

## CLIENT ALERT

BANKING & FINANCE | TURKEY |

NOVEMBER 2018

### BRIEF OVERVIEW OF THE AMENDMENTS MADE IN THE RESTRUCTURING REGULATION

The Banking Regulation and Supervision Agency (the "**BRSA**") amended the Regulation on the Restructuring of Debts Owed to the Financial Sector<sup>1</sup> (the "**Restructuring Regulation**") on 21 November 2018.

The rationale behind those amendments principally lies in the concerns raised by the Turkish financial institutions and foreign lenders (both foreign banks and IFIs) within the past two months. Back in September, the Banks' Association of Turkey (the "**Association**") drafted its first framework agreement (the "**Framework Agreement**") in line with the recently enacted Restructuring Regulation, and a draft law was put in circulation for review/comments by market players in order to complement the legislative framework relating to financial restructuring. As the Restructuring Regulation and the Framework Agreement were both drafted from a Turkish lender perspective, both texts needed further modifications to address certain needs of foreign lenders. Accordingly, the BRSA made a number of modifications in the Restructuring Regulation to reflect the comments collected from market players so far, to further ease the implementation of the financial restructurings. It is now expected that the Framework Agreement will be also amended by the Association to comply with the recent amendments.

You may find below key changes which have been introduced with the recent amendments:

- The participation of foreign lenders in the restructurings were not separately regulated under the Restructuring Regulation and the Framework Agreement. Foreign lenders were thus subject to the general rules for participation in creditors' consortium, requiring the approval of the creditor institutions representing 75% of all receivables and 30% of total number of the creditor institutions who already participated in the creditors' consortium. According to the new amendments, foreign financial institutions will be able to participate in the financial restructuring process without need to obtain any approval from other creditor institutions. Accordingly, procedures and principles regarding the participation of foreign financial institutions in the financial restructuring process shall be determined under framework agreements.
- Turkish banks, capital market institutions, insurance and reinsurance companies, financial leasing companies, factoring companies, financing companies, payment systems and electronic currency institutions shall not benefit as borrowers from the scope of financial restructuring considered under the Restructuring Regulation.
- The amendments also introduced several minor clarifications: only those creditors "*who signed the framework agreements*" shall be considered in the calculation of the thresholds for the restructuring of receivables. Similar emphasis is included in the dispute resolution mechanism, which states that the panel of referees will resolve only those disputes arising between the signatories of the framework agreements.

<sup>1</sup> Published in the Official Gazette No.30510 and dated 15 August 2018.

- The confidentiality obligation which forbids the sharing with third parties (other than the signatories of the framework agreement and legally authorized bodies) of any client secrets pertaining to the borrower has been removed from the Restructuring Regulation.
- The statute of limitations relating to receivables owed by the borrowers that signed individual restructuring agreement shall not cease as of the signing date.
- The borrower's financial status and repayment ability must be assessed prior to financial restructuring. This assessment will be conducted by the entities determined in the framework agreements (they are no longer required to be approved by the BRSA).

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*In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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