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Banking & Finance

Financial Restructuring Framework Agreement has been executed by Turkish Banks and Other Financial Institutions

Development

As previously noted in our Legal Alert on Draft Law on Restructuring of Debts owed to Financial Sector, the Banks Association of Turkey (*Türkiye Bankalar Birliği*) (the "**BAT**") has announced on September 19, 2018 that a financial restructuring framework agreement (the "**Framework Agreement**") has been executed by banks and other financial institutions ("**Financial Institutions**") and entered into force with immediate effect.

What does the Framework Agreement say?

- Borrowers (a) owing more than TL 100,000,000 to financial sector and (b) against which execution proceedings have been initiated for up to 25% of their respective debts are determined as eligible to apply for financial restructuring. On the other hand, borrowers which declared "bankrupt" are not able to apply for financial restructuring.

- A consortium consisting of creditors of a borrower applying for financial restructuring (the "**Consortium**") shall appoint institutions that will assess financial status of the respective borrower and ability to meet its repayment obligations. Depending on the Financial Institutions' decision, one or separate Consortiums could be established for each borrower or risk group.

- Creditors other than banks and financial institutions can be a part of the Consortium provided that the Consortium has granted an approval in this respect and such creditors have executed the Framework Agreement.

- Parallel with the Regulation on Restructuring of Debts owed to Financial Sector (the "**Regulation**") and the Draft Law on Restructuring of Debts owed to Financial Sector (the "**Draft Law**"), in the event that the Financial Institutions having two thirds of an applicant borrower's financial debts have executed financial restructuring agreement (the "**Restructuring Agreement**") within the scope of the Framework Agreement, all Financial Institutions having signed the Framework Agreement shall abide by the Restructuring Agreement and restructure such borrower's debts.

- Within the scope of the financial restructuring opportunity, numerous measures, amongst others, can be taken -such as changes in repayment schedule of the existing debts, providing additional financings, share capital increase, changes in management/shareholding structure of the company, public offerings, asset sales, perfection of additional securities.

- Upon the affirmative vote of more than one Consortium member having at least 90% of the Consortium's receivables, all members of the Consortium that have executed the Restructuring Agreement will be required to extend additional credit facilities to the respective borrower pro-rata their shares in the aggregate amount of such receivables. In case %90 quorum is not reached, the Consortium members willing to grant supplement credit facilities to the relevant borrower and non-member banks/financial institutions are entitled to extend supplement credit facilities to the borrower provided that the respective quorums under the Framework Agreement are met.

- Upon the unanimous affirmative vote of the Consortium members, Financial Institutions may write off the principal amounts in part or in full, or convert such receivables into equity, or transfer the same in return for a certain cost.

- In case no restructuring decision has been adopted within 90 days as of a financial restructuring application to the Consortium, the respective financial restructuring process shall terminate. It should, however, be noted that the Consortium may, on its own discretion, prolong such time period for a maximum period of two months. In any case, the relevant Restructuring Agreement is required to be executed within 150 days as of the application for financial restructuring.

- Borrowers seeking to benefit from the financial restructuring opportunity shall apply to one of the three major Financial Institutions ("**Application Bank**") by executing the application letter together with the undertaking a letter the form of which is attached to the Framework Agreement supported with the documents relating to the borrower's financial status and assets.

- Once a borrower duly applied to the Application Bank and such application is shared with the relevant Financial Institutions, execution proceedings can no longer be initiated/continued by any of the creditors of the borrower (except for any proceedings conducted so as to avoid loss of rights due to limitation and prescription periods).

- Under the Restructuring Agreements, various issues, amongst others, shall be set out such as: amounts of receivables relating to each member of the Consortium, repayment mechanism, events of breach along with the consequences thereof, etc.

- In line with the Regulation and the Draft Law, an arbitration committee shall be competent to settle any disputes arising out of or in connection with the Framework Agreement.

Conclusion

As briefly discussed above, the Framework Agreement has been drawn-up by the BAT and executed by the Financial Institutions in a short span of time following the entry into force of the Regulation. It is lastly worth to note that the Framework Agreement shall be applicable to any Restructuring Agreements to be entered into at the latest within two years as of the Banking Supervision and Regulation Board's (the "**BRSB**") approval on the Framework Agreement, and the BRSB is authorized to extend such period.

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