

RECENT REGULATION ON RESTRUCTURING DEBTS OWED TO FINANCIAL INSTITUTIONS

The Regulation on Restructuring Debts Owed to Financial Institutions was published in the Official Gazette dated 15 August 2018 and numbered 30510 and entered into force on the same date (the “**Regulation**”). The Regulation is enacted as per Article 93 of the Banking Law which was published in the Official Gazette dated 19 October 2005 and numbered 5411.

This Monthly Updates aims to provide a brief explanation on the Regulation and highlight the recent novelties introduced thereby.

Aim and Scope of the Regulation

The aim of the Regulation has been determined as to ensure that borrowers withdrawn loans from banks, financial leasing companies, factoring companies and other financial institutions operating in Turkey are provided with the opportunity to fulfil their repayment obligations and continue to provide employment through measures to be taken within the scope of financial restructuring framework agreements (the “**Framework Agreements**”) and financial restructuring contracts to be entered into within the scope of Framework Agreements (the “**Contracts**”), in relation to loan debts owed to such institutions.

Scope of Financial Restructuring

As per the Regulation, it is obligatory to determine the financial status of borrowers before including them in the financial restructuring plan, as under the Regulation, only those who will be able to repay their debts as a result of restructuring of their debts shall benefit from this restructuring option. Accordingly, the borrowers who are deemed not to be able to gain the ability to repay their debts shall not be included in the scope of financial restructuring. Financial status of the borrowers shall be determined by the entities to be designated by the Framework Agreement and deemed appropriate by the Banking Regulation and Supervision Board (the “**Board**”).

In line with the Regulation, the following measures may be taken within the scope of the Framework Agreements and, accordingly the Contracts:

- (i) extension of the due dates of existing loans;
- (ii) renewal of existing loans;
- (iii) extension of additional loans;
- (iv) reduction of principal, interest, default interest and/or profit sharing amount as well as any kinds of receivables arising from loan agreements or relinquishment of the same;
- (v) conversion of principal, interest or share of profit receivables into participation in part or in whole, transferring or assigning the same in consideration for a sum in kind, in cash or subject to collection condition, liquidation of the same in part or in whole in consideration for in kind values belonging to borrowers or third parties, sale of the same, write-off of the same; and
- (vi) entering into protocols by acting in concert with other financial institutions.

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Elements of the Framework Agreements

In line with the Regulation; the scope of the receivables to be subjected to financial restructuring, qualifications of borrowers, minimum amounts and conditions, and minimum elements of the Contracts to be separately signed between lenders and borrowers shall be indicated in the Framework Agreement. Accordingly, the following shall be the minimum elements of Framework Agreements:

- (i) fundamental terms and principles concerning the implementation of the financial restructuring process;
- (ii) minimum qualifications of borrowers;
- (iii) obligations imposed by the agreements upon parties;
- (iv) events of default; and
- (v) principal elements of the Contracts to be signed between the financial institutions and borrowers and the minimum framework of the rights and obligations imposed on the parties thereby.

Preparation, Approval and Execution of the Framework Agreements

As per the Regulation, Framework Agreements shall initially be prepared by the Banks Association of Turkey (the “**Association**”) and accepted and signed by the authorised representatives of financial institutions.

The Framework Agreements that are prepared by the Association and signed by the financial institutions shall be submitted to the approval of the Board and be valid only upon the approval of the Board.

Contracts

Pursuant to the Regulation, Framework Agreements shall be implemented through Contracts to be signed between each borrower and the relevant financial institution. In order that the Contracts are valid, they shall be signed within two years following the approval of the Framework Agreement by the Board. However, as per the Regulation, the Board is authorised to extend such two-year term.

The financial institutions who are party to the Contracts shall not provide and disclose certain information having the nature of customer confidential information to each other and to those other than the authorities that have been explicitly authorised under the applicable law. Pursuant to the Regulation, it is obligatory to include a provision in the Contracts providing for this obligation or to enter into a separate confidentiality agreement to this effect.

The matters relating to termination of the Contracts and the penalties to be applied in case of their termination shall also be designated in the Framework Agreements and included in the Contracts.

According to the Regulation, once Contracts are signed within the scope of the Framework Agreements, the statute of limitations relating to receivables owed by the borrowers that signed these Contracts shall be deemed to have been suspended as of the date of the Contract.

Conclusion

Considering the current economic environment of Turkey, the need to restructure the debts to the financial sector has arisen. Accordingly, the Regulation has been enacted to meet such need and enable the borrowers to gain the ability to repay their debts through the financial restructuring measures foreseen by the Regulation. However, there are also concerns that this may affect the financial institutions negatively.