

### DRAFT COMMUNIQUÉ ON DEBT INSTRUMENT HOLDERS BOARD IS PUBLISHED

In relation to the provisions brought to the Capital Markets Law No. 6362 (“**Law**”) with the Law No. 7222 Amending Banking Law and Certain Other Laws which entered into force by being published in the Official Gazette dated 25 February 2020 and numbered 31050, the Draft Communiqué on Debt Instrument Holders Board (“**Draft Communiqué**”) was presented to public opinion with the announcement made through the website of Capital Markets Board of Turkey (“**Board**”) on 22 April 2020.

#### 1. Debt Instrument Holders Board and the Operation of Meetings

The Debt Instrument Holders Board (“**DIHB**”) is designated in the Draft Communiqué as a special board which convenes upon the request of the issuer’s board of directors or the debt instrument holders and which takes resolutions on matters regarding important amendments to the issued debt instruments’ interest, maturity, principal amount and other primary terms and conditions. In case the amendments relate to a specific issuance tranche of the debt instruments, the resolutions are envisaged to be taken by the Tranche DIHB.

As the general rule, DIHB meetings shall be held physically; but taking resolutions through circulation of the resolution text and holding the DIHB meetings on electronic mediums are also permitted, provided that it is envisaged by the issuer in the prospectus or the issue document. Further to this, it is envisaged in the Draft Communiqué that, joint stock companies of which the shares are listed in the exchange and issuer of which the debt instruments are offered to public shall provide access to the DIHB meetings through electronic mediums. It is also stated in the Draft Communiqué that the issuer and/or its related parties do not have the right of participation and voting in the DIHB meetings.

With regards to the provisions of quorum with qualified majority in the Law, the Draft Communiqué envisages that resolutions regarding the amendments to the issued debt instruments' interest, maturity, principal amount and other primary terms and conditions shall be taken with the votes of the majority representing at least two thirds of the nominal value of issued debt instruments and such resolutions shall be binding for the debt instrument holders who did not vote affirmatively in the meeting or did not participate in the meeting. On the other hand, taking resolutions with the votes representing more than half of the nominal value of debt instruments in circulation, is sufficient for the amendments to the undertakings made by the issuer regarding its financial or operational status.

As per the Draft Communiqué, the resolutions taken by General DIHB are binding for the Tranche DIHB; however, in case the resolutions taken by the Tranche DIHB have negative effects on the debt instrument holders, General DIHB can be invited to meeting separately.

In addition to the above, it is envisaged that a representative of the debt instrument holders shall be appointed in the first Tranche DIHB meeting to be held regarding the debt instruments issued by issuers other than Banks, and the duties and powers of the representative shall be specified in the related prospectus or issue document.

## **2. Special Provisions Regarding Secured Instruments and Debt Instrument on Collateral**

With Draft Communiqué, it is stipulated that holders of secured instruments and holders of debt instruments who are protected under security management agreement shall convene a separate DIHB regarding relevant debt instruments other than General DIHB and such holders shall not attend to General DIHB. However, there is made an exemptions regarding attendance to General DIHB on following two situations:

- i. In case of partial security, attendance for only debt instruments without security and
- ii. In case of collateral security, for only debt instruments which are effected from this collateral.

### **3. Special Provisions Regarding Debt Instruments Issued in Foreign Market**

The provisions of this Draft Communiqué are not applied to issuer's debt instruments issued in foreign market. However, if issuer has debt instruments issued both in domestic and also foreign market, attendance to General DIHB and approval of DIHB shall be set as conditions regarding change on collateral security on behalf of foreign investor etc.

### **4. Payment Obligation and Failure to Payment of the Issuer and Restructuring of Relevant Debt Instrument**

According to the Draft Communiqué, the obligations and liabilities arising from debt instruments and definition and scope of an event of default in the repayment of the relevant debt instrument are to stated specifically in the prospectus or issue document. Regarding to event of default in the repayment of the relevant debt instrument, in case of restructuring the terms and conditions of such obligations and liabilities, all ongoing execution proceedings, interim injunctions and interim seizures shall not be carried out and prescription period and lapse of time shall not be proceeded.

On the other hand, if issuer is in failure to perform or it is clear not to be performed any re-payment obligations, specific limitations has been regulated for issuers.

### **5. Conclusion**

With Draft Communiqué, procedures and principles regarding new establishment DIHB under Article 31/A of the Law is regulated and you may submit your opinion or suggestions on the Draft Communiqué to Board in writing until March 15, 2020.

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