

Debt Instrument Holders Board to Oversee Issuers

9 Oct 2020

The Communiqué on Debt Instrument Holders Board ("**Communiqué**") has entered into force after being published in the Official Gazette numbered 31241 and dated 11 September 2020, regulating the right for debt instrument holders to form boards ("**DIHBs**") to negotiate terms of structuring the relevant instrument as well as default conditions with issuers. The issuers will require such board approval prior to taking certain actions pertaining to the debt instruments in question.

The Communiqué introduces two different DIHBs: "Tranche DIHB" and "General DIHB". Tranche DIHBs is composed of investors holding the debt instruments issued in the same tranche(s), where tranche corresponds to an issue with a defined ISIN. The "General DIHB", on the other hand, is composed of holders of all debt instruments (excluding those having secured debt instruments) issued by the issuer irrespective of in which tranche such instruments are issued in.

Pursuant to the Communiqué, essential terms envisaged in the prospectus/issuing document can be amended in a way that would influence the investment decisions of investors provided only that the Tranche DIHB approves such amendment. For approval, a two-thirds majority is sought among the nominal value of the outstanding instruments in the given tranche, however, a stricter quorum of the decision can be envisaged in the relevant prospectus/issuing document. The Tranche DIHB's resolution takes effect following the approval of the board of directors of the issuer.

Investors considering their interest being adversely affected by the Tranche DIHB resolution may call for a General DIHB. However, for calling such a meeting, the conteste(s) of the Tranche DIHB resolution must hold debt instruments amounting to 20 per cent of all outstanding debt instruments issued by the relevant issuer, irrespective of in which tranche such instruments are issued in. Decisions are taken with a two-thirds majority among the nominal value of the outstanding instruments enabling its holder to attend the General DIHB.

DIHB meetings can take the form of physical gatherings, as well as electronic meetings. It is also possible to make a decision without a meeting whatsoever, but a way of passing the prospective resolution among debt instruments holders (either physically or electronically) and obtaining signatures of the authorized persons. However, listed issuers and issuers who have sold their debt instruments by way of a public offering are required to conduct physical meetings, to which debt instrument holders may also simultaneously attend electronically.

Other important aspects of the Communiqué can be exemplified as follows:

- Debt instruments held by the issuers and/or its related parties do not grant voting rights, nor are they considered when determining the *quora*.
- The prospectus/issuing document may provide for other decisions to be approved by the DIHB as a prerequisite for having an effect.

- Secured debt instrument holders cannot attend DIHBs, unless the agenda has the potential of influencing their interests. However, secured debt instrument holders form their own DIHBs.
- Debt instruments issued outside of the Republic of Turkey are not bound by these conditions, as the provisions of the Communiqué do not apply to such instruments.
- Upon approval of the DIHB regarding a structuring of a debt instrument, all execution proceedings against the issuer stop, interim measures and attachments are automatically canceled.

Please see this [link](#) for the full text of the Communiqué.

(Only available in Turkish)

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