GEDİK & ERAKSOY

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Amendment to the BRSA's New Regulation on Restructuring of Debts Owed to Financial Sector

*In an effort to prevent contagion effect on the Turkish financial markets which could result from the significant volatility in the Turkish currency over the last couple of months, the Banking Regulation and Supervision Agency (**BRSA**) has recently taken back-to-back measures. In this respect, following the restriction on cross-currency swap transactions, the BRSA, now, introduced the Regulation on Restructuring of Loans Owed to Financial Sector (the **Regulation**) on 15 August 2018, thereby easing the rules on restructuring of debts owed to Turkish banks and financial leasing, factoring and financing companies (each a **Creditor**, and together the **Creditors**).*

*An amendment to the Regulation is published in the Official Gazette and entered into force on 21 November 2018 (the **Amendment**). Under the Amendment the definition of "debtor" is made, as well as "repayment of debtors' obligations in a reasonable period of time" is included as a prerequisite for debtors in order to benefit from a restructuring scheme. Finally, the Amendment enabled foreign financial institutions and international institutions to participate in the financial restructuring process in accordance with the framework agreements, without being subject to the approval of the creditors' quorum or any other conditions. Please see below the updated summary of the Regulation, including the changes introduced by the Amendment.*

Purpose

Having experienced a severe depreciation in Turkish lira, the BRSA has made an intervention – through the Regulation – with a view to allay concerns of Turkish companies whose foreign exchange debt exposure stands above USD200 billion. Accordingly, the new rules would enable Turkish companies to restructure their existing loans by way of entering into restructuring protocols with their Turkish Creditors.

Scope of Financial Restructuring

According to the Regulation, only those debtors, who are expected to gain the financial ability to repay their obligations in a reasonable period of time, would be allowed to benefit from financial restructuring. To this end, solvency of each debtor who would like to benefit from a restructuring scheme is to be determined by entities specified within the framework agreements. Under the Amendment, the definition of debtor, who may benefit from a restructuring scheme, is made. Accordingly, under the Regulation the "debtor", is defined as companies, other than:

- entities subject to the Banking Law;

- entities listed under Article 35 of the Capital Markets Law, such as investment companies, portfolio management companies, independent audit and rating companies, mortgage financing companies and etc.;

- entities subject to the Insurance law (i.e., insurance and reinsurance companies, insurance brokers and agencies and etc.);

- entities subject to the Law on Financial Leasing, Factoring and Financing Companies (i.e., financial leasing, factoring and financing companies); and

- entities subject to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions.

The following measures could be taken within the framework of financial restructuring to be applied through the framework agreements and restructuring protocols thereunder:

- extending the maturity of loans;

- renewing loans;

- providing additional borrowing;

- eliminating a portion of, or entire, principal, interest, profit or such other receivables resulting from loan; and

- converting a portion of, or entire, principal, interest, profit or such other receivables resulting from loan into equity; or transfer and assignment thereof for collection in-cash or in-kind; or otherwise, sale and disposal thereof.

Additionally, as per the Regulation, if a restructuring protocol is executed by a debtor and the Turkish Creditors whose exposure to such company constitutes, at least, two-third of the debt owed to the Turkish Creditors, then the restructuring protocols will be binding on all Turkish Creditors of such company.

The provision governing the interruption of prescription period in respect of debts, for which a restructuring protocol under the Framework Agreements were executed, is removed from the Regulation with the Amendment entered into force today.

Framework Agreements

The restructuring protocols will be based on template framework agreements (**Framework Agreements**) prepared by the Turkish Banking Association in consultation with certain other financial associations (*e.g.*, Association of Financial Institutions and Participation Banks Association of Turkey) and will ultimately be subject to the BRSA's approval.

Once approved by the BRSA, Framework Agreements will allow Turkish companies, which fall within the debtor definition, to enter into restructuring protocols with the Turkish Creditors within a period of two years, which period can be further extended by the BRSA. An additional provision included to the Regulation with the Amendment in relation to foreign financial institutions and international institutions. Accordingly, principles in relation to participation of foreign financial institutions and international institutions in the restructuring process will be determined under framework Agreements, whereas such foreign or international financial institutions may participate to the restructuring process without any approval of the Turkish Creditors or any additional conditions.

The Regulation provides that the Framework Agreements will cover the following:

- the scope of debts that will be subject to restructuring;
- the specifications with regards to debtors;
- the minimum threshold amount for debt restructuring and pre-requisites thereof; and
- basic elements of the restructuring protocols to be entered into thereunder.

Framework Agreement dated 11 September 2018

As per the Framework Agreement dated 11 September 2018, prepared by the Turkish Banking Association, the debtors, willing to benefit from a restructuring scheme must fulfill the following conditions:

- the principal debt (cash-non-cash loans) owed to Creditors by the debtor must exceed TRY 100 million;
- the debtor's loans must not be classified under group 1 and 2 or qualified as dormant receivable under the Regulation on Procedures and Principles of classification of loans and Provisions to be Set Aside regarding Loans. Additionally, no legal proceeding should have been initiated by the Creditors against the debtor as of the debtor's application date;
- the restructuring application can only be made for the 25% portion of the total debt of the debtor owed to one or more Creditor;
- the debtor is not bankrupt; and
- an opinion is formed on the debtor's ability to re-gain its financial ability through restructuring (upon the decision of Creditors' consortium the feasibility and financial status evaluation of the debtor will be prepared by one or more banks, independent audit institutions or other institutions as the Creditors' consortium deems fit).

Please kindly note that the Turkish Banking Association announced, on 19 September 2018, that Turkish Creditors whose shares in the total loans is around 90% have entered into a Framework Agreement as of 19 September 2018, adding that the remaining Turkish Creditors are expected to execute this agreement in the upcoming days once their internal approval processes are consummated. Therefore, now, as a further step, restructuring protocols between the Turkish Creditors – who signed up to the Framework Agreement – and their debtors – who are expected to re-gain their financial ability through restructuring, in a reasonable time period – will be executed and foreign financial institutions and international institutions will be able to participate to the restructuring process, upon their request in relation thereto.

Conclusion

In light of the foregoing, we are of the view that the Regulation would spur the restructuring of debts owed to Creditors, and become an effective instrument in dealing with the spillover effects of volatility on the Turkish companies.

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