

COMMUNIQUE ON LEASE CERTIFICATES

I. Brief Introduction to Lease Certificates in Turkey

The first regulation concerning the lease certificates was the “Communiqué Serial III no: 43 on Principals regarding Lease Certificates and Asset Leasing Companies” dated 01.04.2010 which introduced Sukuk to the Turkish Market. This new investment instrument was similar to Sukuk however it was called as “Lease Certificate”. The Communiqué Serial III no:43 only regulated sukuk ijara type transactions.

Lease certificates provide a financing resource for companies (Resource Companies) through Asset Leasing Companies (“ALC”) and by using the “transfer - lease – take over” process. Resource Company is a joint company which transfers its assets to ALC to lease them back from ALC. ALC is a joint stock company which can only be incorporated exclusively for issuing lease certificates. Resource Company incorporates an ALC which should only serve for issuing lease certificates. ALC has a similar function like an “SPV”.

II. The New Communiqué

A recent communiqué regarding lease certificates has been published on the Official Gazette dated 07.06.2013 and numbered 28670. The communiqué numbered III-61.1 (“Communiqué”) regulates the matters such as the guidelines for determining the lease certificate classes; establishment, articles of association of the ALC and rights, assets which can be acquired by these companies.

This recent communiqué does not cover the issues related to sovereign lease certificate issuances by the Treasury. Sovereign lease certificates are issued in accordance with the Article 7/A of the Public Finance and Debt Management Law numbered 4749.

The communiqué is published in accordance with the Article 61 of the Capital Market Law numbered 6362 and dated 06.12.2012. Article 61 of this law is titled as “Lease Certificates and Asset Leasing Companies” which regulates the lease certificates.

The new Communiqué regulates new types of sukuk transactions unlike the previous Communiqué which regulated only sukuk ijara transactions; explains more details about the structure and brings in more tools for the protection of the investors.

1. Five new lease certificate types are introduced.

2. ALCs are now able to issue lease certificates for other companies. They were not able to carry out such issuances for the companies other than their Resource Company.
3. ALCs may carry out more than one lease certificate issuance at the same time.
4. “Asset” definition is made broader to cover assets and rights in accordance with Capital Markets Law numbered 6362.
5. ALCs are now required to have an independent member at the Board of Directors to avoid any conflict of interest situation and significant decisions are subject to affirmative vote of the independent board member.
6. Obligations and restrictions on the assets and rights which the sukuk is based on shall be monitored and such information shall be kept at the ALC’s records. This is a new provision to inform the investors and protect their rights.
7. If Resource Company request pledge on assets and rights in favour of the investors, ALC must create such pledge on the assets and rights for sukuk which are based on partnership and contractor agreements.
8. The entities that can be Resource Company or the party using the raised funds are limited by the Communiqué concerning lease certificates based on management agreements and sale-purchase transactions for the protection of the investors.

III. Regulations Introduced by the Communiqué

As per the communiqué, lease certificates may be issued in five different types. These are the lease certificates which may be based on; i) Ownership ii) Management Agreement iii) Sale-Purchase iv) Partnership and v) Contractor Agreement. However, this list is not exhaustive. Other types of sukuk can be structure and submitted to the approval of the Capital Markets Board (“Board”). If this is the case, the communiqué’s provisions are implied on these instruments by analogy.

As it is also stated in previous regulation published regarding the lease certificates; lease certificate holders have rights on the underlying assets and rights at the same rate of their percentage on the revenues. In the event underlying assets and rights are sold to any other third person or to the Resource Company; the lease certificate holders shall have the same rights on these sale consideration.

In case the lease certificate will be offered to public, an admission document shall be submitted to the approval of the Board. If the lease certificate will not be offered to public, the issuance will be made as per the relevant agreement.

a. Lease Certificates Based on the Ownership (Sukuk Ijara)

Ownership based lease certificates are the lease certificates that are issued to finance the purchase of the assets and rights to be acquired from Resource Company by ALC. ALC purchases these assets and rights for the purposes of leasing these assets and rights to the Resource Company or third persons. The issuance amount cannot exceed 90 % (ninety per cent) of the value determined in the valuation report issued by a Capital Market Board accredited valuation company. In the event assets subject to the lease certificate are a real property; buyback option must be annotated on to the title deed registry provided that this is requested by the Resource Company.

b. Lease Certificates Based on Management Agreements (Sukuk Al Musaqa)

Lease certificates based on management agreements are issued for the purposes of management of assets and rights of Resource Company by ALC. Resource Company holds the ownership of these assets and rights and they are managed by and in favour of ALC. The revenues generated from the rights and assets are transferred to ALC.

ALC and Resource Company concludes an agreement which states that assets and rights owned by the Resource Company shall be managed in favour of ALC. The ownership on these assets and rights shall remain on the Resource Company.

c. Lease Certificates Based on Sale and Purchase (Sukuk Murabaha)

These are the lease certificates issued to finance the acquisition of assets and rights that are to be sold to third parties with instalments.

ALC shall purchase assets and rights on the next business day following the deposit of the funds collected from the issuance to ALC's bank account and these assets-rights shall be sold in instalments from a price more than the purchase price of the assets. In case these transactions cannot be carried out by ALC within the next business day as explained above; the mentioned funds shall be returned to the investors on the second business day.

d. Lease Certificates Based on the Partnership (Sukuk Musharaka)

These types of certificates are issued by ALC to make ALC a partner in a joint venture. The issuance amount for the partnership based lease certificates cannot exceed 90 % (ninety per cent) of the value determined in the valuation report issued by a Capital Market Board accredited valuation company.

It is a requirement that ALC shall be elected as the representative of the lease certificate holders; and ALC shall put a pledge on the joint venture's assets and the other partners' assets up to the issuance amount. In the event ALC puts a pledge on a real property; number of the lease certificates issued shall be indicated on the title deed registry.

e. Lease Certificates Based on Contractor Agreements (Sukuk Istisna)

These lease certificates are issued to finance a project which ALC is the project owner. ALC signs the contractor agreement in its name and on the account of the lease certificate holders; ALC shall have the project owner title in such agreement.

Other agreements such as service, construction in consideration for land/flat or partnership agreements may be concluded within the scope of lease certificate issuance based on contractor agreement. Eventually, ALC is required collecting the entire sale amount and make payments to the lease certificate holders.

The issuance amount for the contractor agreement based lease certificates cannot exceed 90 % (ninety per cent) of the value determined in the valuation report issued by a Capital Market Board accredited valuation company.

IV. Conclusion

The abovementioned lease certificate types may be issued with or without public offering. There are two different types for the issuances made without public offering; these are i) private placement and ii) sale to the qualified investor. Share certificates that are issued with public offering shall be traded at the stock exchange and an application shall be submitted to the stock exchange for this purpose.

The board may demand from ALC to obtain a guarantee from a local bank or third legal person for payment obligations concerning the lease certificates. The board may also demand from the ALC to make the issuance for only qualified investors. It can be also requested from ALC to have the lease certificates rated.

ALCs that are incorporated in accordance with the previous communiqué numbered III-43 are required to comply with the recent communiqué's provisions regarding their partnership structure, establishment of the administrative board and articles of association. Otherwise, these ALCs cannot issue any further lease certificates.

Should you have further questions, please do not hesitate to contact us.

Regards,

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