

GEDİK & ERAKSOY

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Communiqué on Asset-Backed Securities and Mortgage-Backed Securities (Series: III-58.1), dated 9 January 2014

The Capital Markets Board of Turkey (the CMB) has published a new legislation with the aim of contributing to the formation of a secondary market for the housing finance system.

Speed Read

The issuance of asset-backed securities (**ABS**) and mortgage-backed securities (**MBS**) through an on-shore special purpose entity was previously regulated under the Communiqué on Asset Financing Funds and Asset Backed Securities (Series: III, No: 35) (the **Former ABS Communiqué**) and the Communiqué on Housing Financing Funds and Mortgage Backed Securities (Series: III, No: 34) (the **Former MBS Communiqué**). The Communiqué on Asset and Mortgage-Backed Securities (the **New Communiqué**) promulgated by the CMB on 9 January 2014 has introduced a single piece of legislation governing both asset-backed securities and mortgage-backed securities and repeals both the Former ABS Communiqué and the Former MBS Communiqué.

The New Communiqué regulates the establishment of a special purpose entity (**SPE**), which is called a “fund” under the legislation, composition and management of its assets and qualifications for originators and, in general, sets out more detailed provisions on the regulation of ABS and MBS.

Main Changes

Financial Lease Companies as Eligible Founders

In addition to the eligible entities set out in the Former MBS Communiqué, the New Communiqué allows financial lease companies (*finansal kiralama şirketleri*) to form an SPE for the issuance of MBS. Accordingly, MBS can only be issued by SPEs founded by banks, financial lease companies, financing companies (*finansman şirketleri*), mortgage financing institutions (*ipotek finansmanı kuruluşları*) and brokerage houses holding the required licences.

Issuance under a Programme

In order to simplify and speed up the approval procedure, the New Communiqué introduces the option of establishing an ABS/MBS programme, provided that the issuances under such programme are not conducted by way of a public offering. In connection with the establishment of an ABS/MBS programme, the CMB sets an issuance limit and the New Communiqué enables founders to establish several SPEs under one issuance limit.

Risk Exposure Requirement

Under the New Communiqué, originators and SPE founders must purchase, and hold until maturity, at least 5 per cent. of the nominal value of the ABS/MBS. If the issuance is to take place in several tranches, the

application of this requirement depends on the credit rating of the tranche in question. For tranches which either do not have a credit rating risk or with the same credit rating, the 5 per cent. of nominal value of each tranche of the ABS/MBS is applied *pro-rata*. However, in the case of an issuance where credit ratings are assigned, the 5 per cent. holding is applied to the tranche with the lowest credit rating. Notwithstanding the above, the CMB has the discretion to (i) set a different minimum investment rate for a specific type of instrument and/or (ii) increase the minimum investment rate up to a maximum of 10 per cent. for a specific founder or SPE originator in any given transaction.

New Eligible Underlying Assets

The New Communiqué broadens the categories of eligible underlying asset portfolio for both ABS and MBS. Under the Former MBS Communiqué, the housing finance loans to be included in the SPE assets must be secured by a mortgage (*ipotek*) over real property which normally requires that such real property be fully constructed and registered with the land registry (*tapu sicili*). In addition to these mortgage loans, the New Communiqué allows other types of housing finance loans where the loan is not backed by a mortgage but is secured with other types of collateral including residential loans provided at the project stage. Furthermore, MBS can now be backed by non-housing finance assets such as consumer loans, commercial loans or financial lease receivables, provided that a mortgage is established over a real property as security for these receivables. For ABS, the New Communiqué provides that receivables of not only financial institutions but also other joint stock companies which provide goods and services qualify as eligible underlying assets.

Private Placements

The former legislation provided the ABS/MBS to be issued and sold via public offering and sale to qualified investors. The New Communiqué now also allows issuance of ABS/MBS via private placements, provided that the nominal value of the security in question is at least TL 100,000.

Electronic Registration Requirement

ABS and MBS issued in both the domestic and international markets 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 event, the SPE acting in its role as issuer must inform the CRA within 3 business days from the date of the issuance the following details: the issue amount, issue date, ISIN code, interest commencement date, maturity date, interest rate, identity of the custody institution, the relevant country where the issue is made and the denomination of the issue.

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