The Regulation On Financial Restructuring Has Been Amended

Summary

The Regulation on Restructuring Debts Owed to Financial Sector ("**Regulation**"), which was published in the Official Gazette dated 15 August 2018 and numbered 30510, has been amended by a regulation ("**Amendment**") published in the Official Gazette dated 21 November 2018 and numbered 30602. In short, the Amendment made it easier for foreign credit institutions and other international organizations to participate in the financial restructuring process, narrowed the scope of the definition of debtor and abolished the provision regarding the "tolling of statute of limitations[1]" in case a financial restructuring agreement is signed.

1. It is Now Easier For Foreign Banks to Participate in the Process

The Regulation defines creditor institutions as only the banks, financial leasing companies, factoring companies and financing companies defined in Banking Law No. 5541. In order for other natural and legal persons that fall outside the scope of this definition to participate in a financial restructuring process as creditors, a decision regarding this participation must be taken by the creditor institutions that signed the Framework Agreement which came into force on 19 September 2018, and those agreeing to the decision must **represent 75% of total receivables from the debtor and at least 30%of the total number of creditor institutions**.

2. Before the Amendment was in place, foreign institutions could only participate in the financial restructuring process if a decision had been taken according to the quorum above. The Amendment facilitated the process by stating that the participation of foreign credit institutions and international organizations in the financial restructuring process will be possible upon such institutions' demand, **without being subject to the consent/approval of the creditor institutions** or any other conditions. The procedures and other issues relating such participation will be determine d by the Framework Agreements. **The Definition of Debtor Has Been Narrowed**

The Regulation did not contain a definition for the debtors that could be included in the financial restructuring. With the Amendment, the definition of a "debtor" has been added to the Regulation. According to this definition, the debtors included in the scope of financial restructuring may only be **companies** other than those listed below:

- institutions subject to Banking Law No. 5411,
- capital market institutions as specified in Article 35 of Capital Market Law No. 6362,
- institutions subject to Insurance Law No. 5684,
- institutions subject to Financial Leasing, Factoring and Financing Companies Law No. 6361 and,

[1] "Tolling of statute of limitations" is used herein in the meaning of "*zamanaşımının kesilmesi*" in Turkish, meaning the statute of limitations will start from the beginning.

- institutions subject to Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions No. 6493.

3. The Provision Regarding the Tolling of the Statute of Limitations is Abolished

The Regulation stipulated that if a financial restructuring agreement was signed with debtors, the statute of limitations related to the debts of the debtors who signed the agreement should be tolled from the date the restructuring agreement was signed. This provision regarding restart of the statutes of limitations is abolished with the Amendment. Therefore, the statute of limitations related to the debts of debtors who signed a financial restructuring agreement will continue, uninterrupted, even after the agreement is signed.

4. Other Changes

- The 4th article of the Regulation introduces an additional requirement for the debtors to be included in the financial restructuring process, and the phrase "**within a reasonable period**" has been added to the provision regarding the obligation to confirm that the debtors will gain the ability to repay their debts. However, due to the lack of a definition of "reasonable period", in practice, ensuring that this requirement is met may not be easy. Also, the provision stipulating that institutions that review the financial state of debtors should be approved by the Banking Regulation and Supervision Agency (BRSA) is abolished. Accordingly, pursuant to the provision in the Framework Agreement, banks, independent auditing firms and other institutions selected by the relevant creditor institutions can be determined, **without the approval of BRSA**, to be the institutions that will review the financial state of debtors.
- In addition, the provision in the 2nd paragraph of article 9 prohibiting the creditors from charging interest or providing additional financing that is below the market rate to debtors in the same risk group as them is abolished. Because the Framework Agreement includes a similar provision, it is predicted that the Framework Agreement will also be updated in this regard.
- Lastly, the provision in the 4th paragraph of article 9 prohibiting creditor institutions which are parties to financial restructuring agreements from exposing or disclosing information that belongs to the debtors and qualifies as a client secret to persons other than one another or authorities explicitly authorized by law is also abolished.

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