

New Amendment to the Regulation on Merger, Acquisition, De-Merger and Share Transfers of Banks

The Regulation on Merger, Acquisition, De-Merger and Share Transfers of Banks (Regulation) was amended on 16 November 2017. The amendments have entered into force as of its publication in the Official Gazette on 16 November 2017. The Banking Regulation Supervision Agency (BRSA) has announced that the amendments were enacted to ensure compliance with the Turkish Commercial Code.

- ***The de-merger provisions in the Regulation are no longer applicable to partial de-merger transactions of banks. Accordingly, BRSA approval is no longer required for the completion of partial de-merger transactions.***

A new sub-clause was added to Article 2 regulating the scope of the Regulation. Accordingly, save for the full or partial de-merger transactions of credit institutions relating to the transfer of deposit or participation fund accounts, the de-merger provisions indicated that the Regulation will not be implemented to the partial de-merger transactions of banks.

Accordingly, the de-merger rules set out under the Regulation will not be applied to the transfer of one or more parts of a bank's assets where the de-merging bank is not dissolving but where its shareholders, in exchange for the transferred assets acquiring the shares and rights of the acquiring entity, are making the acquiring entity its subsidiary.

However, after the completion of the partial de-merger transaction, if the paid up share capital of the bank becomes less than minimum share capital requirement (30 million Turkish Liras as set forth in Article 7(1) (f) of the Banking Law), the bank's shareholders must undertake that the difference between the bank's share capital after the de-merger and the minimum share capital amount will be paid by the bank's shareholders within three months by means of a cash capital injection into the share capital of the de-merged bank.

- ***The amendment introduces a new definition for de-merger. Accordingly, the de-merger definition includes the following:***
 - a. full de-merger, which refers to the transfer of assets of a bank by dividing into sections to more than one bank, financial institution or other joint stock companies provided that that the de-merging bank's legal entity status ceases to exist; or
 - b. partial de-merger, which refers to the transfer of one or more parts of a bank's assets that will not result in its dissolution and in this respect, the bank's shareholders will be acquiring the shares and rights of the acquiring entity in exchange for the transferred asset parts of the bank.

- *The wording of certain mandatory provisions to be indicated in the de-merger agreement has been changed.*

Accordingly, in partial demergers, the de-merging bank is no longer entitled to receive the acquiring entity's shares or rights in exchange of its assets.

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