

Debt Capital Markets 2021

Contributing editors

Catherine M Clarkin, John Horsfield-Bradbury, Ekaterina Roze and Jeffrey D Hochberg



Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between January and February 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021
No photocopying without a CLA licence.
First published 2014
Eighth edition
ISBN 978-1-83862-645-7

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Debt Capital Markets 2021

Contributing editors

**Catherine M Clarkin, John Horsfield-Bradbury,
Ekaterina Roze and Jeffrey D Hochberg**

Sullivan & Cromwell LLP

Lexology Getting The Deal Through is delighted to publish the eighth edition of *Debt Capital Markets*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Catherine M Clarkin, John Horsfield-Bradbury, Ekaterina Roze and Jeffrey D Hochberg of Sullivan & Cromwell LLP, for their assistance with this volume.



London
February 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in March 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Global overview	3	Sweden	49
Catherine M Clarkin, John Horsfield-Bradbury and Asa J Craig Sullivan & Cromwell LLP		Carl Hugo Parment and Michael Bark-Jones White & Case LLP	
Germany	5	Switzerland	57
Christian Storck Linklaters LLP		The Capital Markets Team Niederer Kraft Frey	
Ireland	13	Thailand	66
Cormac Kissane, Glenn Butt, Ronan O'Keefe and Maedhbh Clancy Arthur Cox		Veeranuch Thammavaranucupt, Jongtip Tangsriapiroje and Veerakorn Samranweth Weerawong, Chinnavat & Partners Ltd	
Japan	22	Turkey	74
Takuo Hirose and Tomoyuki Oka Anderson Mōri & Tomotsune		Kerem Turunç and Esin Çamlıbel Turunç	
Malta	28	United Kingdom	81
Luca Vella and Katia Cachia GVZH Advocates		Matthew Tobin and Eric Phillips Slaughter and May	
Netherlands	34	United States	88
Jeroen Bos, Vincent Engel and Rosa Temminghoff Simmons & Simmons LLP		Catherine M Clarkin, John Horsfield-Bradbury, Ekaterina Roze and Jeffrey D Hochberg Sullivan & Cromwell LLP	
Spain	42		
Antonio Herrera, Javier Redonet and Josep Moreno Uriá Menéndez			

Turkey

Kerem Turunç and Esin Çamlıbel

Turunç

MARKET SNAPSHOT

Market climate

1 | What types of debt securities offerings are typical, and how active is the market?

While government and bank bonds make up the great majority of Turkish debt capital markets issuances, many other forms of debt securities are available for issuance. Enterprises (private and state-owned) can issue various types of bonds, including straight bonds, convertible bonds, exchangeable bonds and covered bonds, as well as asset-backed securities, bills and precious metal bills.

Debt securities issued by non-enterprise public entities include government debt securities (government debt securities with maturity terms of one year and more are called 'government bonds' and government debt securities with maturity terms of less than one year are called 'treasury bills') and Central Bank of the Republic of Turkey liquidity bills.

In the first 11 months of 2020, there were a total of 1,117 domestic debt security offerings for approximately 180 billion Turkish lira, of which approximately 170 billion Turkish lira were issued by banks and other financial institutions, and approximately 10 billion Turkish lira by corporate issuers. The majority of bank issuances have short-term maturities. The total issuance amount represents an approximately 2 per cent nominal growth in Turkish lira compared with the same period in 2019.

Regulatory framework

2 | Describe the general regime for debt securities offerings.

While Turkey is not a member of the European Union, as a candidate country it has modelled its securities regulation primarily on EU legislation.

The main principles regarding the issuance of capital market instruments, including debt securities, are governed by the Turkish Capital Markets Law, Law No. 6362.

As the chief regulator of Turkish capital markets, the Capital Markets Board (the Board) is authorised to promulgate 'secondary legislation' (ie, rules and regulations) under the Capital Markets Law. Secondary legislation is normally in the form of communiqués, and the Board also issues interpretive resolutions on the implementation of the Capital Markets Law and secondary legislation. The Board also has enforcement powers.

Specific rules applicable to debt issuances are set forth under the Communiqué on Debt Securities (Serial VII, No. 128.8) promulgated under the Capital Markets Law. Pursuant to the Communiqué, debt securities may be issued to be sold through or without a public offering. Sales without a public offering may be in the form of private placements (with a minimum nominal value of 100,000 Turkish lira) or sales to qualified investors.

The resolution of the authorised body of the issuer is required for the issuance of debt securities, and the Board's approval is also compulsory for any public offering of debt securities or their trading on a regulated exchange (currently, the only such exchange is Borsa Istanbul, formerly known as the Istanbul Stock Exchange). Application to the Board must be made within a year of the date of the resolution of the authorised body of the issuer and include the issuance prospectus (if applicable) as well as certain other documents required by the Communiqué. The prospectus is published following the approval of the Board. The offering period for the securities to be issued must also comply with relevant Board regulations.

There are 'issue limits' (ie, the maximum permitted face value of the securities) applicable to debt issuances. These limits change depending on the type of issuer, whether the issuance will be public and the financial situation (usually as it relates to the equity capital) of the issuer.

The Communiqué on Asset-Backed and Mortgage-Backed Securities (Serial III, No. 58.1), the Communiqué on Covered Bonds (Serial III, No. 59.1), the Communiqué on Lease Certificates (Serial III, No. 61.1), and the Act on Public Finance and Arrangement of Debt Management, Law No. 4749 (known as the Public Debt Act) include further specific provisions on the issuance of applicable securities.

Borsa Istanbul also has listing and other rules that issuers of listed securities must observe.

Other pieces of general and specific legislation (eg, the Commercial Code and the Banking Law), and rules and practices of different regulators (eg, the Banking Regulation and Supervision Agency and tax authorities) may also have direct and indirect effects on issuers and offerings of debt securities.

FILING AND DOCUMENTARY REQUIREMENTS

General filing requirements

3 | Give details of any filing requirements for public offerings of debt securities. Outline any requirements for debt securities that are not applicable to offerings of other securities.

The primary documentation required for a public offering of debt securities is as follows:

- an offering prospectus;
- an issue document;
- financial statements;
- the current, consolidated version of the articles of association of the issuer;
- notarised resolution of the general assembly of shareholders (or the board of directors, if the board is authorised by the articles of association to resolve on the issuance);
- opinion letter or approval, as applicable, of any regulatory or other public entities with power over the issuer (or the issuer's declaration that no such approval needed);

- financial adviser's report on the paid-in capital and a copy of the Turkish Trade Registry Gazette on the registration of the existing share capital;
- undertaking letter of the guarantor (if any) and a notarised copy of the resolution of the relevant authorised body of any legal entity guarantors;
- underwriting or intermediary agreement;
- declarations of the members of the board of directors and executives of the issuer, stating whether they are subject to any ongoing criminal prosecution relating to, or have been convicted of, certain offences, such as embezzlement, bribery, certain banking law violations, fraud and tax evasion;
- rating agency report (if any); and
- for convertible and exchangeable bonds, an expert report on the conversion or exchange rate to be used.

Certain other documents are also required depending on the issuer and the type of issuance, and the Capital Markets Board (the Board) always maintains the authority to request any additional documents it deems necessary.

Issuers may also prepare a base prospectus in connection with a public offering programme. Once approved, the base prospectus is valid for 12 months. Each offering during the validity period must be undertaken using final offering terms approved by the Board.

Prospectus requirements

4 | In a public offering of debt securities, must the issuer produce a prospectus or similar documentation? What information must it contain?

The preparation of a prospectus and its approval by the Board are compulsory for the public offering of capital market instruments or their trading on a regulated exchange. The information included in the prospectus must be complete and presented in a manner that is easily comprehensible and analysable by potential investors. The information that must be included in the prospectus is generally consistent with customary international practices. However, a prospectus for debt securities must be prepared as three separate documents:

- a registration document containing information about the issuer and any guarantors relating to, among other things, financial statements, independent auditors, risk factors, business operations, affiliates, corporate governance, shareholders and important agreements;
- a securities note containing information about the securities to be offered, such as the terms and conditions, trading, risk factors and taxation; and
- a summary using brief, clear and easy to understand language, and covering basic information relating to the issuer, any guarantors and the nature of any guarantees, as well as the fundamental characteristics and the rights and risks associated with the securities to be issued.

The prospectus must also identify all persons (individuals and legal entities) who are responsible for its contents.

Certain information can be incorporated by reference into the prospectus. This includes prospectuses previously approved by the Board, the articles of association of the issuer, annual reports and material event disclosures, among other things.

Certain public entities are subject to different disclosure rules.

Documentation

5 | Describe the drafting process for the offering document.

In domestic issuances, the offering document is typically drafted by the intermediary institution with the support of the issuer. International offerings, on the other hand, follow customary practices under which issuer's counsel drafts the document, and underwriters and their counsel provide their input. Having said that, the disclosures contained in domestic and international prospectuses are similar in scope.

While there are no bright-line tests to determine whether to make certain disclosures, as a general rule, the information contained in the prospectus must be complete, easily comprehensible and analysable by potential investors, and allow them to make an informed decision on whether to invest in the securities being offered. The Board may, upon request of the issuer, permit the omission of certain information in the prospectus if:

- the disclosure of the information would be contradictory to public benefit;
- the disclosure to the public of the information would cause a substantial loss to the issuer, provided that the omission must not prevent potential investors from making an informed decision; or
- the information sought to be omitted is immaterial for the public offering or trading of the relevant securities, accessing the information is costly and difficult, and the information does not affect the assessment of the financial situation and future prospects of the issuer or any guarantor.

A prospectus is not required for private offerings or offerings taking place outside Turkey; only an issue document is necessary for those offerings. In practice, virtually all domestic offerings by non-bank financial institutions and corporates are private (and placed with qualified investors) and will typically not include a prospectus. However, for international private offerings, customary offering documents that closely track the requirements of public offerings are used in practice.

6 | Which key documents govern the terms and conditions of the debt securities? Who are the parties to such documents? How can such documents be accessed?

The prospectus is the principal document governing the terms and conditions of debt securities. Specifically, the securities note part of the prospectus will include the full terms and conditions of the securities being offered. The issuer is the primary party to the prospectus and is responsible for its contents. The intermediary institution also signs and takes responsibility for certain sections of the prospectus.

The prospectus will be available on the issuer's and the intermediary institution's websites, as well as on the Public Disclosure Platform (PDP), the online public platform on which disclosures required by capital markets legislation and Borsa Istanbul regulations are made, if the issuer is a member of the PDP. The issuer may also publish the prospectus through the printed press and other media outlets.

7 | Does offering documentation require approval before publication? In what forms should it be available?

In principle, Board approval is required before publication (except for certain public entity issuers exempt from prospectus publishing requirements). However, the Board is authorised to set forth principles pursuant to which the prospectus can be published prior to its approval.

After the prospectus is approved, it must be published on the issuer's website, as well as on the PDP if the issuer is a PDP member, and on the intermediary institution's website. Furthermore, the places

where the prospectus has been published must be registered with the trade registry where the issuer maintains its corporate registration, and announced via the Turkish Trade Registry Gazette.

Where the prospectus is published electronically, a printed copy thereof is required to be delivered free of charge to any investor upon its demand.

Authorisation

8 | Are public offerings of debt securities subject to review and authorisation? What is the time frame for approval? What are the restrictions imposed, if any, on the issuer and the underwriters during the review process?

Public offerings of debt securities are subject to review and authorisation of the Board through the approval of the related prospectus (the approval includes a thorough review of the other required documents).

The Board will deliver its decision within 10 business days of the filing of the prospectus and the supporting documents. If any required information or documents are missing, the Board will notify the issuer within 10 business days to complete the filing, and the 10-business-day review period commences upon receipt of all outstanding information (ie, completion of the review file). Non-approvals by the Board must specify the reasons for the rejection.

There are no specific restrictions imposed on the issuer or the underwriters during the review process other than the prohibition on commencement of the offering. But because part of the review process of the Board relates to the financial status of the issuer (and any guarantors) and risk factors relating to the business of the issuer (and any guarantor), the issuer and the guarantor (if any) must not undertake actions or obligations that will materially alter their financial status, their operations or the information contained in the review file submitted to the Board. Any such changes must be notified to the Board and may reset the clock on the review process.

Once approved, the prospectus is valid for 12 months, and any supplements and amendments to it must also be approved by the Board (the approval period is seven business days). Following the 12-month period, a new complete prospectus must be approved for further issuances.

9 | On what grounds may the regulators refuse to approve a public offering of securities?

The Board will cancel an application if the draft prospectus is determined to be so deficient that the Board is unable to undertake an adequate review, or if the issuer fails to submit all the required information and documents (either initially or upon request by the Board).

Furthermore, the Board may refuse to approve a public offering of securities if:

- the draft prospectus or the supporting documents do not contain the information required by relevant regulations;
- the information contained in the prospectus is inconsistent or incomprehensible;
- the information contained in the prospectus is misleading or insufficient;
- the application does not fulfil the legal requirements needed for issuers or debt securities; or
- the application lacks the necessary supporting documents.

10 | How do the rules differ for public and private offerings of debt securities? What types of exemptions from registration are available?

There are two safe harbours for issuers from the prospectus requirement: private placements (up to 150 investors) and sales to qualified investors (no maximum number of investors, and the investors do not count towards the 150-person limit for private placements).

Furthermore, no prospectus is required if the public offering is intended for investors who each subscribe to a minimum of 500,000 Turkish lira's worth of securities, or the securities being offered have a minimum denomination of 500,000 Turkish lira or above.

Additionally, the Board may grant an exemption from the prospectus requirement if the total sale price of the capital markets instruments to be publicly offered is less than 10 million Turkish lira. When granting this exemption, the Board will require the issuer to prepare a public announcement with certain information about the offering.

Where the issuer is exempt from the prospectus publishing requirement, it must instead prepare an 'issue document'. This is a short document containing a basic description of the securities to be issued, and the terms and conditions of the issuance. An issue document must also be prepared for issuances taking place outside Turkey. The issue document must be approved by the Board.

In public offerings, at least 10 per cent of the nominal value of the securities must be allocated to domestic individual investors and at least 10 per cent of the nominal value allocated to domestic institutional investors. In any issuance, the Board has the authority to reduce or eliminate altogether these minimum requirements or increase them up to 100 per cent, depending on the market value of the securities to be issued, market conditions and other considerations.

Offering process

11 | Describe the public offering process for debt securities. How does the private offering process differ?

The preparation of the prospectus and the related documents typically takes a few months. Once filed, the Board will approve the prospectus within 10 business days. The approved prospectus must be published within 15 business days of the approval, and the public offering may commence on the third day following the publication date of the prospectus (and the related price determination report), subject to certain exceptions or revisions where the issuer makes changes in pricing, interest or other terms. The offering period will be determined by the issuer and must be a minimum of two and a maximum of 20 business days.

In private offerings, a prospectus does not need to be drafted or published. It is sufficient for the issuer to prepare a Board-approved issuance document, and the offering can commence on the business day following the publication of the issuance document. Private offerings can be done as private placements or sales to qualified investors, or a combination of the two.

The Board is authorised to make changes to these timings upon request of the issuer based on reasonable grounds.

Issuers are permitted to release announcements, advertisements and other statements regarding the contemplated issuance, but these must not contain any inaccurate, exaggerated or misleading information.

Closing documents

- 12 | What are the usual closing documents that the underwriters or the initial purchasers require in public and private offerings of debt securities from the issuer or third parties?

If the offering is international, customary international practices (including, as applicable, for Rule 144A and Regulation S purposes) are followed. For domestic public offerings, a law firm opinion is required by Borsa Istanbul. This opinion, however, is longer than is customary in international offerings and reads more like a (limited scope) due diligence report on the issuer.

Listing fees

- 13 | What are the typical fees for listing debt securities on the principal exchanges?

Banks (deposit, participation, development and investment banks), financial institutions, Turkish leasing companies, factoring and financing companies, capital markets institutions defined under the Capital Markets Law and issuers residing abroad must pay to the Board the following fees as calculated over the issuance value of the debt securities to be sold:

- 0.5 per thousand if the maturity term is up to 179 days;
- 0.7 per thousand if the maturity term is between 180 days and 364 days;
- 1 per thousand if the maturity term is between 365 days and 730 days; and
- 1.5 per thousand if the maturity term is longer than 730 days.

Issuers other than those referenced above pay a discounted rate of 75 per cent of the fees listed above. If the issue price is lower than the nominal value of the securities, the nominal value is used as a basis for the calculation of the fees.

KEY CONSIDERATIONS

Special debt instruments

- 14 | How active is the market for special debt instruments, such as equity-linked notes, exchangeable or convertible debt, or other derivative products?

The market for such special debt instruments in Turkey is extremely limited.

- 15 | What rules apply to the offering of such special debt securities? Are there any accounting implications that the issuer should be aware of?

The main special rules applicable to convertible bonds (CBs) and exchangeable bonds (EBs) are as follows:

- the maturity of CBs and EBs may not be less than 365 days;
- at least 365 days must pass from the issue date before the bonds may be converted or exchanged;
- conversion of the CBs into or exchange of EBs with shares is done over the nominal value of the relevant bonds, with any interest accrued until the conversion or exchange day paid to the holders in cash;
- a report on the conversion or exchange rate in respect of the CBs or EBs to be offered to the public must be prepared by an authorised institution at the stage of submitting the prospectus to the Capital Markets Board (the Board) for approval; and
- all conversion and exchange expenses are borne by the issuer.

The Board has the right to apply different rules (ie, rules deviating from the default provisions of the Communiqué on Debt Securities) to issuances of exchangeable and convertible bonds made via private placement or abroad upon the request of the issuer if the Board deems the request acceptable.

Classification

- 16 | What determines whether securities are classed as debt or equity? What are the implications for instruments categorised as equity and not debt?

Debt instruments are assets that require a determinable periodic payment (ie, interest) to the holder. Examples of debt instruments include bonds (government or corporate) and mortgages. Equities are securities that provide a claim on the earnings and assets of the issuer. A capital markets instrument that is classified as debt for purposes of the Capital Markets Law (and disclosure requirements thereunder) may be classified as debt or equity for accounting, credit rating, regulatory or other purposes (eg, Tier 2 bank capital).

Capital markets instruments not specifically covered by applicable legislation but that are, by their nature, debt instruments can also be issued upon authorisation by the Board.

Transfer of private debt securities

- 17 | Are there any transfer restrictions or other limitations imposed on privately offered debt securities? What are the typical contractual arrangements or regulatory safe harbours that allow the investors to transfer privately offered debt securities?

As a general rule, there are no transfer restrictions or other limitations imposed on privately offered debt securities; however, subject to certain exceptions, privately placed securities may be held by no more than 150 persons at any given time. Furthermore, the Board may:

- require the issuer to ensure that its payment obligations relating to debt securities are secured by a bank or another third-party legal entity;
- require that certain restrictions be made on the qualifications of the purchasers or placement conditions; and
- shorten the validity period of the issuance document.

Transfer of securities traded on a regulated exchange are subject to the regulations of the exchange and must be intermediated by an authorised intermediary institution.

Cross-border issues

- 18 | Are there special rules applicable to the offering of debt securities by foreign issuers in your jurisdiction? Are there special rules for domestic issuers offering debt securities only outside your jurisdiction?

Public offerings of debt securities in Turkey by foreign private issuers are subject to certain heightened standards and conditions, such as a long-term investment-grade rating to have been obtained within the last year, and the offering or listing of the securities not having been denied by any regulator or regulated market. Certain additional disclosures are also required in the prospectus, such as information on foreign listings. The securities to be offered can be denominated in Turkish lira or foreign currency, but financial statements must be presented in Turkish lira. Furthermore, the issuer must subject itself to Turkish law and the jurisdiction of Turkish courts for any disputes.

International organisations of which Turkish state entities are members or shareholders are subject to certain exemptions from

prospectus publishing requirements with regard to their debt security offerings.

If a domestic issuer is issuing debt securities outside Turkey only, it is not required to publish a prospectus in Turkey; however, it must still prepare an issue document approved by the Board. An electronic application must be made to the Board for each new tranche of securities to be offered outside Turkey. Furthermore, while the issue limit (amount) must be determined in Turkish lira in domestic issuances, either Turkish lira or foreign currency limits can be used for issuances taking place outside Turkey.

19 | Are there any arrangements with other jurisdictions to help foreign issuers access debt capital markets in your jurisdiction?

There are no specific arrangements to help foreign issuers access debt capital markets in Turkey. Having said that, certain broader arrangements, such as the Board's ongoing activities for the harmonisation of the Turkish securities regulation with the EU *acquis*, double taxation treaties and bilateral memoranda of understanding signed between the Board and its counterparties in other jurisdictions regarding cooperation, exchange of information and technical cooperation, are helpful in providing easier access for foreign issuers to Turkish capital markets.

Underwriting

20 | What is the typical underwriting arrangement for public offerings of debt securities? How do the arrangements for private offerings of debt securities differ?

There are two primary ways that investment firms can intermediate a public offering of debt securities: underwriting (ie, on a commitment basis) and best efforts (ie, no commitment).

Where there is underwriting, the underwriting arrangements for the public offering will be done pursuant to one of the following models:

- offered for sale through a public offering, and the unsold part purchased in cash at the end of the offering period (standby);
- offered for sale through a public offering, and a portion of the unsold part purchased in cash at the end of the offering period (partial standby);
- fully purchased in cash before the offering starts and subsequently offered to the public (full commitment); or
- partially purchased in cash before the offering starts and subsequently offered to the public (partial commitment).

While international offerings will normally include customary commitment-based underwriting, most domestic issuances are undertaken without an underwriting commitment on a best-efforts, intermediation-only basis where the intermediary is not obliged to purchase for its own account any portion of the securities prior to or following the offering, and any unsold portion is returned to the issuer.

Whichever method is used, placements will be done through book-building, without book-building or directly on the exchange under the rules of the exchange.

21 | How are underwriters regulated? Is approval required with respect to underwriting arrangements?

The activity of underwriting and best-efforts intermediation may be carried out only by intermediary institutions, investment banks and development banks specifically authorised by the Board. Authorisation is subject to stringent application and ongoing compliance requirements, and the Board constantly monitors the activities of intermediaries. The Board is responsible for regulating and supervising all transactions

regarding the underwriting and intermediating of the sale of debt securities, and the underwriting or intermediation agreement must be submitted to the Board as part of the issuer's application for the public offering.

Transaction execution

22 | What are the key transaction execution issues in a public debt offering? How is the transaction settled?

Settlement and custody operations are realised by Istanbul Clearing, Settlement and Custody Bank (Takasbank), which is majority-owned by Borsa Istanbul (with various banks and intermediary institutions holding minority interests). Takasbank uses netting and delivery versus payment principles in its clearing and settlement operations, thereby eliminating the default risk of the principal.

The settlement of transactions on the debt securities market of Borsa Istanbul is performed on the same day (ie, T+0), and the settlement of foreign currency-denominated securities are performed on the trade date plus at least one day (ie, at least T+1).

Normally, all private debt securities must be issued on a dematerialised basis via the Central Securities Depository (CSD), and no printed global or individual certificates are used. Holders of securities issued domestically must also maintain an account with the CSD while holders of securities issued abroad do not need to open CSD accounts. However, the issuer must file with the CSD certain information relating to the issuance, including the amount of the issuance, date of issue, ISIN code, maturity period, applicable interest rate, information about the custodian, currency of the issue and country of issuance.

CSD accounts are used in the settlement of private bonds; accounts maintained at the Turkish Central Bank are used for the settlement of public sector bonds, liquidity bonds and lease certificates.

Holding forms

23 | How are public debt securities typically held and traded after an offering?

While debt securities issued by state entities can be held in bearer or registered form, they are typically held as bearer bonds and can be obtained from branches of the Central Bank, investment companies and banks. Public debt securities can also normally be bought or sold freely after their offering.

Outstanding debt securities

24 | Describe how issuers manage their outstanding debt securities.

While not very active practice, issuers can manage their outstanding debt securities, subject to certain conditions and exceptions (depending, in part, on the type of issuer), through open market or private purchases, exchange offers, tender offers and cash redemption (if permitted under the terms and conditions of the debt securities).

REGULATION AND LIABILITY

Reporting obligations

25 | Are there any reporting obligations that are imposed after the offering of debt securities? What information would be included in such reporting?

Issuers are subject to ongoing material events disclosure requirements during the time that their publicly offered debt securities are outstanding. These disclosures must be made on the Public Disclosure Platform and include, among other things, certain material non-public

information, corporate decisions and reorganisations, issuances of other securities and changes in the capital structure of the issuer.

The ongoing disclosure obligations do not apply to non-publicly traded issuers that have issued the debt securities abroad or through a private placement domestically. Non-publicly traded issuers that issued their debt securities domestically to qualified investors only are also exempt from some of these requirements.

Issuers of covered bonds have additional reporting obligations, such as a quarterly report on collections made on the collateral assets and payments made to holders of the covered bonds, and disclosure of payment defaults.

Certain additional ongoing disclosure obligations also apply to asset-backed and mortgage-backed securities. Investors in those securities must be notified of, among other things, any amendments to the related fund structure and must be provided with a quarterly report on payments made to investors.

Liability regime

26 Describe the liability regime related to debt securities offerings. What transaction participants, in addition to the issuer, are subject to liability? Is the liability analysis different for debt securities compared with securities of other types?

Issuers are primarily liable for losses arising out of any inaccurate, misleading or incomplete information included in the prospectus. In cases where the losses cannot be compensated by the issuer, the lead intermediary institution (underwriter), any guarantors and the members of the board of directors of the issuer are liable to the extent of their fault and to the extent the losses can be attributed to them based on the specifics of the situation.

Furthermore, experts such as independent auditors, rating agencies and appraisal firms whose reports have been included in the prospectus are also liable for any inaccurate, misleading or incomplete information included in their reports.

Potential liability also attaches to issuers, experts and signatories for other public disclosure documents (eg, issue document and financial statements) in relation to, and losses arising out of, inaccurate, misleading or incomplete information contained in those documents.

The liability analysis is not different for debt securities compared with other types of securities.

Remedies

27 What types of remedies are available to the investors in debt securities?

Investors may be able to obtain monetary damages through the Investor Compensation Centre, a public entity established for the purpose of implementing the compensation decisions of the Capital Markets Board (the Board) pursuant to the Capital Markets Law in cases where intermediaries or other capital markets institutions fail to fulfil their cash payment or securities delivery obligations.

Investors also always have the right to sue for alleged violations of securities laws under general principles of law.

Enforcement

28 What sanctioning powers do the regulators have and on what grounds? What are the typical results of regulatory enquiry or investigation?

The Board has several tools available to it to sanction issuers and other market participants for violations of the Capital Markets Law and secondary legislation thereunder.

For less serious violations (eg, contravention of certain disclosure rules), the Board has the right to impose administrative fines ranging from several thousand to several hundred thousand Turkish lira. In cases where a benefit has been gained because of a violation of an obligation, the amount of the administrative fine to be imposed must be at least twice the amount of the benefit. For more serious offences, the Board can also temporarily or permanently prohibit the violators from trading on regulated exchanges.

For unlawful or unauthorised issuances of debt securities, the Board can seek injunctive relief. Such issuances can also result in judicial (punitive) fines or imprisonment (through a court trial).

In cases of suspected insider trading or manipulation, the Board has broad rights, including imposing limited or total trading restrictions on the alleged violators, requiring the use of different clearing and settlement methods and imposing guarantee obligations.

Insider trading and market manipulation can also result in the disgorgement of profits, judicial (punitive) fines and imprisonment (through a court trial).

The Board also possesses extensive general powers to take various kinds of measures to ensure the effective and robust functioning of capital markets. However, for offences subject to punitive fines and imprisonment (ie, capital markets crimes), the Board must file a criminal complaint with the public prosecutor's office and may not impose such sanctions on its own.

Tax liability

29 What are the main tax issues for issuers and bondholders?

The primary taxes potentially applicable to interest, principal or redemption payments on debt securities, and capital gains from their sale are withholding tax and corporate income tax. Whether one of these will be applicable and the percentage of the applicable withholding tax (maximum of 10 per cent) depend on several factors, including the type of issuer (private or public), the tax status of the bondholder (individual or corporate, resident taxpayer or non-resident taxpayer), the date of issue (different treatment for issuances before and starting with 2006) and the maturity period.

As an example, interest payments on private bonds placed by Turkish corporate issuers outside Turkey in or after 2006 with a minimum maturity of three years or longer will be subject to zero per cent withholding tax for all holders, while those with a maturity of less than one year will be subject to 7 per cent withholding tax for all holders and those with a maturity between one and three years will be subject to 3 per cent withholding tax for all holders. For a similar issuance placed in Turkey, however, there will be 10 per cent withholding tax applicable to interest payments to individual holders and non-capital stock legal entity holders, but no withholding tax to holders that are capital stock companies (eg, Turkish joint stock or companies and their counterparts in other jurisdictions), investment funds or trusts.

Documents related to the issuance of debt securities are exempt from stamp tax.

UPDATE AND TRENDS

Key developments of the past year

30 Please provide any updates and trends in your jurisdiction's debt capital market.

Certain significant amendments were made to the Capital Markets Law in 2020.

A new article added to the Law introduced the concept of an assembly of debt instrument holders, whereby holders of an issuer's debt securities (or tranches thereof) can adopt changes to the terms of

the securities through the meeting and decision quorums set forth in the Law or the prospectus. Decisions that are adopted will be binding on all holders of the debt instruments or the applicable tranches. The Communiqué on the Assembly of Debt Instrument Holders (II-31/A.1) regulates in detail the rights and procedures of the assembly.

Another new article introduced the concept of a security trustee (or agent) to make it easier for investors to perfect, maintain and enforce security interests.

Finally, yet another new article specifically regulates the issuances of project bonds and the formation of project finance funds.

Coronavirus

31 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

See www.lexology.com/gtdt.

TURUNÇ

Kerem Turunç

kturunc@turunc.av.tr

Esin Çamlıbel

ecamlibel@turunc.av.tr

Teşvikiye Caddesi 19/11

Teşvikiye 34365 Istanbul

Turkey

Tel: +90 212 259 4536

Fax: +90 212 259 4538

www.turunc.av.tr

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)