

**Capital Markets Board of Turkey:**

**DRAFT BY-LAW REGARDING  
MORTGAGE FINANCE CORPORATIONS**

**SECTION ONE**

**Objective, Scope, Base, Definitions**

**Objective and Scope**

**ARTICLE 1 - (1)** The objective of this by-law is regulating principles regarding establishment, activities and authorization of mortgage finance corporations.

**Base**

**ARTICLE 2 - (1)** This by-law is published based on Article 39/A of Capital Market Law no.2499.

**Definitions**

**ARTICLE 3 - (1)** In the application of this by-law, the definitions below, are applicable;

- a) Bank: Banks defined at Article 3 of the Banking Law dated 19/10/2005, no.5411.
- b) CB: Covered bonds defined at Law article 13/A
- c) CB By-law: Serial:III, No:33 “By-law Regarding Mortgage Covered Bonds” published at Official Gazette no: 26603 at 4/8/2007.
- d) Law: Capital Markets Law.
- e) Board: Capital Markets Board.
- f) Client: housing finance corporations defined article 38/A second paragraph of the Law and Turkish Republic Prime Ministry Mass Housing Administration.
- g) Qualified Share: 10% or more of the shares of the equity or the voting rights of a corporation and even under 10%, shares qualified to determine a board member or bears a privilege regarding election of the Board members.
- h) MFC: mortgage finance corporations defined at Article 39/A of the Law.
- i) Cover assets: assets inside the cover pool defined at Article 13/A of the Law.
- j) TCRG: Turkish Commercial Registry Gazette.

## **SECTION TWO**

### **Principals Regarding Establishment and Activities**

#### **Mortgage Finance Corporations**

**ARTICLE 4 -** (1) MFC's are corporations established solely with the purpose of performing activities defined at Article 19 of the By-law.

(2) MFC's shall apply to the Board to get approval to be founded and begin its activities.

#### **Conditions to be Established**

**ARTICLE 5 -** (1) For the approval of the establishment of MFC's, following conditions must be met.

- a) They shall be founded as a corporation.
- b) Securities shall be issued for cash and all shall be registered.
- c) Paid-in capital shall not be lower than the amount required for development and investment banks stated at Banking Law No. 5411.
- ç) Articles of incorporation shall comply with the Law.
- d) Founders, shareholders and managers shall have the qualification stated in the by-law.
- e) Their commercial title shall involve the phrase: "Mortgage Finance".
- f) They shall submit a program of activity includes work plans, market analysis, three year projections regarding the financial structure of the corporation involving the capital adequacy development, budget plan for the first three years, information regarding internal control, risk management and internal supervision structures.

(2) In the applications for the permission for establishment of mortgage finance corporations to which an institution under the regulation and supervision of Banking Regulatory and Supervisory Agency, is foreseen to participate, in order the permission of establishment to be given, the approval of Banking Regulatory and Supervisory Agency has to be taken.

#### **Qualifications of Founders and Shareholders**

**ARTICLE 6 -** (1) Qualified shareholders and the real and legal persons who apply to found an MFC shall meet the following conditions.

- a) They shall meet the conditions which shall be met by founders of banks at banking Law No.5411.
- b) They shall not have mature tax and social security premium obligations.

- c) Their activities shall not be suspended for more than one month in the last 1 year.
- ç) They shall not be banned from operations according to Law Article 46 (i).
- d) They shall not be convicted according to capital market regulations.
- e) They shall not be convicted of the crime of money laundering and terrorism financing.

(2) The conditions above are not required to be met for the governmental legal persons.

(3) The condition at sub-paragraph (a) of the first paragraph is not required to be met for the banks.

#### **Authorization to be Established**

**ARTICLE 7 -** (1) Founders apply to the Board with the application form published by the Board and other documents stated in the form. Board owns the power to demand additional documents.

#### **Authorization to Perform Activities**

**ARTICLE 8 -** (1) MFC's shall apply to the Board within six months to acquire approval to perform their activities.

(2) MFC's shall meet the conditions below in order to acquire approval to perform their activities.

- a) They shall keep meeting the conditions set forth in the foundation.
- b) Articles of incorporation shall be registered to the trade registry and published at TCRG.
- c) The general manager shall be appointed to work full time.
- d) Necessary organization shall be set up.
- e) Board members, members of the internal audit unit and general manager shall meet the conditions set forth at this by-law.

(3) MFC's apply to the Board with the application form, information and documents proving that they meet the conditions above. Board reserves the right to request additional information and documents.

(4) Authorization for establishment is cancelled after six months if the MFC does not apply for authorization to perform activities. The MFC's whose authorization is cancelled, shall modify the provisions in their articles of incorporation regarding performing as an MFC in three months and shall send the TCRG to the Board within 10 days beginning the end of the six month period. The MFC's whose application for authorization to perform activities is rejected by the Board shall modify the provisions in their articles of incorporation regarding

performing as an MFC in three months and shall send the TCRG to the Board within 10 days beginning from the date of the rejection.

(5) Upon approval, Board shall issue a certificate of authorization.

### **SECTION THREE**

#### **Organization of MFC's**

##### **Organizational Structure of MFC's**

**ARTICLE 9 -** (1) MFC's are obliged to create accounting, registry, information and documenting system and an effective organizational structure that avails a regular workflow and communication, establish the technical background, constitute sufficient internal control, risk management and internal audit systems, define the duties and responsibilities of the employees and made the board of directors approve the written procedures of internal control and audit procedures.

(2) Internal audit, internal control, risk management units and audit committee shall be established in the MFC.

##### **Internal Control System**

**ARTICLE 10 -** (1) The purpose of the internal control system is to protect the assets of MFC and to ensure the MFC while performing its activities in an efficient way; to comply with the law, other regulations and internal MFC policies and rules; has a safe, precise and integral accounting and financial reporting system.

##### **Qualifications and Responsibilities of the Internal Control Unit**

**ARTICLE 11 -** (1) MFC's can recruit adequate number of internal control staff in the internal control unit established to monitor, examine and control the execution of MFC functions. Internal control staff that is authorised to execute continuous control can not overtake any other responsibilities.

(2) Internal control unit monitors and control the internal control policies and procedures. Internal control staff demand information, control and supervise based on various control tools and observations, report their findings and submit their warnings to the relevant unit. Internal control staff have the authority to demand additional information about the matters they monitored, examined and controlled from MFC staff, to consult their opinions and to warn the supervisory unit and other units if necessary.

(3) Internal control unit manager shall have five years of capital markets or banking experience and advanced level license of capital market activities.

(4) Internal control unit is under the supervision of the audit committee.

### **Risk Management System**

**ARTICLE 12 -** (1) A risk management system shall be established in order to ensure defining, measuring and controlling the risk exposures regarding the nature and scope of its activities.

### **Qualifications and Responsibilities of Risk Management Unit**

**ARTICLE 13 -** (1) Risk management unit is at least responsible for:

a) Defining risk management strategies, risk management policies and procedures and risk measurement models, assuring proper implementation and regular monitoring of these and making necessary changes.

b) Producing and analyzing periodical reports derived from risk measurement models,

c) Assuring that the countable risks are maintained within predetermined limits and monitoring these limits,

ç) Punctual and reliable reporting to the audit committee, CEO and the Board of Directors on the outcomes of risk measurement and risk monitoring.

(2) The educational background, experience, professional capabilities required for risk management unit personnel must be regulated in the risk management unit charter which is prepared by the risk management unit and approved by the Board of Directors.

(3) Risk management unit manager must have at least 5 year experience in capital markets and banking and must possess an Advanced Level License of CMB. Risk management unit manager assesses whether the unit personnel meets the required qualifications, prepares training programs in order to improve their qualifications and monitors their performance.

(4) Risk management unit is under the supervision of the audit committee.

### **Internal Audit System**

**ARTICLE 14 -** (1) An internal audit system shall be established in order that the activities of MFC are in compliance with law, other regulations and internal strategy, policy, principles and objectives and the internal control and risk management systems are efficient and adequate.

### **Qualifications and Responsibilities of Internal Audit Unit**

**ARTICLE 15 -** (1) Internal audit function is executed by internal audit unit. Sufficient number of supervisors and internal audit personnel shall be recruited in order to proper execution of audit function taking its intensity, scope, riskiness, size and complexity level into consideration.

(2) Internal audit unit manager must have at least 5 year experience in capital markets and banking and must possess an Advanced Level License of CMB. Internal audit unit manager executes internal audit function in accordance with audit plans and policies and implementation practices.

(3) Internal audit unit is responsible for punctual and regular reporting of internal audit outcomes to the audit committee.

(4) Internal audit unit manager;

a) Defines and executes the internal audit policies and implementation practices on the opinion of audit committee and on the approval of the Board.

b) Monitors and directs internal audit function, policies, programs, processes and implementations.

c) Assesses the qualifications of supervisors, prepares training programs in order to improve their qualifications and monitors their performance.

(5) Internal audit unit is under the supervision of the audit committee.

## **SECTION FOUR**

### **Managers**

#### **Board of Directors**

**ARTICLE 16 -** (1) Board members of the MFC shall,

a) Meet the conditions stated in the first paragraph of Article 6,

b) Be a university graduate, have at least 5 year experience in capital markets and banking, have a reputation of becoming a board member.

(2) MFC Board must be comprised of at least seven members. Board members shall be appointed yearly, however they can be re-appointed.

(3) Any appointment shall be noticed to the CMB with the documentation in the first paragraph within six working days.

(4) Board has the ultimate responsibility for the establishment, performance, compliance and adequacy of internal control, risk management and internal audit systems, assurance of financial reporting systems and assessing the job definitions.

#### **CEO**

**ARTICLE 17 -** (1) CEO shall meet the conditions stated in the first paragraph of Article 6 and have at least 10 year experience in capital markets and banking.

(2) Appointment of the CEO shall be notified to the CMB with the documentation in the first paragraph of Article 6 within six working days.

### **Audit Committee**

**ARTICLE 18 -** (1) An audit committee shall be established in order to support the execution of audit and supervision of the Board. Audit committee is comprised of at least two Board members who do not have executive functions. Qualifications of audit committee members are stated in Article 6 of “Communiqué on Internal Systems of Banks”.

(2) Any appointment shall be noticed to the CMB with the documentation in the first paragraph and the first paragraph of Article 6 within six working days.

(3) Audit committee is responsible for;

(a) the efficiency, adequacy and proper function of the MFC’s internal control, risk management and internal audit systems and accounting and reporting systems in accordance with regulations, necessary assessments regarding the appointment of audit and rating companies, monitoring these companies’ activities,

(b) receiving reports from internal control, risk management and internal audit units and audit companies regarding their executions and notifying the Board in case of incompliance with rules and regulations and of any problem causing malfunctions.

(c) submitting the Board its opinions about results and necessary precautions and implementations and any other important matters related to the proper function of the MFC in maximum semi-annual periods.

(4) Audit committee has the authority to demand any information from MFC units, audit companies, rating institutions and appraisal companies and can outsource experts on the approval of the Board. Responsibility and authority areas of audit committee shall be documented and approved by the Board.

## **SECTION FIVE**

### **Activities**

#### **Scope of MFC Activities**

**ARTICLE 19 -** (1) Within the context of Article 39/A of the Law, MFC’s may:

a) Purchase without recourse, manage and transfer the receivables arising from housing finance and provide financial resource by means of purchasing receivables with recourse,

b) Issue mortgage covered bonds in accordance with Communiqué On The Principles Regarding Mortgage Covered Bonds and second paragraph, asset covered bonds and other debt securities provided that it is within the context of Article 3/k of the Law, and may establish Housing Finance and Asset Finance Funds,

c) Execution of transactions related to risk management.

ç) Execution of other activities given the permission of CMB,

(2) Receivables purchased with recourse may be deemed as collateral for mortgage covered bonds within the context of Article 13/A of the Law. In that case, cover assets are kept by the client. Cover assets are separate from other assets of the client. In order to ensure that, cover register is kept by MFC. The records in the cover register are the principal basis of consideration in all transactions and disagreements on cover assets.

(3) In case of providing finance from MFC which purchase receivables arising from housing finance or other assets with recourse, the related collaterals can not be used for any other purpose, may not be pledged or given as collateral and can not be seized by third persons even for the aim of collecting the public receivables, can not be subjected to precautionary injunction and can not be included in bankrupt's estate. Communiqué On The Principles Regarding Mortgage Covered Bonds is applied in case of any absence of provision.

(4) The Board, upon the consent of the BRSA, may require keeping the records of the collateral receivables also at a separate registry institution.

### **Servicer**

**ARTICLE 20 -** (1) MFCs sign a servicing agreement with the client to fulfill services related with the purchased receivables.

(2) The servicer is responsible for the day to day management of the receivables. The servicer must have the experience, human resource, and management and information technology systems necessary for management of receivables.

(3) The responsibilities of the servicer are determined according to a servicing agreement made with MFC and the servicer shall be responsible for the following:

a) Timely collection of the interest and principal payments of the mortgage loans and remittance to the MFC account.

b) Timely collection of property insurance premiums or other insurance premiums if the borrower is insured for any reason regarding his/her debt, and payment to the insurer.

c) If there are any relating clauses in the underlying loan agreement, the collection of the taxes in relation to the property in timely manner from the borrower, and payment of property taxes to the tax authorities.



d) Monitoring the repayment credibility of borrowers, and making necessary notifications to borrowers in cases of delinquencies and defaults.

e) Provided that it is stated in the servicing agreement, following foreclosure of the non-performing residential mortgage loans as defined in the “By-law on the Identification of the Loans and Other Receivables by the Banks and Reserve Requirements” and remittance of MFCs share of proceeds to the MFC account.

f) At least monthly reporting to the MFC regarding the cash flow from the housing finance receivables including the time of payments and outstanding balances.

g) Determination of the new servicer which shall be appointed as servicer in case the incumbent servicer fails to fulfill the liabilities that are defined in the servicing agreement or the servicer’s license to operate is cancelled.

h) Upon the realization of the conditions which are stated in (g), the servicer shall deliver to the MFC or the new servicer all the accounts and documentation that are kept electronic or paper based, and all cash and accounts pertaining to the receivables without any kinds of deductions.

i) Other tasks that will be determined by the Board.

(4) The servicer shall not be compensated any higher than the ongoing prevailing market price.

(5) Within the context of the agreement made with the MFC, the cash which is due to be transferred to MFC via the servicer, belongs to the MFC portfolio and shall be transferred into a MFC account at a bank, which is segregated from servicer’s accounts.

(6) Upon the realization of the conditions which are stated in (g) of third paragraph MFC shall give daily notice to CMB.

#### **Determination of capital adequacy ratio**

**ARTICLE 21 -** (1) MFC’s equity-to-assets ratio, where the assets are credit risk weighted, is considered in determining the capital adequacy of the MFC. MFC equity and assets are measured in accordance with International Financial Reporting Standards.

(2) Capital adequacy ratio, as well as consolidated, shall be calculated and maintained as 4 percent.

(3) In calculation of risk weighted assets, below rates shall be used:

a) 35 % for residential mortgage receivables purchased from housing finance institutions and receivables acquired from Housing Development Administration,

- b) 20 % for receivables of secured loans extended to housing finance institutions,
- c) Other assets are risk weighted in accordance with the “Regulation on Measurement and Assessment of Capital Adequacy of Bank” of Banking Regulation and Supervision Agency.

## **SECTION SIX**

### **Operations that MFCs Can Not Undertake, Other Obligations and Audit**

#### **Transactions and Operations That MFCs Can Not Undertake**

##### **ARTICLE 22 - (1) MFCs;**

- a) Can not operate other than their the main activities,
- b) Can not give any guarantee letters,
- c) Can not collect deposits other than borrowing money from international markets via securities issuing defined in law.
- ç) Can not collect deposits as described in the Banking Law and can not be involved in transactions and operations bearing the result of deposit collection.
- d) Can not be involved in any kind of activity except for the activities permitted by the Board and transactions and operations with regard to those and can not have real estate in excess of their requirement for undertaking their capital market operations.
- e) Shareholders, managers, personnel, inspectors and auditors appointed in accordance with the Turkish Commercial Code No: 6762 can not disclose the confidential information they gather during their work and can not use these secrets for their own benefit or for the benefit of third parties. Notices and advertisements required by the legislation for disclosure purposes, disclosing information to the related authorities on situations constituting crime, and all judiciary or, when authorized by the legislation, administrative inspections and investigations fall outside the scope of secrecy.

#### **Financial Reporting Standarts, Independent Auditing of the MFC and reporting**

**ARTICLE 23 - (1) MFCs are subject to Communiqué On Principles Regarding Financial Reporting Standards In Capital Markets (Serial: XI, No: 29) for financial reporting standarts and subject to Communiqué On Principles Regarding Independent Auditing In Capital Markets (Serial: X, No: 22) for independent auditing.**

(2) MFCs shall prepare a quarterly report which includes followings;

a) Information about the purchased loans or receivables from originators (loans per originator, loan terms, loan qualifications etc.)

b) Events for the last quarter and activity report,

c) Quarterly financial statements and capital adequacy statements prepared in accordance with Board regulations,

and shall send these quarterly reports to the CMB following two weeks at the end of quarterly periods. These quarterly reports shall be kept minimum 10 years within the MFC.

### **Rating Activities**

**ARTICLE 24 -** (1) Rating companies which shall give rating services to the MFC can be selected among the listed companies by CMB.

### **Principles on Other Ads and Notices**

**ARTICLE 25 -** (1) All kinds of printed, audio and visual ads in media, ads in data processing media, letters, calls, brochures, posters and similar ads and notices of MFCs shall be in accordance with the following principles:

a) No expression can be used that will mislead and deceive the public, exploit the lack of experience and information.

b) No information shall be provided lacking objectivity and reality.

c) Information required as a minimum shall not be hidden.

d) Comparison with other MFCs shall not be presented, clauses aiming to create an overstated and subjective image of the MFCs such as; “the biggest”, “the best”, “the most reliable”, the strongest” and etc. shall not be used.

### **Book Keeping, Recording and Documentation**

**ARTICLE 26 -** (1) MFCs shall keep the books and records kept by first grade tradesmen within the framework of the provisions of the Turkish Commercial Code No: 6762, Tax Procedure Law No: 213, and the legislation on stock exchanges.

### **Public Disclosure Requirements**

**ARTICLE 27 -** (1) - MFCs shall submit followings within six business days following the end of the events.

a) Procedures about qualifications of the purchased receivables from clients and procedures whether these qualifications are satisfied or not and related board of directors decisions.

b) Annual activity reports.

c) Their articles of incorporation regarding foundation and TCRG in which amendments to the the articles of incorporation are issued.

ç) Transfer of shares and the record of the transfer of shares to the shareholders book

The copies of newspapers where announcements and advertisements has been published. which to the Board within 10 days. performing as an MFC and shall send the

(2) All information and documents related with the oversight and enforcement of the MFCs which are requested by the Board have to be submitted to the CMB within the prescribed procedures and time frame and have to be announced public if necessary.

#### **Amendments in the Articles of Association and Changes in the Ownership**

**ARTICLE 28 -** (1) All amendments in the Articles of Association of the MFCs shall be subject to the permission of the Board.

(2) Acquisition of shares by an individual becoming shareholder of the MFC through acquiring 10% or more shares of the corporation or transfer of shares providing management control rights shall be subject to the permission of the Board can not be recorded to the shareholders book without Board consent.

#### **Revocation of Authorization Certificates or Temporary Suspension of Operations**

**ARTICLE 29 -** (1) In case of the following situations, the Board may revoke the certificates of authorization for the operations of MFCs or on the basis of areas of activity or suspend their operations temporarily by taking into account the content and significance of the situation.

a) The necessary measures in accordance with sub-paragraph (g) of the first paragraph in Article 46 of the Law are not taken, violation of the legislation and provisions of the Articles of Association are observed.

b) The financial standing has weakened to a degree that the commitments in accordance with sub-paragraph (h) of the first paragraph in Article 46 of the Law cannot be fulfilled.

c) Any of the conditions required by the regulations of the Board and the Law for the establishment, operations, and for obtaining authorization for operations, also conditions and qualifications regarding the shareholders, managers, personnel of the MFCs has been lost or unfulfilled.

d) In cases of violations of the regulations of the Board on capital adequacy, failure to meet the necessary conditions within the period granted by the Board.

(2) The same sanction shall not be imposed for the third time on the MFCs, whose entire activities have been suspended within two years. Instead its authorization certificates with regard to these activities shall be permanently revoked.

(3) In the evaluation undertaken by the Board, if it is understood that no operation and task has been realized in one of the activities under the authorization certificate of the MFC within 12 months or if the MFC notifies that it shall not undertake one of these activities for 6 months or longer, the related certificate of authorization shall be revoked. However these periods may be extended by the Board provided that a justified cause is presented by the MFC.

(4) MFCs, whose certificates of authorization have been permanently revoked by the Board shall be subject to the fourth paragraph of article 8.

(5) Companies which don't have certificates of authorization and those whose certificates of authorization have been permanently revoked by the Board can not engage in activities which are mentioned in this Communiqué and can not use words, terms and signs within their commercial titles, announcements, advertisements and offices to imply that they perform as an MFC.

**Mergers, Transfers and Liquidation**

**ARTICLE 30 -** (1) The consent of the Board shall be obtained in mergers, transfers and liquidation of MFCs the Board is entitled to request every necessary information and documents for the application of the MFCs such a kind of decision.

(2) The Board may decide on gradual liquidation of the MFCs in accordance with Article 46/C of the Law.

**Validity**

**ARTICLE 31 -** This by-law shall become valid upon the date of publication.

**Enforcement**

**ARTICLE 32 -** The clauses in this by-law shall be enforced by the Board.

