Pekin & Pekin

Legal Alert 16 / 2018

The award winning Pekin & Pekin Banking & Finance practice team not only provides compliance support and legal advice to banks and financial institutions on an ongoing basis but also focuses on more complex cases, giving clients direct practical and innovative advice.

To discuss how these developments affect your business interests please contact either:

Ahmed Pekin
Senior Partner,
Dispute Resolution & Arbitration,
Banking & Finance
Email: **apekin@pekin-pekin.com**

Eda Beltan
Partner,
Banking & Finance
Email: **ebeltan@pekin-pekin.com**

Banking & Finance

LATEST DEVELOPMENTS ON FINANCIAL RESTRUCTURING

Amendments to the Framework Agreement

As mentioned in our previous Legal Alert, the financial restructuring framework agreement dated September 11, 2018 and approved with the decision of the Banking Regulation and Supervision Board dated September 19, 2018 (the "**Framework Agreement**") was expected to see revisions in line with the recent amendments introduced to the Regulation on Restructuring of Debts owed to Financial Sector on November 21, 2018. Accordingly, an amendment protocol in relation to the Framework Agreement (the "**Amendment Protocol**") has now been prepared by the Banks Association of Turkey (*Türkiye Bankalar Birliği*) and circulated to Turkish banks and other financial institutions for their due execution.

What's New?

- Participation of foreign credit institutions and international organizations: Foreign credit institutions and international organizations, which have extended loans to debtors and which are authorized to do so under the laws of their jurisdiction of incorporation, will be able to become party to the Framework Agreement on a debtor basis by submitting an executed copy of the same to the respective leader bank; provided that their participation cannot be subject to any approval quorum or consent of Turkish financial institutions.

- Legal proceedings initiated prior to the execution of a Financial Restructuring Agreement: In the event that (i) creditors of a debtor that are not party to the Framework Agreement initiate legal proceedings against such debtor for an amount exceeding 25% of the aggregate amount of such debtor's debts, and (ii) the relevant legal proceedings are not lifted within 30 days; the negotiations on financial restructuring agreement to be executed within the scope of the Framework Agreement (the "**Financial Restructuring Agreement**") can be terminated by the affirmative vote of the creditor institutions which own at least 75% of the aggregate amount of the consortium members' receivables and represent at least 30% of the total number of the consortium members (the "**Qualified Quorum**"). In case that the Qualified Quorum cannot be met so as to terminate the negotiations, each of the creditor institutions will still be able to quit the negotiations of the Financial Restructuring Agreement.

- Legal proceedings initiated following the execution of a Financial Restructuring Agreement: In the event that (i) creditors of a debtor that are not party to the Framework Agreement initiate legal proceedings against such debtor, and (ii) such legal proceedings are not lifted within 30 days; the Financial Restructuring Agreement can be terminated or revised by the affirmative vote of the Qualified Quorum. That being said, each of the creditor institutions will still be able to exit the Financial Restructuring Agreement if the respective agreement is not terminated or revised by the affirmative vote of the Qualified Quorum.

- Priority in collaterals provided for additional loans: In case additional loans are extended to a debtor within the scope of the financial restructuring, the proceeds of the foreclosure of any collateral provided as a security for such additional loans will firstly be used for the purpose of the repayment of such additional loans. Furthermore, any banks that have executed the Financial Restructuring Agreement but have not extended additional loans thereunder will not be able to claim for priority with respect to the proceeds of the related collaterals or any other collections to be made under the Financial Restructuring Agreement.

Conclusion

To sum up, upon entry into force of the Amendment Protocol introducing significant amendments to the Framework Agreement, (i) foreign credit institutions and international organizations will be able to get involved in the financial restructuring process without being subject to any approval quorum or consent and (ii) creditor institutions will be able to cease the negotiations or terminate (or exit) the Financial Restructuring Agreements due to legal proceedings initiated by a third-party creditor. Finally, in view of the above developments, we expect that stay of enforcement provisions under the Draft Law on Restructuring of Debts owed to Financial Sector (as discussed in Pekin & Pekin Legal Alert 9 / 2018) will not be enacted.

---

t: +90 212 313 35 00 f: +90 212 313 35 35 e: postmaster@pekin-pekin.com
www.pekin-pekin.com