

MULTIPLE CHANGES REGARDING REAL ESTATE CERTIFICATES

This legal alert aims to set forth the amendments of Capital Markets Board of Turkey dated November 29, 2017 on the Communiqué on Real Estate Certificates numbered VII-128.2.

Capital Markets Board of Turkey (“CMB”) has adopted a new Communiqué Amending Communiqué No. 128.1 published in the Official Gazette numbered 30255 and dated November 29, 2017 (“**Amendment Communiqué**”) that brings multiple changes in different elements of real estate certificate issuances.

The amendments are mostly concerning the issuance principles, which include the following aspects:

- A quality standard has been set for the individual sections in buildings which are subject to real estate certificates; such that, these individual sections shall be constructed with the same quality standards as the individual sections in buildings that are in the same project but not subject to real estate certificates.
- According to the Amendment Communiqué, redemption procedures of real estate certificates will be determined by Central Registry Agency (“CRA”) and approved by CMB.
- Operations providing price stability, may now be applied to real estate certificates in sales by public offering.
- Other principles for the benefit of the investors, may be applied provided that the principles are approved by CMB and published in the prospectus or issuance document.

Another important topic addressed in the Amendment Communiqué is related to the utilization of funds by the issuer. Previously, the issuer only received 10% of the collected funds, before the commencement of the construction. The rest was transferred to the issuer pursuant to the progress reports throughout the construction period. After the Amendment Communiqué, the issuer will receive 25% of the collected funds before the commencement. With a new provision brought by the Amendment Communiqué, the issuer has the right to receive all of the collected funds, provided that payment of redemption values and penalties are secured by a guarantee from a bank or a guarantee letter, or completion of the project is covered by an insurance.

Changes occurred with the Amendment Communiqué, in addition to the above, are as follows:

- 1) The definition of primary obligation was altered. In the Communiqué, the primary obligation was the transfer of title and delivery of the real estate. With the Amendment Communiqué, the term “ownership” was amended as “property ownership”.
- 2) The investors’ applications for the fulfillment of primary obligation, will be submitted to the issuer under the principles and procedures that will be regulated by CRA, as opposed to the previous implementation where the investors were able to apply either to the issuer or the authorized investment institution and CRA procedures were not explicitly mentioned.
- 3) The potential exemption from the requirements regarding the document and information submission, which was applied to the companies that at least 51% of the share capital of which is owned by public, is broadened and now also applies to the companies that at least 51% of the voting rights of which are owned by public.
- 4) As per the previous regulation, the real estate certificates were blocked by the authorized investment institution until the fulfillment of the primary obligation or payment of the redemption value, only if an undertaking contract of real estate sales or a pre-emption right contract was executed. The Amendment Communiqué has abolished the requirement of the contracts mentioned above; accordingly, the real estate certificates will be blocked until the fulfillment of the primary obligation or payment of the redemption value, under the principles that will be regulated by CRA and approved by CMB.

- 5) CMB fees for the companies that are owned by public through share capital or voting rights of at least 51%, will be zero for two years as from November 29, 2017.

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