

## NOVELTIES IN THE COMMUNIQUE ON DEBTS INSTRUMENTS

The Communiqué Amending the Communiqué on Debt Instruments (II.31.1) (the “**Communiqué**”) was published in the Official Gazette numbered 29983 and dated 18 February 2017 and entered immediately into force as of its publication date (the “**Amending Communiqué**”).

Due to the emerging needs in the capital markets, the Amending Communiqué has aimed to provide a more flexible atmosphere for the issuers. Among other things, the Amending Communiqué has mainly introduced changes in the following areas: definition of bills, principles for the issuance of debt instruments, overseas issuances, right to buy-back, competent body resolutions, issuance ceiling calculation method and board fees.

This Monthly Update aims to highlight the main novelties introduced with the Amending Communiqué with respect to the issuance of debt instruments.

### *Major Changes Introduced by the Amending Communiqué*

#### *Definition of Bills*

Certain definitions under the Communiqué are amended. Accordingly, the “Bills” is re-defined as “Financing Bills”. Additionally with the Amending Communiqué, financing bills and bonds are defined as capital market instruments, which enable the issuers to make re-payments until the maturity date in installments rather than a lump-sum payment on the maturity date which was foreseen in the previous version of the Communiqué.

#### *Issuance of Debt Securities*

According to the Amending Communiqué, debt instrument may either be issued through or without public offering in the local market or at overseas. With the Amending Communiqué the domestic and abroad markets are separated more clearly and the issuance in local market is distinguished as the sale (i) via public offering, (ii) to qualified investors; or (iii) via private placement in case a minimum nominal value is reached. Accordingly, sale via private placement in local market can only be made for the debt instruments with a minimum nominal value of TL 100,000 per unit.

#### *Overseas Issuances*

With the Amending Communiqué, the legislator has aimed to simplify the overseas issuance process by removing certain procedures for overseas issuances. Accordingly, previously in the Communiqué, the issuers were obliged to make an additional application to the Capital Markets Board (the “**Board**”) and obtain the Board’s approval for each tranche within the issuance limit. This obligation of the issuers has been abolished. In that respect, the issuers are no longer be obliged to obtain the approval of the Board and are able to issue debt instruments at abroad in tranches only by sending to the Board certain documentation containing their e-signatures before the sale of each tranche.

Another flexibility introduced by the Amending Communiqué for the overseas issuance is regarding the registration of the debt instruments to be issued abroad with the Central Registry Agency. In that respect, the Amending Communiqué has abolished the obligation regarding the registration of debt instruments to be issued abroad with the Central Registry Agency.

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Accordingly, the issuers have become obliged to provide information relating to issuance amount, date of issuance, ISIN code, maturity commencement date, maturity, interest rate, custodian, currency of issuance, and country of issuance to the Central Registry Agency within three business days following the date of issue.

### **Right to Buy-Back**

Formerly, the right to buy-back debt instruments was only allowed for banks. With the novelties brought by the Amending Communiqué all issuers are allowed to buy-back the issued debt instruments. Furthermore, re-purchased debt instruments may be sold, retained or cancelled before its maturity date by execution of required transactions before the Central Registry Agency. The information regarding buy-back and re-sale of debt instruments should be disclosed in the website of the issuer. The issuers shall be responsible for the fair execution of buy-back transactions stipulated under the Communiqué.

In overseas issuances, notwithstanding the laws of the country where the issuance will take place, the issuers and investors are granted with the discretion to decide on buy-backs.

### **Resolution of Competent Bodies**

With the Amending Communiqué, the general assembly is granted with the right to authorize the board of directors to conduct transactions with respect to debt issuance. Accordingly, the board resolution shall contain (i) the issuance limit; and (ii) method of sale (i.e. overseas sale, domestic sale via public offering, domestic sale without public offering). In case of issuance of exchangeable bonds, convertible bonds or other type of special debt instruments, the type of the debt instrument should be expressly specified in the competent body's resolution. Otherwise, the application will be deemed to have been made for the issuance of bonds or financial bills by the Board.

### **Calculation Method for the Issuance Limit**

The financials to be the base for the calculation of issuance limit is amended through the Amending Communiqué. Accordingly, the following financials shall be taken into account while calculating the issuance limit:

<b>Date of Filing</b>	<b>Financials to be taken into Account</b>
1 January-15 March	Latest annual financial statements, or if not available, semi-annual financial statements pertaining to the previous year
16 March-15 August	Latest annual financial statements
16 August-31 December	Semi-annual financial statements pertaining to the current year

Accordingly, upon request of the issuers, the fully or partially audited financial statements pertaining to the preceding year may be taken into account during the calculation of the issuance limit. In the event that the financial statements indicate loss in equities and financial statements pertaining to the preceding year are already prepared by the issuer, the financial statements pertaining to the preceding year shall be automatically taken into account by the Board even if those financial statements are not audited.

### **Board Fees**

With the Amending Communiqué, the board fees subject to issuances having maturity of more than 730 days have been decreased to 0.0015% of the issuance amount. Additionally, the fee exemption of 75% shall no longer be applicable for capital markets institutions.