

Amendments to the Framework Agreement on Financial Restructuring

February 2019

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The Framework Agreement on Financial Restructuring (the “**Framework Agreement**”) was amended by Amendment Protocol I and Amendment Protocol II (the “**Amendments to the Framework Agreement**”), in order to reflect the latest changes made to the Regulation on Financial Debt Restructuring effective as of 21 November 2018¹ (the “**Amendments to the Regulation**”). The revised Framework Agreement was published by the Banks Association of Turkey on 29 January 2019.

A. AMENDMENTS CONCERNING INTERNATIONAL CREDITORS

i. Definition for International Creditors

International creditors are defined as foreign creditors and international institutions that are authorized to provide loans in accordance with the laws of their jurisdiction.

ii. Participation in the Financial Restructuring Process

The Amendments to the Regulation had revoked the requirement for the international creditors to obtain consent of the Turkish creditor consortium to participate in financial restructuring processes. The Amendments to the Framework Agreement additionally provide the procedure to be followed for participation. Accordingly, the international creditors are required to sign the Framework Agreement and deliver it to the lead creditor of the relevant financial restructuring. However, signing the Framework Agreement by the international creditors will relate to the relevant restructuring only, and, unlike Turkish banks, the international creditors will not become a party to the Framework Agreement in general and be bound by the general obligations thereunder. For example, there is a compulsory participation requirement for Turkish banks. In case two thirds of the creditors (in terms of debt size) transact with the debtor to restructure its debts, then all relevant creditors, who have signed the Framework Agreement, must participate in the restructuring. These types of general obligations under the Framework Agreement will not apply to international creditors.

iii. Right to Obtain Information

The international creditors are now granted with the right to obtain information relating to the financial restructuring processes. Accordingly, the debtors must inform the international creditors regarding their application for financial restructuring on the application date and undertake to continue to inform the international creditors regarding the process including but not limited to feasibility, negotiations, agreements and additional loans and securities. In addition, the creditor who is leading the financial

¹ Please click on the following link for our Çakmak Alert on the Amendments to the Regulation: http://www.cakmak.av.tr/articles/Banking_Finance/400127897.pdf

restructuring process can provide information to the international creditors upon request, save for the compulsory restrictions under Banking Law No. 5411 and Personal Data Protection Law No. 6698.

In addition, in case a debtor makes an application for financial restructuring under the Framework Agreement, then such debtor will be under the obligation to inform the relevant Turkish creditors concerning the financial restructuring or similar processes it pursues with international creditors and debts and assets within the scope of such processes.

iv. Standstill Period

The debtor can carry out financial restructuring or similar processes with the international creditors during the standstill period, provided that it will not discriminate between its creditors during this period.

v. Impact on the Existing Contracts

The Framework Agreement explicitly describes its nature as a private law agreement. This means that the Framework Agreement cannot overrule the existing finance documents relating to a debtor unless all parties (including the international creditors) sign the Framework Agreement. The Framework Agreement also explicitly confirms this point, underlining that the Framework Agreement or the individual restructuring agreements shall not affect the validity of the intercreditor agreements between the Turkish and international creditors.

B. OTHER AMENDMENTS

i. Execution Proceedings

Prior to the Amendments to the Regulation, the execution of a restructuring agreement was a trigger for suspension of the statute of limitations and the execution proceedings against the debtor were prohibited during the restructuring process. The mentioned trigger had been revoked by the Amendments to the Regulation. Now, the Framework Agreement provides that the execution proceedings against the debtor are prohibited only for the debts subject to restructuring. Therefore, creditors who do not participate in the financial restructuring can start and pursue execution proceedings and other legal remedies against the debtor during the restructuring process without any restriction.

ii. New Securities

Additional loan was already provided as one of the remedies for financial restructuring. The Amendments to the Framework Agreement made it clear that new securities established for additional loans will be used primarily for the repayment of the additional loans.

iii. Termination of the Process due to Execution Proceedings

If:

- the creditors who have not signed the Framework Agreement file legal proceedings against a debtor during the financial restructuring negotiation process for an amount more than 25% of its total debts,
- this amount revokes the eligibility of the debtor² for restructuring, and
- the legal proceedings are not removed within 30 days,

then the negotiations may be terminated with the affirmative votes of the creditor institutions representing 75% (including 75%) of the total receivables of the creditor institutions consortium (the “**CIC**”) and at least 30% of the total number of the creditors within the CIC (the “**Termination**”

² Pursuant to the Framework Agreement, the minimum debt amount to be eligible to apply for the financial restructuring is TL 100 million.

Quorum”). In case the negotiations are not terminated by the CIC, each creditor within the CIC will have the right to individually terminate the negotiations.

In case a legal proceeding is filed against the debtor after a restructuring agreement is signed and if such legal proceeding is not removed within 30 days, then the CIC may decide to terminate or revise the restructuring agreement with the Termination Quorum. If the agreement is not terminated or revised by the CIC, each creditor within the CIC will have the right to individually terminate the restructuring agreement.

iv. Existing Securities

Pursuant to the Framework Agreement, existing securities will be protected during the financial restructuring period. The Amendments to the Framework Agreement also add into the scope of this protection the assets and goods that are subject to factoring or financial leasing transactions.

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