of Finance advance opinion published recently on its website, stamp duty should apply to offshore securitisation documentation. Advance opinion letters are not binding on taxpayers, but they are on the tax authorities. This means that taxpayers are not obliged to comply and settle or litigate the matter in the case of a dispute, whereas the tax authorities would issue the same opinion for similar transactions unless there is a change in the legislation.
- The application of the resource utilisations support fund levy depends on the denomination currency and on the average maturity. The rate is 3%. The base amount is interest on Turkish lira loans and principal amount for foreign currency loans. Turkish intermediary banks act as tax agents and the levy is usually a borrower's liability.

Onshore securitisations are generally made through funds that are technically considered taxable fiscal units (that is, taxable entities) in Turkey. However, income of the concerned funds is exempt from corporate income taxation in Turkey.

Onshore securitisations are generally subject to tax (that is, corporate tax on any gains, VAT and stamp duty). However, exemptions apply for some types of securitisations, such as *sukuk* issuances under sale and leaseback models and mortgage-backed securities.

An agreement between Turkey and the US to improve international tax compliance through enhanced exchange of information was signed on 29 July 2015.

RECENT DEVELOPMENTS AFFECTING SECURITISATIONS

27. Please give brief details of any legal developments in your jurisdiction (arising from case law, statute or otherwise) that have had, or are likely to have, a significant impact on securitisation practices, structures or participants.

The authors are not aware of any recent material development affecting securitisations in Turkey.

OTHER SECURITISATION STRUCTURES

28. What other structures, including synthetic securitisations, are sometimes used in your jurisdiction?

Generally, single issue structures are most commonly used. Additionally, there is a Turkish legal framework for securitisation and associated forms of structured finance, including mortgage-covered bonds and asset-covered bonds. The Turkish securities regulator, the CMB, issued on 21 January 2014 the Communiqué on Covered Bonds (Series III-59.1) (as amended on 5 September 2014 and 21 October 2015), which replaced the two communiqués on mortgage-covered bonds and asset-covered bonds, creating a single framework for both debt securities.

Turkish banks with large mortgage lending portfolios are considering issuing covered bonds. For example, Ziraat Bank issued covered bonds abroad in an amount of USD2.5 million in November 2018, and Vakıfbank issued covered bonds for its mortgaged loans in an amount of TRY396 million with an eight-year maturity in January 2019. Most Turkish banks are in good shape to come to the market, despite high establishment costs and limited rating increase.

Covered bonds can be issued by housing finance institutions (*konut finansmanı kuruluşları*) and mortgage finance institutions (*ipotek finanmanı kuruluşları*). Housing finance institutions are banks authorised to extend loans (or provide financial leasing) to consumers. Financial leasing companies and finance corporations are authorised by the Turkish banking authority to perform housing finance activities.

Mortgage finance institutions are defined as joint stock companies established within the scope of housing finance and asset finance for the purpose of acquiring and transferring CMB-qualified assets, managing such assets or taking such assets as collateral and conducting other activities approved by the CMB.

REFORM

29. Please summarise any reform proposals and state whether they are likely to come into force and, if so, when. For example, what structuring trends do you foresee and will they be driven mainly by regulatory changes, risk management, new credit rating methodology, economic necessity, tax or other factors?

There is no draft legislation in the area of securitisation, and there is no expected change in securitisation practice in the near future.

30. Has the nature and extent of global, regional and domestic reforms had a positive or negative affect on revitalising securitisation in your jurisdiction?

There are no regional or domestic reforms that have affected the market.

Practical Law **Contributor profiles**

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Experience

- Representing underwriters and issuers in initial public offerings, debt offerings, Islamic finance transactions and private placements.
- Acting in regulatory capital issuances under Basel III, and representing clients in structured finance transactions, including but not limited to securitisations.
- Significant experience in listed company mergers and acquisitions, in addition to various high-ticket cross-border mergers and acquisitions in various sectors, including financial institutions and retail, acting for private equity firms and strategic investors.
- Worked as a foreign associate at a US firm in California, acting for bio-tech and high-tech multinational clients.

Professional associations/memberships. American Bar Association; International Bar Association.

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Professional qualifications. Istanbul Bar Association, 1998; Ankara Bar Association (licences: capital market activities (advanced level), derivative instruments, real estate appraiser, credit rating specialist, corporate governance rating specialist and independent auditing in capital markets)

Areas of practice. Capital markets; banking and finance; public mergers and acquisitions.

Non-professional qualifications. Ankara University, School of Law; University of California, School of Law, LL.M., Davis, CA

Experience

- Acting for issuers and underwriters in equity, debt and equity-linked instruments in international public offerings, Eurobond offerings and private placements.
- Worked for almost 15 years as legal counsel at the Capital Markets Board of Turkey.