Pekin & Pekin

Legal Alert 2 / 2020

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

MEASURES TAKEN BY THE REGULATORY AUTHORITIES IN THE BANKING SECTOR REGARDING THE COVID-19 OUTBREAK

The Banking Regulation and Supervision Agency (the "**BRSA**"), the Central Bank of Republic of Turkey (the "**CBRT**") and the Banks' Association of Turkey (the "**BAT**") have swiftly taken several measures after the declaration of the first confirmed COVID-19 case in Turkey on March 11, 2020 in order to mitigate the outbreak's impact on the financial markets and soften expected disruptions in commercial activities that may be caused by COVID-19. Such measures are set forth by the relevant regulators in order to provide flexibility to financial institutions (the "**FIs**") to ensure (i) financial stability of the FIs and (ii) meet FIS customers' needs such as facilitating cash flow of individuals and SMEs which are likely to be the most affected by this outbreak and ultimately to mitigate the macroeconomic effects and risks arising from COVID-19 in financial markets.

This legal alert will discuss the measures taken by the BRSA, the BAT and the CBRT regarding the COVID-19 outbreak.

What's New?

- The BRSA, in its decision dated March 17, 2020 and No. 8948 indicated that, (i) the 90 days default period for loans to be classified as non-performing loans shall be applied as 180 days; (ii) the provisions to be set aside by the banks for the loans which continue to be classified in the Group Two despite the 90-day default shall continue to be set aside pursuant to their own risk models used in the calculation of the expected loan loss within the scope of TFRS 9 and (iii) the loans, which are restructured and then classified as performing loans following such restructuring, and (a) the principal and/or interest payments of which are overdue for more than 30 days within the 1 year monitoring period or (b) which were subject to restructuring once more within such monitoring period, are no longer required to be classified as Group Three Loan. This measure will be effective until December 31, 2020.

- Pursuant to the BRSA decision dated March 19, 2020 and No. 8949, to be effective until December, 31 2020, in loans to be extended to consumers (i) for the purposes of house acquisition and (ii) secured by mortgage (except for vehicle loans), the ratio of the loan amount to the value has been increased to 90% for the houses with the value up to 500,000 TL.

- The BRSA also took several measures in order to ensure the financial stability of the FIs. In line with such purpose, as per the BRSA decision dated March 19, 2020 and No. 8950, the 90-day default period in relation to the special provisions to be set aside shall be applied as 180 days for the factoring and financing companies and 240 days for the financial leasing companies and the 90-day default period determined for the financing companies in relation to the general provisions to be set aside in respect of consumer loans (other than housing loans) shall be applied as 180 days.

- In order for the banking sector to remain financially sound and healthy to support the economy, the BRSA published a press release on March 23, 2020 and indicated that banks may use the buying exchange rate which is used in financial tables dated December 31, 2019 (i.e. 5.9400) while calculating the amount which is subject to credit risk as per the Regulation on the Calculation and the Evaluation Capital Adequacy of Banks for the calculation of the valuated amounts as per the Turkish Accounting Standards and the relevant reserves to be set aside in relation to banks' cash and non-cash assets (except for the assets in foreign currency measured in historical cost). Furthermore, banks may disregard (i) the net valuation differences relating to the securities held in banks' "Securities fair value difference of which is reflected on other comprehensive incomes" portfolio in the calculation of equity amount to be used for the calculation of the capital adequacy ratio, if such valuation difference is negative and (ii) the value decrease in the securities whilst calculating their net foreign currency positions. However, banks may not apply the above mentioned exceptions for the securities that are acquired after March 23, 2020.

- Another set of measures taken by the BRSA through its decision dated March 26, 2020 and No. 8967 in order to provide flexibility to banks in relation to minimum liquidity adequacy and coverage ratios due to the COVID-19 outbreak is that the deposit and participation banks are exempted from the steps to be taken when a bank fails to meet minimum liquidity coverage ratios and reporting of the reasons for the relevant shortfall. Similar to this temporary exemption, the development and investment banks are exempted from the steps to be taken when a bank fails to meet minimum liquidity adequacy ratio requirements and reporting of the reasons for the relevant shortfall. In the meantime, the deposit and participation banks will continue to report their liquidity coverage ratios and the development and investment banks continue to report their liquidity adequacy ratios regularly to the BRSA. However, as part of such measures, in order to reduce the operational burden on the banks, the development and investment banks are exempted from the reporting of the liquidity coverage ratios to the BRSA.

- It has been decided that by the BRSA that, effective from March 17, 2020 to December 31, 2020, the 30-day delay envisaged for the loans classified under the Group One Loans to fall under the Group Two Loans shall be applied as 90 days. Provisions for loans that continue to be classified in the Group One Loans despite the 30-day delay, shall continue to be set aside according to the banks' own risk models used while calculating the expected credit losses under TFRS 9.

- In order to facilitate cash flows of individuals, it has been decided by the BRSA decision dated March 27, 2020 and No. 8971 that, in the event that principal and interest payments of consumer and vehicle loans extended by banks, financial leasing, factoring and financing companies are postponed until December 31, 2020 upon consumers' requests, then the postponed period shall not be taken into account in determination of the maturity limits set forth under the relevant regulation. In line with the above purpose, through the BRSA decision dated March 30, 2020 and No. 8975, it has been stipulated that, the minimum repayment amount for credit cards are determined as 20% of the debt incurred in the relevant period and banks may grant non-repayment periods to the respective credit card holders until December 31, 2020 (during the period they postponed their payments) and in such non-repayment periods, banks will not request any payment, including minimum repayment amount, from the credit card holders. Accordingly, the BRSA aims to support businesses and individuals facing financial hardship as a result of the COVID-19 outbreak.

- Along with the measures which are taken in order to ensure maintaining a strong financial system, the BRSA has also taken steps to increase the personnel employment who provide call center services in banks. Since it has been observed that number of people who work remotely has been increased and working hours of banks' branches have been shortened at the same time, the need to reach bank personnel via call center has become very important. In this context, the number of call center personnel has been increased by banks to a sufficient number that meet customers' needs.

- The Decree No. 2325 (the "**Amending Decree**") amending the Decree on Treasury Support to Credit Guarantee Institutions (*published in the Official Gazette dated November 22, 2016 and numbered 29896*) (the "**Decree**") was published in the Official Gazette dated March 30, 2020 and numbered 31084. Within the scope of the Amending Decree; (i) the definition of lenders is expended in a way to cover the Investment and Development Bank of Turkey; (ii) consumer loans are included within the scope of the credits to be supported by the Ministry of Treasury and Finance (the "**Ministry**") through the credit guarantees institutions; (iii) the maximum total balance amount of surety provided by the credit guarantee institutions is re-determined as TRY 500 billion which is double the amount previously set out under the Decree while the maximum total amount of funds to be transferred to credit guarantees institutions by the Ministry is also increased from TRY 25 billion to TRY 50 billion and (iv) different upper limits of surety are set out for real person beneficiaries, small-medium sized enterprises and other legal beneficiaries. However, in order to alleviate the potential negative impacts of the COVID-19, the mentioned upper limits increased under the Provisional Article 7 under the Amending Decree will be applied and beneficiaries with overdue debts to the tax administration or the social security institution may benefit from the sureties until December 31, 2020.

- CBRT also took several measures and has reduced the one-week repo auction rate 1% to 9.75% for the purpose of sustaining regular cash flow within the Turkish financial markets pursuant to the press release dated March 17, 2020 and numbered 2020-15. Furthermore, the CBRT has published another press release numbered 2020-16 and introduced several measures for the purposes of (i) increasing predictability by enabling liquidity management flexibility in banks; (ii) providing additional liquidity opportunities to banks to ensure uninterrupted credit flow into reel sector and (iii) cash flow support to exporters via re-discounting credit regulations. Such measures introduced by the CBRT include but not limited to (i) injection of liquidity to banks by the CBRT (if need be) from available daily and overnight funds; (ii) injection of liquidity into financial markets via repo auctions with maturities up to 91 days; (iii) increase of applicable liquidity limits for market maker banks within the scope of Open Market Operations; (iv) continuity of current 1,3 and 6 months USD swap auctions and permission to conduct the same against EUR and Gold; (v) reduction of FX mandatory reserve ratio by 500 BPS in all lability types and maturity segments for banks that meet the real credit growth conditions; (vi) grant of extension options and periods for repayments of rediscount credits, depending on their types and original maturity dates.

- On March 31, 2020, the CBRT published a press release regarding the additional measures to be taken against the economic and financial impacts of the COVID-19 outbreak. Such additional measures include but not limited to (i) allowing to carry out Open Market Operations (OMO) portfolio in a front-loaded manner and their limitations may be subject to revisions depending on market conditions, (ii) providing opportunity for selling of the government domestic debt securities bought by primary dealer banks from the Unemployment Insurance Fund within the scope of regulated conditions or increasing the liquidity facility provided within the scope of the OMO, (iii) including the asset-backed and mortgage-backed securities in a collateral pool within the scope of the Turkish lira and foreign exchange operations to be conducted within the CBRT, (iv) increasing the limits for targeted additional liquidity facilities and (v) extension of the Turkish lira-denominated rediscount credits for export and foreign exchange earning services to firms exporting goods and services.

- The BAT has announced that several practices have been initiated by the banking sector in order to ensure the proper application of the “Economic Stability Shield” measures, which are implemented in order to minimize the possible effects of the COVID-19 outbreak on the employment, production, trade and payment systems, and to support the economic activities. As part of such practices, Cheque Payment Support Credit has begun to be provided by some banks in order for the cheques which are issued and to be issued by the corporate and commercial customers based on the real commercial activities to be paid. Apart from this, some banks started to provide “Economic Stability Shield Credit Support” for the working capital needs of corporate and commercial customers, especially the SMEs.

- As per TBA’s advice, banks may be flexible while determining own their working and customer visit hours by informing their customers, take relevant measures in order to avoid crowding and temporarily close their branches which have the maximum risks, at their own discretion. In addition, it was also advised that banks should continue providing digital banking services to their customers and should set the working and customer visit hours as 12:00-17:00 for the branches and service units that directly provide service to customers.

- Through its decision dated April 2, 2020 and No. 8976, the BRSA introduced several measures in order to facilitate FIs’ compliance with the reporting requirements. Accordingly, due to the limitation of the number of staff conducting operational process within the scope of the measures taken against the COVID-19 outbreak, it has been decided that, the deadlines for the submission of the year-end (December 12, 2019) and interim (March 31, 2020) financial reports; independent audit reports; activity reports and other several notifications that are regulated under different regulations by banks, independent audit institutions, rating agencies, asset management companies leasing, factoring and financing companies to the BRSA and other relevant authorities have been extended for 60 days, to be effective until December 31, 2020. The relevant regulations include but not limited to Regulation on Banks’ Loan Transactions, the Regulation on Banks’ Procedures and Principles for Accounting Practices and Document Retention, Regulation on the Principles and Procedures concerning Banks’ Preparation and Publishing of Annual Report, Regulation on the Principles and Procedures concerning Banks’ Preparation and Publishing of Annual Report and Regulation on Banks’

Independent Audit. Furthermore, it has been stipulated that banks may submit electronically their Stress Test Report and Internal Capital Adequacy Assessment Process Report for December 31, 2019 through their registered e-mail address. In addition, it has been decided that in the event that the new borrowers are not able to submit the relevant documentation required for the purpose of extension of loans as per Article 11/A of the Regulation on Banks' Loan Transactions, such borrowers may provide the remaining documents within 6 months following the extension of such loan. Banks are required to keep records of the remaining documentation. Existing borrowers may also complete the remaining information and documents requested by banks until the end of 2020.

- The Presidency of the Republic of Turkey issued Circular No. 2020-5 (*published in the Official Gazette dated April 2, 2020 and numbered 31087*) regarding contracts executed under the Public Tender Law No. 4734 (along with its exceptions) (the "**Law No. 4734**"). As per the Circular, in contracts which are executed under the Public Tender Law No. 4734 (along with its exceptions), the applications regarding the impossibility of performance (temporarily or permanently, in part or in whole) due to the COVID-19 outbreak shall be made to the contracting public authority by documenting the relevant impossibility. The contracting public authority will evaluate such applications of impossibility of performance under Article 10 of the Law No. 4735, which regulates the circumstances of force majeure events, and other regulations and will consult with the Ministry of Treasury and Finance before adopting a decision. As a result of the evaluation to be made by contracting public authority, the duration of the contract may be extended or the contract may be terminated, provided that the relevant event is not caused by the contractor's fault, the event prevents the contractor from performing his liabilities arising from the contract and the contractor is unable to remove the effects of the event.

Conclusion

It should be noted, in a nutshell, that the Turkish regulatory authorities (e.g. the BRSA, the BAT and the CBRT) have taken swift and effective measure to maintain a strong monetary, credit and financial system against the expected effects of the COVID-19 in financial markets, to ensure financial stability of the FIs and to facilitate cash flow of individuals and SMEs which are likely to be the most affected by this outbreak.

---

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