GEDİK & ERAKSOY

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# *BRSA says Banks can extend loans to entities indirectly owned by its Board Members*

*A recent press release by the Banking Regulation and Supervision Agency (**BRSA**) stated that banks can extend loans to any companies indirectly owned by their own board members.*

### *Background*

A recent loan provided by Kuveyt Turk (the **Bank**) to Dicle Enerji Yatırım A.Ş. (**Dicle Enerji**) has raised questions and controversy, as it has been revealed that one of the indirect shareholders of Dicle Enerji is also serving as a board member of the Bank.

The story all began when İş Kaya- Doğu Hattı Enerji Yatırım Joint-Venture (the **Joint Venture**) successfully bid and won the tender for the privatization of a major electricity distribution company, Dicle Elektrik Dağıtım A.Ş. (**Dicle Elektrik**) in June 2013 for USD 387 million. The Joint Venture subsequently formed Dicle Enerji, which in turn, acquired Dicle Elektrik. The acquisition was financed by the Bank together with three other Turkish banks: Albaraka Turk, Halkbank and Ziraat Bankası.

According to a news article published by The Wall Street Journal Turkey (**WSJT**) on 26 July 2013, the transaction attracted criticism and sparked debate for the non-cash loan provided by the Bank. As one of the indirect shareholders of Dicle Enerji, ultimately holding more than thirty per cent of the share capital, Abdullah Tivnikli, also serves as a board of directors member in the Bank.

It was argued by a number of bankers, scholars and, according to WSJT, even certain government officers; that the provision of this loan is a direct violation of Article 50 of the Banking Law which prohibits banks from granting cash or non-cash loans to (i) their board members, general manager, deputy general managers or employees that are authorized to extend loans; and (ii) company in which any of these persons individually or jointly holds a capital share of twenty-five per cent or more. The BRSA was asked to intervene and conduct an investigation on this controversial issue.

### *Public Announcement of the BRSA*

Following these criticisms, in August 2013, the lawyers of Mr. Tivnikli declared to the press that they have already cleared this issue with the BRSA. On 9 December 2013, in response to the news appearing in the press, the BRSA published an announcement explaining its standing and understanding of Article 50. In this announcement, the BRSA declared to the public that, pursuant to the wording of the law and scholarly opinion, the threshold of twenty-five per cent is applied only in the case of direct shareholdings and the restriction does not cover indirect shareholdings. The BRSA also stated that this interpretation is indeed consistent with its past practices and no "special treatment" was made for this transaction.

***Announcement's Impact***

Although said to be consistent with past practices, the BRSA's announcement will certainly change the way that banks will investigate these loans provided to their own officers, irrespective of being direct or indirect, which used to believe were prohibited. The BRSA, which placed strict restrictions on these loans as a reaction to bank failures in the 2001 crisis, appears to be loosening its view of these loans, at least for the time being.


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