



THE COMMUNIQUÉ ON ISSUANCE OF SECURED CAPITAL MARKET INSTRUMENTS HAS BEEN INTRODUCED BY THE CAPITAL MARKETS BOARD

The Communiqué on the Procedures and Principles Regarding the Issuance of Secured Capital Market Instruments (“**Communiqué**”) numbered I-31/B.1 has been introduced by the Capital Markets Board (“**Board**”) and Communiqué entered into force through its publication in the Official Gazette dated 26 January 2022 and numbered 31713.

EXECUTIVE SUMMARY

Principal regulations stipulated under the Communiqué may be summarized as follows:

- (i) *The principles regarding the security agent which has been regulated with article 31/B of the Capital Markets Law numbered 6362 has been introduced with the Communiqué.*
- (ii) *Debt instruments such as bonds, convertible bonds, exchangeable bonds and financing bonds which are defined under Communiqué on Debt Securities numbered VII-128.8 may be secured by assets in order to ensure the performance of the obligations arising from these debt instruments in due course.*
- (iii) *It has been stipulated that assets which may be subject to collateral as per the Communiqué may be transferred to the security agent or limited rights in rem may be established on these assets in favor of security agent.*
- (iv) *Principles regarding transfer of assets or establishing limited rights in rem on the assets and other duties of the security agent will be determined under the security management agreement. Under the security management agreement, issues such as assets may be subject to collateral and principles regarding performance of the payment obligations arising from the capital market instruments will be stipulated.*

- (v) *Creditors of the security agent may commence executing proceedings such as seizure against the security agent in order to collect their receivables. In order to ensure the receivables of the investors and avoid the assets which are subjected to the collateral will be affected due to such proceedings; assets cannot be seized, pledged or be subjected to preliminary injunction and provisional attachment for the debts of the security agent including the public debts.*
- (vi) *In case of default of the issuer, the security agent is authorized to make payments to investors by converting the assets subject to the security into cash without the need for extension or notice.*

INNOVATIONS BROUGHT UNDER THE COMMUNIQUÉ

The provisions regarding significant innovations in the Communiqué are as follows.

A. General View of Issuance of the Secured Capital Market Instruments

The capital market instruments as per Communiqué may be secured by the issuer and also Board is entitled require to secure capital market instruments in terms of the type of issuer or its financial status, amount of the issuance and/or the type of capital market instrument planned to be issued.

It is required to obtain an issue ceiling from the Board for issuance of the capital market instruments with security.

Concerning the secured issuance under the Communiqué, the ownership of the assets subject to security shall be transferred to security agent or limited real rights on the aforementioned assets in favor of the security agent shall be established in order to ensure the fulfillment of the issuer's obligations arising from the relevant capital market instruments.

The sale of the secured capital market instrument shall not be commenced before the assets subject to the security is transferred to the security agent or the the limited real rights on the assests are established. Transactions are required to be completed in one business day prior to the beginning of the sale at the latest.

B. Assets Subject to Security

Article 5 of the Communiqué with headline "*Assets Subject to Security*" regulates which assets may be subject to security and the qualifications which assets should have. The following assets may be subject to security under the scope of the Communiqué and Board is entitled to determine in which rate the assets may be subject to security and also entitled to request reassessment of the assets.

- (i) Cash (Turkish Lira/convertible foreign exchange),
- (ii) Assets stated under Article 15/1 of the Communiqué On Asset-Backed And Mortgage-Backed Securities,
- (iii) Foreign currency denominated bonds issued by the Ministry of Treasury and Finance, government domestic debt security, lease certificates issued by Hazine ve Maliye Bakanlığı Varlık Kiralama Anonim Şirketi,
- (iv) Shares trading in BIST Stars Market,
- (v) Debt instruments issued by banks, excluding the ones included in the calculation of equity,
- (vi) Bank letters of guarantee which includes instant payment commitment at the first request, without having any restrictions,

- (vii) Mutual fund participation shares,
- (viii) Standard precious metals traded on the stock exchange,
- (ix) Mortgage-backed securities and asset-backed securities,
- (x) Assets in clauses (a), (e), (f), (g), (ğ), (h) and (I) of article 5/1 of the Law on Pledge of Movable in Commercial Transactions provided that it is insured if it complies with its qualification,
- (xi) Immovable properties specified in article 704 of the law numbered 4721 provided that they are insured,
- (xii) Limited real rights that may be established on assets that can be accepted as security listed herein.

As of the date of the transfer of ownership of aforementioned assets or establishment of limited real rights on the assets:

- (i) the assets subject to security shall be within the borders of the Republic of Turkey, in the event that the asset subject to security is a receivable, the debtor of the receivable shall be a person residing in Turkey, and
- (ii) there shall be no obligations restricting the transfer of the assets or the establishment of limited real rights on the assets.

Periodic incomes of the assets subject to security shall also be added to the value of asset subject to security, unless otherwise agreed in the security management agreement.

Creditors of the security agent may commence executing proceedings such as seizure against the security agent in order to collect their receivables. In order to ensuring the receivables of the investors and avoid the assets which are subjected to the collateral will be affected due to such proceedings, it has been stipulated that **assets are separate from the assets of the security agent** and monitored seperately. In this regard, assets cannot be seized, pledged or be subjected to preliminary injunction and provisional attachment for the debts of the security agent including the public debts.

The possession of the assets subject to security may remain with the issuer or security agent, or it may be left to a third party. The party which will have the possession and the way of operation/use of these assets will be determined by the security management agreement.

In the event that the assets subject to security leave the property of the security agent by a court decision or disappear, it is obligatory to add new assets and/or rights of the same value within **3 business days**.

C. Security Management Agreement

The issuer and the security agent shall execute a written **security management agreement** containing the minimum elements determined by the Communiqué.

Under security management agreement the issuer undertakes to carry out the necessary transactions for the transfer or establishment of the rights; the security agent undertakes to manage these assets and fulfill its duties towards investors by converting them into cash when its necessary

The security management agreement **terminates** upon the redemption of the capital market instruments or the investors have been paid by converting securities into cash.

Additionally, if it is understood that the security agent does not manage the assets subject to security as stipulated in the Communiqué and security management agreement, security agent must comply with Communiqué and security management agreement within 5 business days following the notice made by the issuer. Otherwise, the agreement shall be **terminated by the issuer within 3 business days** as of the end of 5 day period.

D. Default and Consequences of Default

Failure to fulfil the payments of capital, interest and similar payments of the capital market instruments within the time stipulated under prospectus or issuance document **shall be deemed as an event of default**.

Within the scope of the security management agreement, other situations that the receivables from the security will also be covered may also be determined, and these situations shall have the same result as default.

A different structure has been adopted from the general principles for the liquidation of the securities in order to ensure that the security agent promptly convert the assets subject to security into cash in the event of default. In this regard, in the event of default, the security agent may sell the assets which are subject to security and allocate price among the investors **without the obligation to fulfil any prerequisite** such as giving any notice or warning, granting a delay, obtaining permission or approval from the judicial or administrative authority, converting the security into cash by auction or any other way.

The portion of the assets subject to security shall be converted into cash in an amount sufficient to meet payment obligations of the issuer. It has been determined that in the event that the amount obtained by converting the assets subject to security into cash is not sufficient to meet the receivables of all investors, the security agent shall make a proportional payment to investors.

E. Security Report

Security agent should prepare a security report which contains information regarding issuance, event of default, if any and assets subject to security in the cases stated below:

- (i) Every six months following the issuance of the capital market instrument,
- (ii) In the event of default or other situations which will be deemed as a default,
- (iii) In case the assets are converted into cash and,
- (iv) Other cases requested by the Board.

F. Principles Regarding the Security Agent

Security agents are investment institutions which are approved and announced by the Board and has general custody authority.

The security agent is authorized and responsible for liquidation of securities into cash when it comes to meet the receivables from the security, the distribution of the sale amount of assets subject to security among investors, the return of the assets subject to security to the security giver in case of the redemption of the capital market instrument, carrying out all kinds of works and transactions including the transfer of ownership and establishment or removal of real rights (*including the*

transactions required to be made before relevant registries) and the protection of rights and interests of the investors.

Also limitations have been introduced regarding the relationship between the security agent and the issuer. Accordingly, the security agent shall not be a party related to the issuer and the security agent or the shareholder who has the management control or the members of the board of directors and the general manager shall not provide a security in favor of the issuer (*or vice versa*).

G. Public Disclosure

The security agent is obliged to make an public statement in the events which are stipulated under the Communiqué, such as amendments on security management agreement or in the event of default.

This newsletter has been prepared as of January 29, 2022 for informative purposes regarding the Communiqué on the Procedures and Principles Regarding the Secured Issuance of Capital Markets Instruments which has entered into force by being published in the Official Gazette dated February 2, 2022 and numbered 31713.

Our assessments in this newsletter do not constitute legal recommendation or legal opinion and Aksu Çalışkan Beygo Attorney Partnership may not be hold responsible depending on these assessments. It is recommended to obtain legal opinion for your inquiries within the scope of this memorandum.

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