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## **A Long-Forgotten Capital Markets Tool for Construction Sector: Real Estate Certificates**

After the news that the Capital Markets Board of Turkey (“**CMB**”) is in discussions with major construction companies; the CMB, on 30 October 2012 announced that studies on a draft communiqué (“**Draft Communiqué**”) amending the existing ‘*Communiqué on Principles regarding Registration of Real Estate Certificates with the Board*’, Communiqué No. III/19 (“**Communiqué**”) is nearly completed; and that the Draft Communiqué will soon be opened for public opinion. Accordingly, the aim is to revitalize a long-forgotten capital markets tool for construction sector: Real estate certificates (“**RE Certificates**”).

RE Certificates are bearer securities each with an equal nominal value, and issued by a joint stock company which undertakes to complete an ongoing or future construction project and seeks funding for it (“**Issuer**”).

### **Background and the Existing Communiqué**

Upon the implementation of the Communiqué in 1995, the ‘Real Estate Certificates Market’ was launched on 3 June 1996 at the Bonds and Bills Market of the Istanbul Stock Exchange (“**ISE**”). This market’s scope was to provide funding and accelerate the construction of organized housing and work residence projects. However, except the funding of the construction by Emlak Bankası in 1996, RE Certificates were barely used in Turkey.

According to the Communiqué, the construction project must be fully guaranteed by a bank issuing a letter of guarantee; and, starting from the finalization of the sale, the guarantor bank must present quarterly reports to the CMB regarding the project development and funds transferred to the Issuer. The CMB is also authorized to audit the accounts and transactions of the Issuer and the guarantor bank in relation to the project; and request additional documentation and/or information.

Upon completion of the project, the RE Certificate holders are entitled to claim either (i) the ‘*principal obligation*’ which is to transfer a separate unit (e.g. an apartment, house, office, etc.) to investors holding a sufficient number of RE Certificates (variable on the value of the relevant unit); or (ii) if an investor does not claim the principal obligation on the due date, or does not hold enough RE Certificates to become entitled to an independent unit, the ‘*ancillary obligation*’ which is the payment of the principal amount for the RE Certificates and the interest accrued therefrom.

### **Draft Communiqué**

The CMB announced that in the Draft Communiqué the bank letter of guarantee requirement, which was criticized to have a detrimental effect on the implementation of RE Certificates, will be abolished. Accordingly, the Draft Communiqué will require the funds raised to be deposited at the brokerage house which conducted the public offering, and be transferred to the Issuer on a project completion basis.

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Other novelties and/or amendments which will be introduced in the Draft Communiqué are as follows:

- (i) A ceiling for the portion of the construction project which may be subject to RE Certificates;
- (ii) A new design for RE Certificates to meet the needs of investors wishing to invest in interest-free tools;
- (iii) Freedom for the investors to purchase RE Certificates at the initial public offering and then also on the ISE;
- (iv) Freedom for the RE Certificate holders to either sell their certificates on the ISE, or be reimbursed by the sale of the real estate; and
- (v) An option to provide a limited protection from price fluctuations.

Mechanics of and other amendments and/or novelties introduced (if any) in the Draft Communiqué will be clear once it is opened for public opinion.

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