

## **Amendments to the Regulation on Loan Transactions in Turkey**

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### **I. General Overview**

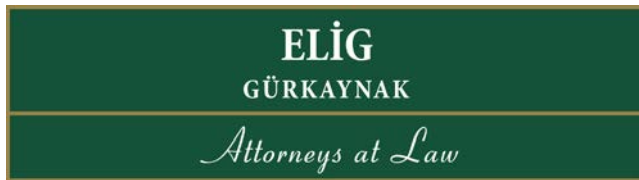
In Turkey, wide-ranging procedures and principles apply to loans provided by banks which are regulated under the Regulation on Loan Transactions of Banks (“**Regulation**”). Banking sector may rapidly be affected by economic circumstances. Therefore, the Regulation has been amended a number of times especially in 2019. In this article, our aim is to present the provisions of the Regulation concerning the obligation of the Turkish banks to obtain certain documents from their loan customers as well as amendments introduced to this matter.

### **II. What have changed through the Regulation?**

Turkish banks are obliged to obtain financial tables from their loan customers. However, Article 8 of the Regulation lists a number of transactions in which loan customers are not required to submit their financial statements. These transactions are as follows:

- Transactions not exceeding TRY 2 million;
- Transactions carried out with public administrations, their affiliates and local administrations, excluding public economic enterprises and their enterprises, affiliates and subsidiaries;
- Transactions conducted with the central administrations and central banks of foreign countries, or performed in exchange of bonds and debentures issued or guaranteed by those;
- Transactions carried out in exchange of cash, cash equivalents and precious metals;
- Transactions performed in exchange of bonds and debentures issued or guaranteed by Treasury, Directorate of Privatization Administration or Housing Development Administration;
- Transactions carried out with Central Bank of the Republic of Turkey or performed at the markets in this bank;
- Trading securities obtained from securities exchanges or secondary market for the purpose of evaluating very short term funds’ surpluses;
- Share certificates acquired from organized stock markets or due to receivables;
- Transactions between domestic banks with no maturity date or a maturity not exceeding 3 (three) months and sureties and guarantees issued on the basis of surety bonds issued by these banks;
- Transactions carried out with banks or financial institutions whose total loan risks do not exceed USD 5 million and whose loan ratings are classified as second class in accordance with the relevant laws as well as non-cash loans provided on the basis of surety bonds issued by these banks or institutions.

In addition to the financial tables, Article 11/A of the Regulation obliges banks to request additional documents from their customers which have a total risk of TRY 100 million and more in the banking



sector. By entry into force of the Amending Regulation to the Regulation on Credit Transactions of Banks (“**Amending Regulation**”) on August 16, 2019, the total risk limit has been reduced from TRY 500 million to TRY 100 million in order to secure loan transactions carried out between Turkish banks and their customers. Additionally, in light of the amendments to the Regulation, banks must now obtain additional documents from their customers with a total risk in the banking sector of TRY 100 million and more.

Prior to the amendments to the Regulation, banks were required to obtain (i) consolidated financial tables from the customers who are obliged to prepare consolidated financial tables and (ii) non-consolidated financial tables from customers who do not have an obligation to prepare consolidated financial tables. These financial tables must be (i) prepared in accordance with the accounting and financial reporting standards published by the Public Oversight, Accounting and Audit Standards Authority of Turkey and (ii) audited by independent auditors authorized by the Public Oversight, Accounting and Audit Standards Authority of Turkey. Following entry into force of the Amending Regulation, the banks must also obtain the most recent consolidated financial tables of their customers’ parent companies. These consolidated tables must be prepared in line with the abovementioned standards and audited by independent auditors authorized by the Public Oversight, Accounting and Audit Standards Authority of Turkey.

Loan customers residing outside of Turkey must submit their balance sheets, profit and loss tables as well as accompanying financial tables which are prepared in accordance with their own legislation and include the footnotes in line with the international standards.

The Communiqué on Corporate Governance (II-17.1) requires joint-stock companies, the shares of which are offered to public or deemed to be offered to public, to prepare corporate governance compliance reports. Following entry into force of the Amending Regulation, these joint-stock companies must also submit their corporate governance compliance reports to the banks in order to receive loans.

On the other hand, the Amending Regulation exempts joint-stock companies that are not subject to the Communiqué on Corporate Governance (II-17.1) from submitting their corporate governance compliance reports prepared in accordance with all corporate governance principles set forth in the Communiqué on Corporate Governance (II-17.1). Accordingly, joint-stock companies that are not subject to the Communiqué on Corporate Governance (II-17.1) must present their corporate governance compliance reports which include the following corporate governance principles: functions of the board of directors, principles of the activity of the board of directors as well as financial right to be provided to board members and senior executives. It is important to note that the loan customers residing outside of Turkey are not required to present a corporate governance compliance report to the banks in order for obtaining loan from the relevant bank.

### **III. Are there any ambiguities?**

Following entry into force of the amendments, Turkish Banking Regulation and Supervision Agency (“**BRSA**”) provided further clarifications to the practitioners who submitted questions to the BRSA.

Amending Regulation does not explicitly state whether the companies, which are not subject to independent audit under the relevant legislation, are also required to present their financial tables audited by the independent auditors. BRSA confirmed that since Article 11/A of the Regulation does not refer to the legislation related to determination of the companies being subject to independent audit, the banks must obtain financial tables audited by the independent auditors from their customers with a total risk in the banking sector of TRY 100 million and over, even if such companies are not subject to independent audit under the relevant legislation. Accordingly, it can be stated that the Regulation broadens scope of the legislation which regulates conditions of the requirement to be subject to independent audit and causes many other companies to also become subject to independent audit due to their risks in banking sector.

As explained above, Article 8 of the Regulation lists a number of transactions in which loan customers are not obliged to present their financial tables. In this regard, it is not clear whether the loan customers must present the documents listed in Article 11/A of the Regulation for their transactions stipulated in Article 8 of the Regulation. It is understood from BRSA that Articles 8 and 11/A of the Regulation must be separately assessed and the loan customers with a total loan risk in the banking sector of TRY 100 million and over must submit the documents listed under Article 11/A of the Regulation.

The Amending Regulation has introduced a new obligation on the banks to obtain the most recent consolidated financial tables of their customers' parent companies. Under the Amending Regulation, these consolidated financial statements must be prepared in line with the Turkish standards and audited by independent auditors authorized by the Public Oversight, Accounting and Audit Standards Authority of Turkey. On the other hand, Article 11/A of the Regulation stipulates that the loan customers residing outside of Turkey must submit their balance sheets, profit and loss statements as well as accompanying financial statements which are prepared in accordance with their own legislation and include the footnotes in line with the international standards. As it may be seen, the Amending Regulation does not address the issue whether loan customers' parent companies residing outside of Turkey are obliged to present their financial statements. If so, it is also not explicit whether these financial statements of the loan customers' parent companies residing outside of Turkey must be in line with Turkish or international standards. Within this scope, BRSA clarified that the loan customers' parent companies residing outside of Turkey must provide the banks with their financial statements (i) prepared in accordance with the accounting and financial reporting standards published by the Public Oversight, Accounting and Audit Standards Authority of Turkey and (ii) audited by independent auditors authorized by the Public Oversight, Accounting and Audit Standards Authority of Turkey. This approach is expected to put a lot of strain on the loan customers' parent companies residing outside of Turkey.

Lastly, it also needs to be clarified whether a company residing outside of Turkey must provide the banks with their balance sheets, profit and loss statement as well as accompanying financial tables which are prepared in accordance with their own legislation and include the footnotes in line with the international standards, in case it intends to obtain loans for their Turkish resident branches. In this respect, BRSA stated that in case a Turkish resident branch obtains loan from a Turkish bank, it is required to submit its financial tables (i) prepared in accordance with the accounting and financial reporting standards published by the Public Oversight, Accounting and Audit Standards Authority of



Turkey and (ii) audited by independent auditors authorized by the Public Oversight, Accounting and Audit Standards Authority of Turkey. Nonetheless, it is not clear how this provision can be implemented in practice.

#### **IV. Conclusion**

With the aim of protecting Turkish banks, BRSA has recently amended the Regulation by extending the scope of the loan customers being subject to submit certain documents to the banks as well as by increasing the number of the documents that need to be presented to the banks in order to obtain loans. The changes introduced to the Regulation have created difficulties in practice and they also have some ambiguities. Therefore, the Regulation still needs to be clarified in order to prevent misunderstandings and difficulties that may be encountered in practice.

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*(First published by Mondaq on January 21, 2020)*