

GEDİK & ERAKSOY

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Regulation of Mortgage Covered Bonds under the New Communiqué on Covered Bonds

The Capital Markets Board of Turkey (CMB) released the Communiqué on Covered Bonds (Series: III, No: 59.1) (Communiqué) on 21 January 2014. The Communiqué introduces a single piece of legislation governing both mortgage covered bonds (ITMK) and asset covered bonds (VTMK) and has repealed the Communiqué Serial III No. 33 on the Principles Regarding Mortgage Covered Securities (ITMK) (published in the Official Gazette dated 4 August 2007 and numbered 26603) and the Communiqué Serial III No. 38 on the Principles Regarding Asset Covered Securities (VTMK) (published in the Official Gazette dated 12 September 2009 and numbered 27347).

Eligible Issuers

Under the former ITMK communiqué, mortgage covered bonds (ITMK) could be issued only by banks and mortgage financing corporations (*ipotek finansman kurulusu*). In addition to these entities, the Communiqué now allows financial lease companies (*finansal kiralama sirketi*), financing companies (*finansman sirketi*) and real estate investment trusts (*gayrimenkul yatırım ortaklıkları*) to issue mortgage covered bonds.

New Cover Assets

The Communiqué introduces new asset classes such as financial lease or factoring receivables that can be included in the cover pool. Furthermore, the housing finance loans that are not secured by a mortgage can now also be included in the cover pool, if such loans are secured by any other eligible security to be determined by the CMB. Additionally, the issuer will be able to include commercial loans to the cover pool provided that such loans are secured by a mortgage.

Issue Limit

The Communiqué sets an issuance limit for mortgage covered bonds. Accordingly, at any given time, the nominal value of the mortgage covered bonds that are in circulation must not exceed 10% of the total assets of the issuer. This issue limit may be increased by 100% if the issuer is assigned a long term investment grade within the highest three rating categories of the relevant credit rating agency.

Eligible Swap Counterparties

The Communiqué also revised the credit rating criteria for swap counterparties. Accordingly, a counterparty must be assigned a long term credit rating by credit rating agencies corresponding to one of the highest three levels within the investment grade rating. Nevertheless, the swap counterparty, whose credit rating corresponds to the lowest level within the investment grade rating, may still be an eligible counterparty provided that a negative watch is not placed on its credit rating.

Compliance Report/Investor Report

The cover monitor will be required to issue, at least semi-annually, a compliance report addressing the issuer's compliance with the cover matching principles and publish the same on the issuer's website. The issuer must also publish an investor report on its website to provide information to bondholders on collections from the cover assets and payments made to bondholders.

Servicer and cash manager

The issuer may appoint a servicer for administration of the cover pool in compliance with cover matching principles. Furthermore, the issuer will be able to appoint a cash manager for the collection of sums arising under cover pool assets and for making payments to mortgage covered bondholders. The servicer and cash manager fees may be paid out of the cover pool assets if an appropriate amount is allocated to the cover pool for this purpose.

Limitation on Derivatives

The cover pool may comprise derivative contracts entered into with swap counterparties to hedge interest or currency risks in respect of mortgage covered bonds. The former ITMK communiqué provided that if the ratio of receivables arising from the derivative contracts exceeds 15% of the aggregate amount of the cover pool, the exceeding part of the derivative contracts cannot be recorded with the cover pool. The Communiqué has removed the 15% limitation and, therefore, derivative contracts will now benefit from the asset pool coverage without being subject to any limitation.

Electronic Registration Requirement

Mortgage covered bonds issued under both domestic and international offerings must be in dematerialised form and registered with the Central Registry Agency (CRA). In the case of international offerings, the CMB may grant an exemption from the CRA registration requirement. In such an event, the issuer must inform the CRA, within 3 business days from the date of the issuance, of the issue amount, issue date, ISIN code, maturity date and the first day of the maturity date, coupon rate, identity of the custody institution and the relevant country where the issue is made, and the denomination of the issue.

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