

REGULATORY UPDATES IN TURKISH FINANCIAL MARKETS

Certain amendments are made on multiple laws concerning Turkish financial markets with the Law No. 7186 and the Capital Movements Circular in line with the letter of Ministry of Treasury and Finance dated 16 July 2019.

On 19 July 2019, Law No. 7186 Amending Income Tax Law and Certain Other Laws (“**Amendment Law**”) was published and brought several amendments to laws governing Turkish financial markets including Law on Central Bank of the Republic of Turkey No. 1211, Banking Law No. 5411, Capital Market Law No. 6362, Financial Leasing and Factoring Law No. 6361 and Income Tax Law No. 193. In addition to these, new amendments are made on the Capital Movements Circular issued by the Central Bank of the Republic of Turkey (“**CBRT**”) in accordance with the letter of Ministry of Treasury and Finance dated 16 July 2019.

A. Recent regulatory changes adopted with the Amendment Law which has come into force on 19 July 2019 are summarized below:

1) Following the previous repatriation of assets back in May 2018, new set of rules for repatriation of assets are adopted with the Amendment Law with the following scope:

a) *Money, Gold, Foreign Exchange, Securities and Other Capital Market Instruments Held Abroad*

In case the afore-mentioned assets which are held abroad, are declared to banks or brokerage firms in Turkey before 31 December 2019, the relevant assets can be freely transferred and used by real and legal persons in Turkey.

Upon such declaration, the declared assets shall be brought to Turkey or transferred to an account opened in Turkish banks or brokerage firms within 3 (three) months as of the declaration date.

It is important to note that those assets can be used for (i) paying off the loans (registered in company books/records) obtained from foreign banks and/or financial institutions and (ii) the injection of capital advance through bringing the relevant assets from abroad to Turkey before 19 July 2019.

b) *Money, Gold, Foreign Exchange, Securities and Other Capital Market Instruments Held in Turkey*

The afore-mentioned assets and also, the *immovables* held by taxpayers in Turkey, however, that are not declared, can be declared to the tax offices before 31 December 2019 and can be freely used.

It should be noted that the repatriated assets will be subject to a tax at the rate of 1% from over the value of the repatriated assets which will be paid by Turkish banks, brokerage firms or the taxpayer to the related tax office; however, the repatriated assets will be exempt from other tax obligations.

- 2) Financial restructuring aims to enable the loan debtors in financial difficulty together with the other debtors in the same risk group, to make their loan repayments and also, to sustain the financial presence of such debtor entities in the economy by taking certain precautions (such as postponing the loan maturity date, providing new loans, decreasing the interest rate) with respect to the loans utilized by such debtors from banks, financial lease, factoring and financing companies. Following the publication of the Directive on Restructuring of the Debts to Financial Sector on 15 August 2018 and the Financial Restructuring Framework Agreement which sets out the main principles of financial restructuring, organizational structure, required criteria of the debtor and the liabilities of the relevant parties; market participants were expecting the subsequent regulations to clarify the content of the exemptions and incentives to be introduced in favor of these debtors. The Amendment Law has met these expectations and introduced certain tax exemptions and investment incentives for the transactions to be conducted under the financial restructuring framework.

Significant notes regarding the recent amendments on financial restructuring are as follows:

- a) Financial status of the debtor may be determined and evaluated by independent audit firms, expertise institutions specified in the executed framework agreements or creditors subject to the approval of debtor.
 - b) Financial restructuring may apply for 2 (two) years term as of the date this Amendment Law has come into force (19 July 2019), which may be extended for another 2 (two) years term subject the decision of the President of Turkey.
 - c) The loans subject to the financial restructuring are exempt from Banking and Insurance Transactions Tax, Resource Utilization Support Fund, prison fee and stamp tax. The tax exemptions and investment incentives, however, may only be applied in the first restructuring of debts and not be applied in the subsequent restructuring of the same debts.
 - d) Foreign banks and financial institutions that have extended direct loans to Turkish companies which do not operate in financial sectors, and multilateral banks and institutions which has direct investments in Turkey are now expressly recognized as “*Creditors*” within the framework of financial restructuring, as well as SPVs and investments funds established by them.
 - e) Terms of the guarantees and suretyship provided by credit guarantee institutions are now extended in line with the terms of the executed framework agreements.
 - f) Actual valuation of loan collaterals and the assets and obligations that will be acquired by the creditors from debtors, may be performed by eligible firms authorized for valuation by the Capital Markets Board of Turkey, if required by the debtor or creditor.
- 3) Previously, Turkish banks were obliged to monitor and maintain reserves with respect to the “*loans and other receivables*” in order to cover any kinds of losses arising therefrom, however, with the amendment, banks are only liable to monitor and maintain the reserves specifically with respect to the “*loans*”.
 - 4) With the Amendment Law, certain accounting rules are adopted regarding the non-performing loan receivables of banks, financial leasing companies, factoring companies and financing companies.
 - 5) Previously, CBRT was calculating the mandatory reserves of banks and certain other financial institutions based on the *liabilities* of such institutions. With the amendment however, CBRT is

authorized to base its calculation of mandatory reserves on several other on-balance sheet or off-balance sheet items.

- 6) According to the amendment made in the Capital Market Law No. 6362, in case the issuer falls into default in settlement of its obligations regarding its debt securities, the document issued by Merkezi Kayıt Kuruluşu A.Ş. (*Central Registry Agency*, “**MKK**”) evidencing such default will be used for lifting the debtor’s objection as per Enforcement and Bankruptcy Law No. 2004.

B. The amendments made in the Capital Movements Circular are summarized below:

- 1) Previously, Turkish resident entities that are established for the purpose of acquiring the stocks of *new* companies were exempted from the requirement of foreign currency income with the purpose of obtaining foreign currency loans in Turkey, however with the Amendment Law, such Turkish resident entity that is only established for acquiring stocks of either *existing* or *newly established companies* are exempt from the same requirement.
- 2) In cases where separate banks intermediate extension and repayment of the loan, the bank intermediating the repayment shall inform the bank which has intermediated the extension of loan on the date of the transaction. With that, the bank which has intermediated the extension of loan shall notify the Risk Center of the Banks Association of Turkey about the current loan risk balance, on the first business day after the notification from the bank intermediating the repayment is received.

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