

Read below the latest legal developments in Turkey. This latest roundup provides insight on the latest amended and repealed laws and regulations affecting different sectors.

To discuss how these developments affect your business interests please contact Fethi Pekin, Managing Partner.
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BANKING & FINANCE

BRSA introduces the Regulation on Principles Regarding Repo and Reverse Repo Transactions of Banks

The Banking Regulation and Supervision Agency (the “**BRSA**”) has issued the Regulation on Principles Regarding Repo and Reverse Repo Transactions of Banks (*published in the Official Gazette dated December 6, 2015 and numbered 29554*) (the “**Repo Regulation**”) which introduces new rules applicable to repo and reverse repo transactions of banks.

The scope of the Repo Regulation includes the repo and reverse repo transactions executed (i) among banks or (ii) between a bank and a real person or a legal entity. The Repo Regulation does not apply to (i) open market repo and reverse repo transactions executed between banks and the Central Bank of the Republic of Turkey (*T.C. Merkez Bankası*) (the “**Central Bank**”) and (ii) repo and reverse repo transactions executed between banks and financial institutions as foreign over-the-counter (OTC) market transactions under a special netting agreement or an international repo framework agreement.

Pursuant to the Repo Regulation, the financial instruments which may be subject to definition as a repo or reverse repo transaction are as follows: (i) debt instruments and lease certificates issued by Turkish state institutions; (ii) liquidity bills issued by the Central Bank; (iii) debt instruments, lease certificates, asset/mortgage covered bonds and asset/mortgage backed bonds issued by Turkish residents; (iv) shares which are determined by Borsa İstanbul A.Ş. (*Istanbul Stock Exchange*) (“**Borsa İstanbul**”) to be used in repo and reverse repo transactions performed on Borsa İstanbul markets; and (v) other financial instruments determined by the BRSA.

The principles for the valuation and the securitization of the financial instruments subject to a repo and a reverse repo transaction are determined in Article 6 of the Repo Regulation. Moreover, pursuant to the Repo Regulation, (i) the cash or collateral subject to a repo or reverse repo transaction may be in Turkish Lira or in any foreign currency; (ii) the maturity date of the repo and reverse repo transaction should not exceed the redemption date of the relevant financial instrument; (iii) parties are required to make a framework agreement unless they are both members of Borsa İstanbul and the transaction is performed on the stock market.

Banks are required to deposit the financial instruments subject to a repo and reverse repo transaction (except for the repo and reverse repo transactions by and between other banks and financial institutions and including financial instruments traded on exchanges or other organized markets outside Turkey) in the accounts held at İstanbul Takas ve Saklama Bankası Anonim Şirketi (*Istanbul Settlement and Custody Bank*) (“**Takasbank**”) or Takasbank’s

correspondents. Additionally, banks are required to notify Takasbank regarding repo and reverse repo transactions which they make outside Borsa İstanbul.

Lastly, the difference between the total repo balance and the reverse repo balance shall not exceed the twenty times a particular bank's own funds and such difference shall not exceed two times of a bank's own funds in respect of a repo or reverse repo transaction made with the same person and institution.

Capital Markets Board introduces the Communiqué on Principles Regarding Repo and Reverse Repo Transactions of Intermediary Institutions (III-45.2)

The Capital Markets Board (the "CMB") has issued the Communiqué on Principles Regarding Repo and Reverse Repo Transactions of Intermediary Institutions (published in the Official Gazette dated December 6, 2015 and numbered 29554) (the "Repo Communiqué") which has abolished the Communiqué on Sales and Purchase of the Securities with Repurchase or Resale Commitment (Series: V, No: 7). The Repo Communiqué is applicable to repo and reverse repo transactions executed (i) among intermediary institutions and (ii) between an intermediary institution and a real person or a legal entity. The open market repo and reverse repo transactions executed between the intermediary institutions and the Central Bank are excluded from the scope of the Repo Communiqué.

Pursuant to the Repo Communiqué, (i) the intermediary institutions are prohibited from performing repo or reverse repo transactions which are not covered by the Repo Communiqué; (ii) the intermediary institutions are required to have at least transaction intermediacy license or portfolio intermediacy license in order to perform repo or reverse repo transactions; and (iii) the intermediary institutions shall notify the CMB before performing any repo or reverse repo transaction.

Other rules imposed by the CMB on intermediary institutions under the Repo Communiqué are similar to those imposed on banks by the BRSA under the Repo Regulation.

Amendment to the Regulation on Establishment and Principles for Establishment and Operations Of Financial Leasing, Factoring and Finance Companies and Regulation on Credit Transactions of Banks

The BRSA has amended the Regulation on Establishment and Principles for Establishment and Operations Of Financial Leasing, Factoring and Finance Companies (*published in the Official Gazette dated April 24, 2013 and numbered 28627*) and Regulation on Credit Transactions of Banks (*published in the Official Gazette dated November 1, 2006 and numbered 26333*). Within the scope of acquisition or alteration of a residence, the maturity date of the consumer loans cannot exceed 36 months and the maturity date of the and vehicle secured loans cannot exceed 48 months, except for the loans utilized (i) by the consumers for purchase of products or procurement of services, (ii) for renting residences to consumers through financial leasing, (iii) other **loans** made available for real estate purchase, (iv) the loans utilized for financing education fees and; (v) the loans utilized for re-financing of loans mentioned hereinabove.

Amendment to the Regulation on Payment Services and Electronic Money Issuance and Payment Institutions and Electronic Money Institutions

The BRSA has amended the Regulation on Payment Services and Electronic Money Exporting and Payment Institutions and Electronic Money Institutions (published in the Official Gazette dated April 2, 2015 and numbered 29314). The definition of "invoice payment" has been amended by excluding tax related payments. Certain changes have been made with regard to notifications and conditions about one-time payment transactions.

Amendment to the Decree No.32 regarding the Protection of the Value of Turkish Currency

As per the amendment to Article 3 of the Decree No. 32 regarding Protection of the Value of the Turkish Currency (*published in the Official Gazette dated 11 August 1989 and numbered 20249*) (“**Decree No. 32**”), the amount of cash or any other payment instruments that a traveler carries which are exceeding TL 25,000 have been made subject to cash declaration form which is announced by the Prime Ministry. The Administration of Customs will inform the Central Bank on a monthly basis regarding the cash outflows exceeding USD 50,000.

As per the amendment to Article 4 of the Decree, an outflow of foreign currency which is equal to or exceeding EUR 10,000 is made subject to cash declaration form which is announced by the Ministry of Customs and Trade.

As per the amendment to Article 10 of the Decree, Turkish residents must fill the information form which can be found on the website of Ministry of Economy regarding the first capital export in order to establish a company, open a branch or be a shareholder to existing companies.

Amendment to the Communiqué on Document and Record Orders regarding the Investment Services and Activities and Ancillary Services

The CMB has amended the Communiqué on Document and Record Orders regarding the Investment Services and Activities and Ancillary Services (*published in the Official Gazette dated November 11, 2015 and numbered 29529*) (the “**Amendment Communiqué on Documents and Records**”).

Amendment to the Communiqué on Required Reserves

The Central Bank has amended the Communiqué on Required Reserves (*published in the Official Gazette dated December 26, 2015 and numbered 29574*) (the “**Amendment Communiqué on Required Reserves**”).

Pursuant to the Amendment Communiqué on Required Reserves, for the calculation of the required reserves allocated in a foreign currency for liabilities in Turkish Lira, the arithmetic average of the buying exchange rates published in the Official Gazette on the days between the liability date (inclusive) and allocation date (inclusive) shall be used.



CORPORATE

Energy

Regulation on Implementation of the Organized Industrial Zones

Certain provisions of the Regulation on Implementation of Organized Industrial Zones (*published in the Official Gazette dated 22 August 2009 and numbered 27327*) have been amended by the Ministry of Science, Industry and Technology. This Regulation sets forth procedure for the determination of the attendees that will be elected to the committee of enterprising. In addition, the non-transferable duties and authorities of the general assembly and the committee of enterprising have been regulated. As per the Regulation, the general assembly and the committee of enterprising have been entitled to amend the articles of association of the companies which operate in an Organized Industrial Zone (“**OIZ**”) and such authority shall not be transferred or assigned to a third party.

Retail Energy Sale

A new Communiqué on Rates of Retail Energy Sale has been published by Energy Market Regulatory Authority in the Official Gazette dated December 30, 2015. The purpose of the Communiqué is to regulate the procedures and principles regarding preparation of rates subject to retail energy sale. According to Article 15 of the Communiqué, the rates of retail energy sale should be prepared in compliance with the investment expenditures to be required for operations, operating and other expenses, and gross profit margin to be determined by incurred risks.

Electricity Facilities Projects

The Regulation on Electricity Facilities Projects (*published in the Official Gazette December 30, 2014 and numbered 29221*) has been amended by the Ministry of Energy and Natural Resources. The purpose of this Regulation is to regulate methods and principles in respect of enabling the project approval transactions to be conducted in compliance with the relevant laws, standards and specifications in order to establish the power plants. The commencement date of the implementation of Provisional Article 1 of this Regulation regarding the project engineers has been replaced by the expression "1/6/2016".

Commencement Date of the Implementation Regarding the Authorization Certificate

An amendment to the Regulation on Natural Gas Market Certificate (*published in the Official Gazette December 23, 2014 and numbered 29214*) has been published by the Energy Market Regulatory Authority. With this Amendment, the expression "1/1/2016" in Provisional Article 3 of this Regulation which is the commencement date of the implementation regarding the authorization certificate has been replaced by the expression "1/1/2017".

Arrangement of Distribution System Investments and Supervision of the Realizations in the Plans in Electricity Market

The Regulation on Arrangement of Distribution System Investments and Supervision of the Realizations in the Plans in Electricity Market (*published in the Official Gazette dated January 7, 2007 and numbered 26396*) has been abolished by the Energy Market Regulatory Authority.

Investment Incentives

An amendment to the Decree of the Council of Ministers No.2012/3305 (*published in the Official Gazette dated 19 June 2012 and numbered 28328*) regarding the investment incentive system has been published. Pursuant to the amendment, investments with respect to renewable energy may benefit from any of the incentive schemes set forth under this Decree, if such investment project is approved by the Ministry of Economy.

Penalties for Petroleum Market

The Communiqué on the Penalties for the year 2016 as per Article 19 of the Petroleum Market Law (*published in the Official Gazette dated December 22, 2015 and numbered 29570*) has been published by Energy Market Regulatory Board. The penalty for operating without license on the activities which are subject to have a license has been increased from TL 879.168 to TL 1.208.229.

Penalties for Natural Gas Market

The Communiqué on the Penalties for the year 2016 as per Article 9 of the Law of Natural Gas Market numbered 4646 (*published in the Official Gazette dated December 22, 2015 and numbered 29570*) has been published by Energy Market Regulatory Board. Pursuant to the amendments, the administrative fine that is stated in Article 9/g of the Law numbered 4646 has been increased from TL 500.000 to TL 1.062.235.

Operating without license on Liquefied Petroleum Market and Electricity Market

The Communiqué on the Penalties for the year 2016 as per Article 16 of the Amendment on Liquefied Petroleum Market Law and Electricity Market Law numbered 5307 (published in the Official Gazette dated December 22, 2015 and numbered 29570) has been published by Energy Market Regulatory Board. The penalty for operating without license on the activities which are subject to have a license has been increased from TL 643.433 to TL 885.195.

Operating without license on Electricity Market Law

The Communiqué on the Penalties for the year 2016 as per Article 26 of the Electricity Market Law numbered 6446 (published in the Official Gazette dated December 22, 2016 and numbered 29570) has been published by Energy Market Regulatory Board. The penalty for unlicensed activities has been determined as TL 1.208.229.

Time Extension for Encouragements

The Cabinet Decree numbered 2015/8317 has been published in the Official Gazette dated December 24, 2015 and numbered 29572. Pursuant to the decree, the period in respect of providing encouragement to the legal persons who have manufacture license and commenced to operation for the first time has been extended from December 31, 2015 to December 31, 2020.

Regulation on Electricity Market License

The Regulation on Electricity Market License has been amended (published in the Official Gazette dated December 23, 2015 and numbered 29571).

Pursuant to the amendments, Energy Market Regulatory Board ("Board") shall be notified about the production capacity of the facilities for the pre-license applications to set up production facilities of wind and solar energy;

- until October 1 of each year for wind energy applications
- until April 1 of each year for solar energy applications

Application dates regarding pre-license for solar and wind energy has been amended. Pursuant to the amendments;

- applications based on wind energy shall be made in the first five days of April for each year, and
- applications based on solar energy shall be made in the first five days of November for each year.

Additionally, pre-license applicant has the right to get the paid application fee back in the event of application withdrawal.

For the production license applications, the company must submit its articles of association which states that the company shall receive the approval of the Board in the event of capital decrease.

Regulation on Technical Evaluation of Applications on Electricity Production based on Wind Sources

The Regulation on Technical Evaluation of Applications on Electricity Production based on Wind Sources has been published by the Ministry of Energy and Natural Resources (*published in the Official Gazette dated October 20, 2015 and numbered 29508*). This regulation determines the grounds of denial for the pre- license applications and the conditions for amending license. This regulation has abolished the Regulation on Technical Evaluation of Applications on Electricity Production based on Wind Energy (*published in the Official Gazette dated November 9, 2008 and numbered 27049*)

IP

Trademark Regulation

The Regulation on the Implementation of the Decree-Law No. 556 Regarding the Protection of Trademarks (*published in the Official Gazette dated April 9, 2005 and numbered 25781*) ("**Trademark Regulation**") has been amended by the Turkish Patent Institute. Pursuant to the amendments, the objection to decisions of the Turkish Patent Institute with respect to trademark may be withdrawn. Withdrawal shall be declared in writing to the Turkish Patent Institute. As per the Regulation, withdrawal shall not have effect if the Turkish Patent Institute has made a decision on such objection.

The Implementation of the Decree-Law Regarding the Protection of Industrial Designs

The Regulation on the Implementation of the Decree-Law Regarding the Protection of Industrial Designs (*published in the Official Gazette dated February 7, 2006 and numbered 26073*) ("**Industrial Design Regulation**") has been amended by the Turkish Patent Institute. The Industrial Design Regulation covers the principles and requirements for the registration and the protection of industrial designs. Pursuant to this amendment, the definition of the publication costs under Article 9 of the Industrial Design Regulation has been replaced by the expression of "information evidencing payment of costs with respect to application".

The Implementation of the Decree-Law Regarding the Protection of Patents

The Regulation on the Implementation of the Decree-Law Regarding the Protection of Patents (*published in the Official Gazette dated November 5, 1995 and numbered 22454*) ("**Patent Regulation**") has been amended by the Turkish Patent Institute. As per the amendments, the owner of a patent shall submit all required documents and information to the Turkish Patent Institute in 3 years following the disuse of the patent. In addition, pursuant to the amendments, the patent application before the Turkish Patent Institute may be withdrawn by a third party who is appointed as an attorney.

Real Estate

Type Zoning Regulation on Planned Areas

Regulation on Type Zoning Regarding the Planned Areas (*published in the Official Gazette dated November 2, 1985 and numbered 18916*) has been amended by the Ministry of Environment and Urban Planning. In accordance with the amendments, the expression "1/1/2016" in Provisional Article 6 of this Regulation which is the commencement date of the implementation has been replaced by the expression "1/1/2017". In addition, this Regulation will be performed by the Ministry of Environment and Urban Planning.

Regulation on Implementation of the Organized Industrial Zones

Certain provisions of the Regulation on Implementation of Organized Industrial Zones (*published in the Official Gazette dated 22 August 2009 and numbered 27327*) has been amended by the Ministry of Science, Industry and Technology. This Regulation sets forth procedure for the determination of the attendees that will be elected to the committee of enterprising. In addition, the non-transferable duties and authorities of the general assembly and the committee of enterprising have been regulated. As per the Regulation, the general assembly and the committee of enterprising have been entitled to amend the articles of association of the companies which operate in an Organized Industrial Zone ("**OIZ**") and such authority shall not be transferred or assigned to a third party.

Pharmaceuticals, Healthcare & Biotechnology

The Recall Regulation

The Recall Regulation has been published in the Official Gazette dated November 19, 2015 and numbered 29537 (“The Regulation”). This Regulation has abolished the former regulation (*published in the Official Gazette dated August 15, 1986 and numbered 19196*). Pursuant to the amendments, the authority which is entitled to make the recall decisions has been determined as Pharmaceuticals and Medical Devices Agency of Turkey.

The scope of the Regulation has been expanded. The former regulation has covered only the fault products but the new regulation also includes the products that are suspected to be fault.

Recall regime has been re-organized as per the Regulation. The liable firm shall fill a form about the relevant products that is provided by the Authority and submit it to the authority in 5 days as of the date of recall decision.

The liabilities;

- To inform the distributor or country’s authority in case of the product has been exported
- To inform the Authority about the content and reason of the recall for the serials of the products whereof the products are licensed in Turkey in case of a retraction in a foreign country

have been included.

The liability period for the liable firm on keeping relevant information and records in respect of the recall has been extended from 1 year to 5 years.

The period for the liable firm on bringing the fault products under control following the recall has been shorten from 3 days to 2 days for 2nd class recalls and 6 days to 3 days for 3rd class recalls.

The limited period determined for the compensation of damages by the liable firm has been removed.

Consumer Goods & Retail

Administrative Fines regarding Consumer Protection

The Communiqué on Administrative Fines applicable for the year 2016 as per Article 77 of the Law on Protection of the Consumer has been published by Ministry of Customs and Trade in the Official Gazette dated December 20, 2015 and numbered 29568. Pursuant to the Communiqué, the lower limit and the upper limit of administrative fines stated in the Article 77/19 have been increased from TL 25.000 – TL 100.000 to TL 29.063 – TL 116.254.138.

The Regulation on Approval and Registration Procedure of Nutriment Enterprises

The Regulation on Approval and Registration Procedure of Nutriment Enterprises (“the Regulation”) (*published in the Official Gazette dated December 17, 2011 and numbered 28145*) has been amended. The amendment extends the deadline from December 31, 2015 to July 1, 2016 in respect of obtaining approval for the enterprises of which the working license, nutriment registry certificate or the equivalentents have been obtained prior to the date of the Regulation.

General Corporate

Procedures and Principles of the General Assembly Meetings

Regulation on Procedures and Principles of the General Assembly Meetings of Joint Stock Companies and the Representative of Customs of Trade Ministry appointed for these Meetings (published in the official Gazette dated November 28, 2012 and numbered 28481) has been amended (published in the Official Gazette dated October 27, 2015). Pursuant to the amendment, chairman of the meeting shall sign the list of attendants by confirming if the documents that grant the right to join to the meeting have been checked by the managing body.

Independent Audit Regulation

The Amendment on Independent Audit Regulation has been published in the Official Gazette dated December 22, 2015 and numbered 29570. Pursuant to the amendment, the date and number of the decision of authorized body in respect of appointing auditor for the enterprises that do not have a general assembly body have been included to the minimum content of the Audit Agreement.

Type Zoning Regulation on Planned Areas

The Regulation on Type Zoning Regarding the Planned Areas (*published in the Official Gazette dated November 2, 1985 and numbered 18916*) has been amended by the Ministry of Environment and Urban Planning. In accordance with the amendments, the expression "1/1/2016" in Provisional Article 6 of this Regulation which is the commencement date of the implementation has been replaced by the expression "1/1/2017". In addition, this Regulation will be performed by the Ministry of Environment and Urban Planning.

Others – All Sectors

An amendment to the Regulation Regarding Implementation of the European Convention on Patent in Turkiye has been published in the Official Gazette dated November 26, 2015 and numbered 29544 by the Turkish Patent Institute.



COMPETITION

Administrative Penalties

The administrative penalty imposed under the Article 16 of the Law Regarding the Protection of Competition (Law No.4054) for merger or acquisition transactions subject to approval and realized without the approval of the Competition Board and for situations where incomplete, false or misleading information or documents are provided, or information or documents are not provided within the determined duration or at all and on-site investigation held by the Competition Board is obstructed or made difficult, has been amended by the Communiqué *published in the Official Gazette dated December 25, 2015, and numbered 29573*, which entered into effect on January 1, 2016. Accordingly, the penalty to be determined pursuant to the Article cannot be less than TL 17,700.



DISPUTE RESOLUTION

Monetary Thresholds Regarding the Jurisdiction of Consumer Arbitral Committees Have Been Increased

The Communiqué on Increasing the Monetary Thresholds Provided under Article 68 of the Consumer Protection Law and Article 6 of the Consumer Arbitral Committees Regulation (the “**Communiqué**”) was published in the Official Gazette dated December 20, 2015 and numbered 29568 and entered into force on January 01, 2016.

As per the Communiqué, consumers are obliged to apply to the consumer arbitral committees for disputes arising from the purchase of goods or services other than for commercial or professional purposes in the event the subject matter of the dispute is in accordance with the below thresholds provided under Article 3;

- The threshold for applying to district consumer arbitral committees is TL 2,320.00.-,
- The threshold for applying to provincial consumer arbitral committees in metropolitan municipalities is TL 2,320.00.- to TL 3,480.00.-,
- The threshold for applying to provincial consumer arbitral committees in the provinces which do not have the status of metropolitan municipality is TL 3,480.00.-,
- The threshold for applying to provincial consumer arbitral committees in the districts of the provinces which do not have the status of metropolitan municipality is TL 2,320.00.- TL 3,480.00.-

Pursuant to Article 68 of the Consumer Protection Law (Law No. 6502) (Published in the Official Gazette dated November 28, 2013 and numbered 28835), consumers cannot apply to the Consumer Courts for disputes arising from consumer law of which the disputed matter is inferior to the above monetary limits.

Consequently, companies providing goods or services to consumers may raise an objection against lawsuits (where the amount subject to dispute is inferior to the above thresholds) filed before consumer courts and request rejection of the lawsuit on a procedural basis since as per sample judgment of Court of Appeals, the obligation to apply to consumer arbitral committees is considered to be a pre-condition for filing a lawsuit.

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