

What is new for the debt capital markets in Turkey?

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On February 25, 2020, a new law amended the Turkish banking and debt capital markets legislation, introducing new concepts and new measures. The new amendments to the Capital Markets Law (the “**CML**”), introduced the regulatory background for secured bond issuances, whereby a security agent can act on behalf of the bondholders, as well as the meeting of the bondholders. In addition, it is also now possible to issue project backed securities, through a project fund, which seems very timely in light of the ambitious infrastructure projects that Turkey is getting ready to finance.

Security Agent

While the security agent concept is widely used in syndicated loans in the Turkish market, accompanied by the yet untested parallel debt concept, the concept is quite new for the Turkish debt capital markets. From now on, a security agent can be appointed in a secured bond to supervise the assets on which security interests are granted. The security agent will have specific duties to preserve the interests of the bondholders, which include the most-awaited ability to enforce security in the name of the bondholders. Previously, the lack of specific regulation on security agents / trustees created uncertainty as to the enforceability of the security interests and the bondholders were facing the difficulties of the Turkish insolvency regime, resulting in time-consuming liquidation procedures. The amendments to the CML aim to introduce a security agency / trustee concept that replicates the international practice.

The Capital Markets Board of Turkey (the “**CMB**”) retains the right to determine what types of capital market instruments can be secured, as well as the type of assets that can be utilized as security. We would expect the bonds to be classified as capital market instruments that can be secured.

Such security can be established by (i) transferring the ownership of the assets to the security agent; or (ii) establishing in rem rights such as easement or pledge.

The CML requires the security agent to be selected from amongst the investment firms (*yatırım kuruluşu*) that hold a portfolio custodian license (*genel saklama yetkisi*). Therefore, only a limited number of institutions should be entitled to act as security agent. The CML also requires a written security management agreement to be executed between the security agent and the issuer, covering topics such as the management of the assets granted as security, the enforcement of the security, distribution of the enforcement proceeds to the investors, return of the assets in excess to the issuer and the protection of the investors’ rights in general.

To ensure that the security agent is able to fulfill its duties duly, the security assets are to be monitored on bankruptcy remote, segregated accounts. Therefore, the security assets are ring-fenced from the risks related to the insolvency or bankruptcy of the security agent.

A secondary legislation is expected to be issued by the CMB regulating, among other topics, the assets that can be granted as security, record keeping and requirements to be appointed as a security agent.

Project Finance Fund and Project Backed Securities

The amended CML pursues an ambitious target which is the financing of long-term projects such as infrastructure, energy, industry or technology investments through the issuance of project backed securities (“**PBS**”) by project finance funds (“**PF Funds**”). Under the amended CML, a PF fund is the entity benefiting from a legal personality, to which the project revenues and other project related rights are transferred through true sale.

The PF Funds comprise of cash and/or other assets derived from project backed securities and can be established by the licensed investment institutions (i.e., banks and brokerage houses authorized to conduct capital markets activities by the CMB) to manage the portfolio backed by the project revenues and rights, in the name of the holders of the PBS . Such portfolio is segregated from the assets of the investment institution establishing the fund, and is therefore ring-fenced and bankruptcy remote.

Meeting of the Noteholders

The amended CML has re-introduced a long time forgotten concept, which is bondholder meetings, by adapting it to the needs of the bondholders today. Holders of outstanding debt instruments of the issuer may convene bondholders meetings for (i) the aggregate outstanding debt instruments, or (ii) a specific issuance or tranche issuance. Rules of calling a bondholder meeting must be set forth under the terms and conditions of the relevant debt instrument and such rules are required be published in the domestic prospectus or issuance certificate relating to the issuance.

Unless a higher quorum is required by the CMB or the terms and conditions of the relevant debt instrument, the meeting quorum is constituted by half of the aggregate nominal value of (i) all outstanding debt instruments (if a meeting for all outstanding debt instruments is sought to be convened); or (ii) the specific issuance or relevant tranche issuance.

The amended CML also sets forth that in case an event of default occurs in the repayment of principal or interest of a specific debt instrument and the bondholders resolve to revise the terms and conditions of such instrument, all enforcement proceedings including interim reliefs will be suspended and statutory prescription periods will not run. The legal proceedings will be terminated once all outstanding liabilities arising from the debt instrument are satisfied.

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