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Banking & Finance

LATEST DEVELOPMENTS ON FINANCIAL RESTRUCTURING

Amendments to the Financial Restructuring Regulation introduced by the BRSA

As previously noted in [Pekin & Pekin Legal Alert 12 / 2018](#), the Banks Association of Turkey (*Türkiye Bankalar Birliği*) (the “**BAT**”) has distributed a draft regulation (the “**Draft Regulation**”) amending the Regulation on Restructuring of Debts owed to Financial Sector (the “**Financial Restructuring Regulation**”) to its members on November 1, 2018. Following the distribution of the Draft Regulation, the Banking Regulation and Supervision Agency (the “**BRSA**”) has introduced the Regulation Amending the Financial Restructuring Regulation (the “**Amending Regulation**”), as published in the Official Gazette dated November 21, 2018 with immediate effect.

Provisions of the Draft Regulation that have been entered into force

In parallel with the Draft Regulation, the Amending Regulation has brought the following provisions:

- Turkish banks, financial leasing companies, factoring companies, financing companies, capital market institutions, insurance and reinsurance companies, payment services and e-money institutions and system operators will no longer be authorized to benefit, in their capacity as debtors, from the financial restructuring opportunity.
- Upon the execution of financial restructuring agreements, statute of limitation shall not be suspended.
- Procedures and principles regarding the participation of foreign credit institutions and international agencies in the financial restructuring process shall be determined under financial restructuring framework agreements (the “**Framework Agreements**”). In any case, the foreign credit institutions and international agencies shall be able to participate in the financial

restructuring process without being subject to any approval quorum of the respective debtor's creditors and/or without obtaining the consent thereof.

What's New in the Amending Regulation?

- Creditors will no longer be required to obtain the approval of the Banking Regulation and Supervision Board (the "BRSB") while determining the relevant institutions which will evaluate the financial situation of the debtors applying for the financial restructuring opportunity.
- The restriction in the Financial Restructuring Regulation which was stipulating that the creditors cannot apply interest rates lower than the market rates or cannot extend additional financings to debtors which are included into the same risk group (as defined under Article 49 of the Banking Law (Law No. 5411), has been abolished by the Amending Regulation.
- The confidentiality requirements applicable to the creditors in relation to the financial restructuring process have been smoothed. Accordingly, the creditors are no longer under obligation to keep the information pertaining to such debtor and/or financial restructuring process strictly confidential. However, there is no doubt that the creditors would still be bound by the respective legal confidentiality obligations as set forth under their main legislation. On the other hand, it is no longer mandatory for creditors, that are party to restructuring agreements, to (i) insert a confidentiality clause in such restructuring agreements, or (ii) execute an additional confidentiality agreement with debtors in relation to such debtors' confidential information.

Conclusion

Since foreign credit institutions and international agencies have become able to get involved in the financial restructuring process, without being subject to the discretion of Turkish banks; the Framework Agreement which has been prepared by the BAT and entered into force with the approval of the BRSB on September 19, 2018 is now expected to be revised in conformity with the recent amendments. Furthermore, further revisions to the Draft Law on Restructuring of Debts owed to Financial Sector (as detailed in [Pekin & Pekin Legal Alert 9 / 2018](#)), of which the negotiations are still underway, is expected.

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