HUNGRY FOR MORE INVESTMENT

Being one of the world's most rapidly emerging countries, at least economically, Turkey has been adopting investment-friendly legislation for quite some time, in order to attract more (particularly foreign) investment. On the last day of 2014, Turkey enacted the new Regulation on the Principles and Procedures Applicable for Assumption of Treasury Guaranteed Obligations (the **"New Regulation"**). The New Regulation abolished the former Regulation on Treasury Guarantees of 2002 (the **"Former Regulation"**) after 12 years.

Under the New Regulation, the primary liability for fulfilling obligations lies with the principal debtor, being the relevant Turkish administrative authority or state-owned entity in charge of a particular infrastructure investment project. The principal debtor will be obliged to (i) plan the repayment of debts (when due) guaranteed by the Treasury and (ii) reserve these amounts in its yearly budget with priority. Provided that the debtor reserves the necessary amounts, it will be able to request the Treasury to (fully or partially) assume its obligations, if the debtor is financially incapable of fulfilling its obligations due to *unexpected* cash flow problems.

If the Treasury assumes obligations on behalf of provincial special administrations *(il özel idareleri)*, metropolitan municipalities, municipalities and their affiliates, having independent budgets and public legal personality, these institutions will be joint guarantors, along with the Treasury. If the Treasury assumes obligations on behalf of state economic enterprises or their affiliates, then the relevant state economic enterprises will be joint guarantors.

Similarly with the Former Regulation, the New Regulation stipulates provisions regarding the Treasury's supervision and the principal debtors' liability. The Treasury can conduct audits in order to (i) confirm the authenticity of information provided by the debtor and (ii) determine whether or not the Treasury guarantee is being used properly.

There are two significant differences between the New Regulation and the Former Regulation:

(i) Both regulations provide that debtors are primarily liable for the fulfillment of their obligations, even if the obligations are guaranteed by the Treasury. However, while the Former Regulation provided an exception to this general rule through a clause *"except for situations that the Treasury approves"*, the New Regulation does not contain this clause. Accordingly, this exception is now abolished.

This change is considered as a positive one, preventing debtors to put pressure on the Treasury to create exceptions for their duty of fulfilling their own obligations and making them to plan their actions beforehand.

(ii) The New Regulation provides a specific clause regarding the assumption of foreign state obligations guaranteed by the Treasury. The Former Regulation did not have such a clause. Although the law constituting the basis for the New Regulation (i.e. Law No. 4749 on Public Financing and Regulation of Debt Management[1]) stipulates provisions regarding "Treasury State Guarantees", and enables this subject to be regulated, this provision attracted heavy criticism, on the ground that providing guarantees for foreign states is extremely risky, as there is no way of taking such guarantees back once they are given.

The New Regulation was enacted five days after the enactment of the Regulation on the Principles and Procedures Regarding External Financing within the Scope of Law No. 4749.[2] Enacting two regulations within such a short timeframe shows the Turkish government's eagerness to attract new investors for new infrastructure projects.

Okan Demirkan (odemirkan@kolcuoglu.av.tr) & Burak Eryiğit (beryigit@kolcuoglu.av.tr)

[1] Entered into force on 28 March 2002
[2] Entered into force on 25 December 2014