

GEDİK & ERAKSOY

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Regulation of Asset Backed Securities and Mortgage Backed Securities under New Turkish Capital Markets Legislation

The Capital Markets Board of Turkey (CMB) published the Draft Communiqué on Asset and Mortgage Backed Securities (Draft Communiqué) on 29 August 2013 with a view to promoting a transparent, efficient, reliable and competitive market environment and contributing towards the formation of a secondary market for the housing finance system.

Overview

The issuance of asset backed securities (**ABS**) and mortgage backed securities (**MBS**) through an on-shore special purpose entity is regulated under the Communiqué on Asset Financing Funds and Asset Backed Securities (Series: III, No: 35) (**ABS Communiqué**) and the Communiqué on House Financing Funds and Mortgage Backed Securities (Series: III, No: 34) (**MBS Communiqué**). The Draft Communiqué introduces a single piece of legislation governing both asset backed securities and mortgage backed securities and, once enacted, will repeal both the ABS Communiqué and the MBS Communiqué. The Draft Communiqué is expected to be promulgated before the end of December 2013.

Financial Lease Companies as Eligible Founders

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

Risk Exposure Requirement

Under the Draft Communiqué, the originators and SPE founders must purchase, and hold until maturity, either (i) each tranche of the ABS/MBS *pro-rata*, or (ii) in the case of an issuance where credit rating is assigned, the tranche with the lowest credit rating. In each case, the amount invested in ABS/MBS by the originators and SPE founders must be at least 5 per cent of nominal value of the ABS/MBS.

New Underlying Assets

Under the MBS Communiqué, the housing finance loans to be included in the SPE assets must be secured by a mortgage (*ipotek*) over a real property which normally requires that real property to be fully constructed and registered with the land registry (*tapu sicili*). The Draft Communiqué no longer requires the housing finance loans to be secured by a mortgage thereby allowing the housing finance loans, which finance real properties at the project stage, to be included in the SPE assets. 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.

Electronic Registration Requirement

ABS and MBS issued in 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 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.

Gedik Eraksoy Avukatlık Ortaklığı

Kanyon Ofis Binası, Kat 6,
Office No: 1015 - 1023
Büyükdere Caddesi No.: 185
TR-34394 Levent, İstanbul
Turkey

Tel +90 212 371 2950
Fax +90 212 371 2955

www.gedikeraksoy.com

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Hakkı Gedik
Partner, Gedik & Eraksoy

Contact
Tel +90 212 371 2950
hakki.gedik@gedikeraksoy.com



Gökhan Eraksoy
Partner, Gedik & Eraksoy

Contact
Tel +90 212 371 2952
gokhan.eraksoy@gedikeraksoy.com