

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 This latest roundup provides insight on the latest amended and repealed laws and regulations affecting different sectors.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

Q1/2016 Regulation on Systemically Important Banks

The BRSA has issued the Regulation on Systemically Important Banks (*published in the Official Gazette dated February 23, 2016 and numbered 29633*) (the “**Systemically Important Banks Regulation**”) which introduces rules applicable to systemically important banks (the “**SIB**”).

The scope of the Systemically Important Banks Regulation includes (i) the determination of the SIBs, (ii) the requirements of Additional Tier II Capital to be maintained as a systemic bank add-on for the SIBs and other liabilities that the SIBs are required to fulfill and (iii) the procedure and principles with respect to the transactions to be performed in case of the failure of the Additional Tier II Capital requirements by the SIBs.

Pursuant to the Systemically Important Banks Regulation, The SIBs are defined as the banks of which the general score related to its systemic importance, calculated according to Article 4 of the Systemically Important Banks Regulation, is higher than the systemic importance threshold score (minimum score used to determine whether a bank is systemically important or not). According to Article 4 of the Systemically Important Banks Regulation, determination of the systemic importance of banks shall be made based on the indicated approach and for this approach, the criteria of size, correlativity, complexity and non-substitutability and indicators and sub-indicators of such criteria shall be considered.

Furthermore, systemic banks are determined and grouped by the BRSA each year by using the consolidated data of the previous December and such determination and groups are valid for the following year. The BRSA shall reconsider the SIB status each year within the scope of the principles under the Systemically Important Banks Regulation. Additionally, The BRSA shall revise the group of the relevant SIB and its liabilities upon any change made by the SIB on its systemic importance such as merger and division.

Finally, the SIBs are required to maintain a systemic bank tampon for the following year of the determination.

Q1/2016 Amendment to the Regulation on Own Funds

The BRSA has amended the Regulation on Own Funds (*published in the Official Gazette dated September 05, 2013 and numbered 28756*) (the “**Amendment Regulation on Own Funds**”).

Pursuant to the Amendment Regulation on Own Funds, shares acquired by a bank in return for a financing provided or a guarantee issued by such bank in accordance with paragraph 1 of Article 380 of the Turkish Commercial Code

shall not be taken into account for the calculation of the paid capital for the purpose of Tier I Capital calculation. Additionally, privileged shares, which grant its owner the privilege to oblige the bank for the payment of unpaid dividends in the following periods, have been excluded from the calculation of the capital amount corresponding to the privileged shares, for the purpose of Additional Tier I Capital calculation.

Some items and criteria considered for the calculation of (i) the gross long positions indicated under the deduction items listed under the Article 9 of the Regulation of Own Funds and (ii) the amount exceeding the minimum required amount of Tier I Capital, capital stock and own funds of an affiliate of a bank as per Article 12, 13 and 14 of the Regulation of Own Funds, respectively have been amended by the Amendment Regulation of Own Funds.

Furthermore, according to the Amendment Regulation of Own Funds, shares held by the minority shareholders in Tier I Capitals of the consolidated affiliates of a bank shall be taken into account under the consolidated Tier I Capital account of the bank in case that such affiliate is subject to the same regulations and supervision as banks.

Finally, a provisional article has been added by the Amendment Regulation on Own Funds regulating the rules for the calculation of a capital issued before January 01, 2014.

Q1/2016 Amendment to the Regulation on the Principles of Authorization and Activities of Rating Agencies

The BRSA has amended Amendment to the Regulation on the Principles of Authorization and Activities of Rating Agencies (*published in the Official Gazette dated April 17, 2012 and numbered 28267*) (the “**Amendment Regulation on Regulation Agencies**”).

As per the Amendment Regulation on Regulation Agencies, the business principles which the rating agencies authorized or to be authorized, board of directors members responsible for the quality assurance system, rating committee members and rating experts shall be complied with have been amended and their scope has been expanded.

The Amendment Regulation on Regulation Agencies has changed the principles regarding the consideration of the rating agency’s honoring in the market. Accordingly, such consideration shall be made based on each asset category. The rating agency shall be performing rating activities at least for 5 years in accordance with a rating authorization granted by relevant Turkish or foreign authorities and such duration requirement may be shortened to 3 years by the BRSA if some other requirements have been fulfilled. However, the BRSA cannot grant to any rating agency immunity from such requirements other than the said shortened duration.

The Amendment Regulation on Regulation Agencies has also amended (i) the documents required to be submitted to the BRSA for the authorization applications; and (ii) the procedure which should be followed for the confirmation of rating method and the minimum scope of the confirmation report.

Furthermore, pursuant to the Amendment Regulation on Regulation Agencies, in order to rate a customer on a non-request basis, the rating agencies are required to perform rating activities for the last 2 accounting periods for such customer on a request basis, instead of 3 consecutive accounting periods.

Finally, the rating agencies shall publicly announce the text of ethical principles and the general framework related to the pricing of counterparties being rated. However, the ratings issued by the Turkish representative of an international rating agency shall no longer be required to be publicly announced via the website of such international rating agency. Additionally, an authorized rating agency cannot announce the rating issued by another rating agency as its own rating and cannot create such an impression.

Q1/2016 Amendment to the Regulation on Measurement and Evaluation of Capital Adequacy of Banks

The BRSA has amended the Regulation on Measurement and Evaluation of Capital Adequacy of Banks (*published in the Official Gazette dated January 20, 2016 and numbered 29599*). Some of the items and criteria which are taken into account for the measurement and evaluation of capital adequacy have been amended; (i) risk capital requirement based upon security, and (ii) qualified debt instrument category.

Q1/2016 Amendment to the Regulation on Calculation of Liquidity Coverage Ratio of Banks

The BRSA has amended the Regulation on Measurement and Evaluation of Capital Adequacy of Banks (*published in the Official Gazette dated January 20, 2016 and numbered 29599*). Pursuant to the amendment to the Regulation on Calculation of Liquidity Coverage Ratio of Banks the provisions related to (i) liquidity coverage ratio and measurement of the level of the liquidity, (ii) the definition of high qualified liquid assets, (iii) the rules regarding the transfer and discharge of high qualified liquid assets, (iv) the rules regarding 2B qualified liquid assets, (v) the calculation of cash flow, (vi) junior debts to the real person clients, (vii) junior debts to retail clients, (viii) junior debts to other people, (ix) other junior debts, (x) structured financial instruments debts, (xi) irrevocable or conditionally revocable off-balance sheet debts and (xii) cash inflows have been amended.

Q1/2016 Amendment to the Regulation on Accounting Practices and Financial Statements Of Financial Leasing, Factoring and Finance Companies

The BRSA has amended the Regulation on Accounting Practices and Financial Statements Of Financial Leasing, Factoring and Finance Companies (*published in the Official Gazette dated January 08, 2016 and numbered 29587*). The scope of first group warranties has been expanded with including the (i) guarantees given by the correspondents who operates in OECD countries in export transactions, (ii) exportation documents insured within the scope of export credit insurance policies or based upon transport bill or marine bill of lading; (iii) commercial receivables insurance policies and (iv) securities which are not provided with the support of Undersecretariat For The Treasury.

Q1/2016 Amendment to the Regulation on the Principles of Incorporation and Activities of Asset Management Companies

The BRSA has amended Amendment to the Regulation on the Principles of Incorporation and Activity of Asset Management Companies (*published in the Official Gazette dated November 01, 2006 and numbered 26333*) (the **"Amendment Regulation on Asset Management Companies"**). The definition of other financial institutions has been amended by including asset management companies (the **"AMC"**) in addition to the factoring, leasing and financing companies and the definition of control has been inserted by referring to the definition made under Banking Law.

Pursuant to the Amendment Regulation on Asset Management Companies, the AMCs are required to provide a paid capital in the amount of at least TL 20,000,000 for the incorporation. As provided by the provisional article, such requirement shall be satisfied by the AMCs already incorporated, until December 31, 2017. The documents required to be submitted to the BRSA in relation to foreign persons and entities for the incorporation of an AMC have been listed in detail under the Amendment Regulation on Asset Management Companies. Additionally, a provision regulating the criteria used by the BRSA during the operation license applications has been inserted. Accordingly, during the operation license applications the BRSA shall review if the AMC satisfies the conditions of capital adequacy and corporate governance rules and if satisfied, the BRSA shall issue the operation license to the AMC which will be in effect upon its publication in the Official Gazette.

Furthermore, there have been some amendments with respect to the shareholding structure of the AMCs. Accordingly, BRSA's approval is also required for the change of control at the AMCs in addition to the approval

requirement for share acquisitions corresponding to 50% or more shares of an AMC and the share transfers resulting to the decrease of the shareholders' number from 5 may be registered into the share ledger from now on.

Additionally, the documents required to be submitted to the BRSA for the notification of appointment of the members of the board of directors and the general manager have been indicated in detail under the Amendment Regulation on Asset Management Companies. Also the resignation of any member of the board of directors and/or the general manager shall be notified to the BRSA within a month.

The Amendment Regulation on Asset Management Companies has further introduced two new articles regulating that an AMC shall incorporate an adequate and efficient internal control system and an IT system which is in compliance with the AMC's scale and activities. As provided by the provisional article, such requirements shall be satisfied by the AMCs already incorporated, until December 31, 2016.

The reporting system to the BRSA of the audited financials and annual reports has also been amended and accordingly, the independent audit reports with respect to the unconsolidated financials of an AMC shall be reported to the database of the BRSA until 15th April of the following year.

Finally, according to the Amendment Regulation on Asset Management Companies, the BRSA has a discretionary power to decide whether to cancel the operation license of an AMC or not upon violation of legislation, following its consideration on the reasons or grounds of the violation and on the deficiency of the AMC in such violation. The AMC is required to assemble a general meeting within 3 months following the cancellation of the operation license, in order to decide whether to change the type and title of the company or liquidation of the company. The companies of which the operation license has been cancelled cannot perform asset management activities or create impression as performing asset management activities, in their titles, publications or advertisements or offices.

Q1/2016 Amendment to the Regulation on the Evaluation Phase of the Internal Systems and Internal Capital Adequacy of Banks

The BRSA has amended the Regulation on Evaluation Phase of the Internal Systems and Internal Capital Adequacy of Banks (*published in the Official Gazette dated January 20, 2016 and numbered 29599*). The role and responsibilities of the board of directors has changed such as; being liable to provide adequate capital in order to establish and implement ICAAP. The qualifications of the members of the audit committee have changed as well.

Q1/2016 Amendment to the Regulation on the Measurement and Evaluation of Liquidity Adequacy of Banks

The BRSA has amended the Regulation on the Measurement and Evaluation of Liquidity Adequacy of Banks (*published in the Official Gazette dated November 01, 2006 and numbered 26333*) and added a provisional article stating that foreign currency indexed assets and liabilities may be considered as foreign currency assets and liabilities for the calculation of foreign currency liquidity adequacy ratio and continued to be considered as Turkish Lira assets and liabilities for the calculation of total liquidity adequacy ratio until December 12, 2016.

Q1/2016 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**"), allowed gaining, selling and changing different kind of foreign money through bank transfers on condition that giving transfer instructions on the same date with the client or physical delivery of the subject.

Q1/2016 Amendment to the Communiqué on the Credit Risks Reduction Techniques

The BRSA has amended the Communiqué on the Credit Risks Reduction Techniques (*published in the Official Gazette dated January 20, 2016 and numbered 29599*). The definition of security financial transaction has been changed to repo transactions, reverse repo transactions, securities lending and margin trading. There is an addition to the quantitative criteria regarding volatility adjustment based upon internal predictions which states that there is no liability regarding the usage of a special model. Banks can use models depending on the methods of historical stimulation or stimulation as long as they cover the whole risk.

Q1/2016 Amendment to the Communiqué on Printing Forms of Checkbooks, on Amounts which the Banks are Obligated to Pay to the Holders and on Notification and Announcement of Prohibition Decisions on Check Issuance and Opening Check Accounts

The Central Bank of Republic of Turkey has amended the Communiqué on Printing Forms of Checkbooks, on Amounts which the Banks are Obligated to Pay to the Holders and on Notification and Announcement of Prohibition Decisions on Check Issuance and Opening Check Accounts (*published in the Official Gazette dated January 20, 2010 and numbered 27468*) and the amounts which the banks are liable to pay for the fully or partially unpaid checks and the thresholds related thereto have been increased to TL 1,290 from TL 1,200 for each check leaf. Additionally, the maximum amount which the banks are under obligation to pay for the fully or partially unpaid checks printed according to the communiqués issued before January 20, 2010 have been increased to TL 740 from TL 700.

Q1/2016 Amendment to the Communiqué on Financial Statements to be Disclosed by Banks and Statements and Footnotes Related Thereto

The BRSA has amended the Communiqué on Financial Statements to be Disclosed by Banks and Statements and Footnotes Related Thereto (*published in the Official Gazette dated January 20, 2016 and numbered 29599*). Pursuant to the amendment to the Communiqué on Financial Statements to be Disclosed by Banks and Statements and Footnotes Related Thereto, the table with respect to the risks within the calculation of the circular capital buffer has been added. Additionally, the footnotes regarding liquidity risk management and liquidity coverage ratio has been amended. With a provisional article, the implementation of the calculation method regarding the consolidated liquidity coverage ratio is specified under the Communiqué.

Q1/2016 Amendment to the Communiqué on Calculation of Credit Risk Principal Amount with the Internal Rating Approach

The BRSA has amended the Communiqué on Calculation of Credit Risk Principal Amount with the Internal Rating Approach (*published in the Official Gazette dated January 20, 2016 and numbered 29599*). Pursuant to the amendment to the Communiqué on Amendment to the Communiqué on Calculation of Credit Risk Principal Amount with the Internal Rating Approach, there have been some amendments related to, *inter alia*, the classification of the risk within the scope of the approach based upon internal evaluation.

Q1/2016 Amendment to the Communiqué on Public Announcement with regards to Risk Management of Banks

The BRSA has amended the Communiqué on Public Announcement with regards to Risk Management of Banks (*published in the Official Gazette dated October 23, 2015 and numbered 29511*) and revised the risk weights of some commercial immovable having high volatility which shall be publicly announced by the banks in relation to the credit risks other than securitization and counter party credit risk.

Q1/2016 Amendment to the Communiqué on Calculation of Market Risk and Risk Measurement Models and Evaluation of Risk Measurement Models

The BRSA has amended the Communiqué on Calculation of Market Risk and Risk Measurement Models and Evaluation of Risk Measurement Models (*published in the Official Gazette dated October 23, 2015 and numbered 29511*) and required, for the determination of risk factors to be used for internal model, that at least six risk factors shall be used during the yield curve modeling for some currencies which are subject to a major interest rate risk.



CORPORATE

GENERAL CORPORATE

Q1/2016 Amendment to the Decree of the Council of Ministers No.2012/4213

The Amendment to the Decree of the Council of Ministers No.2012/4213 (*published in the Official Gazette dated January 23, 2013 numbered 28537*) regarding the determination of the companies that are subject to independent audit has been published. Pursuant to the amendment, total assets of the company has been determined as TL 80 million and above and TL 40 million and above.

Q1/2016 Environment

Communiqué regarding the Administrative Fines in respect of the Article 20 of the Environmental Law numbered 2872 (the “**Communiqué**”) has been published (*published in the Official Gazette dated January 7, 2016 and numbered 29606*). Pursuant to the Communiqué, the administrative fine applicable for the year 2016 that is stated in the article 20 of the Law numbered 2872 has been determined as TL 40,913 and TL 204,584.

The Regulation on the Principals of Calculation, Construction and Design of the Steel Constructions has been published by Ministry of Environment and Urbanisation in the Official Gazette dated February 4, 2016 and numbered 29614. The Regulation covers the terms and conditions of design and construction of the steel and steel-ferroconcrete construction systems.

Amendment to the Regulation on Environmental Impact Assessment (“EIA”) (*published in the Official Gazette dated November 25, 2014 and numbered 29186*) has been published. Pursuant to the amendments, the extension time granted by the ministry/governorate to the project holder has been determined as one year in case the project owner fails to fulfill the undertaking following the EIA report or document of EIA is not necessary.

Q1/2016 Customs Regulation

Amendment to the Customs Regulation (*published in the Official Gazette dated October 7, 2009 and numbered 27369*) has been published. The qualities determined for the applicant in respect of the shipments by airway in a simplified manner in the frame of transit regime has been determined pursuant to the amendment. As per the amendment made in Article 525 of the Regulation, permission to set up and operate a warehouse shall be canceled in case the operator cause a tax loss by acting against his undertaking. The permission to set up and operate a warehouse shall not be given once again in case the permission has been cancelled in consequence of smuggling or corruption.

INSURANCE

Q1/2016 Regulation on Insurance Agents

Amendment to the Regulation on Insurance Agents (*published in the Official Gazette dated April 22, 2014 and numbered 28980*) has been published. Pursuant to the amendments, each party may terminate the agency agreement by giving a notice before 3 months to the termination date. The agreement can be terminated even if the agreement has been executed for a fixed term in case a valid reason appears. Valid reasons shall be determined in the agency agreements and any reason which has not been determined as a valid reason in an agency agreement will not justify the termination of the agreement. The amendments on the agreement against the agents enter in force minimum 2 months after the amendment date. This Regulation enter in force in six months as of the publish date (January 16, 2016). Parties of an agency agreement should amend the agency agreements within this 6 months period.

CONSUMER PRODUCTS & RETAIL

Q1/2016 Regulation on Shopping Centers

Regulation on Shopping Centers (the "**Regulation**") has been published in the Official Gazette dated February 26, 2016 and numbered 29636. The scope of this Regulation is to settle the qualifications and determine the procedures and principles in respect of opening, operating, inspection, project design and authorization of shopping centers. Additionally, the Regulation details the properties of common use areas and its minimum standards and the procedures in respect of bearing its expenses.

ENERGY

Q1/2016 Petroleum Market License

Amendment to the Petroleum Market License Regulation (*published in the Official Gazette dated June 17, 2004 and numbered 25495*) has been amended. Pursuant to the amendments in respect of the provision regulating activities which are subject to license and its exemptions, production of base oil from waste mineral oil shall be made by the producers who have mineral oil license or distributor license on condition that the license holder includes this activity to the subtitles of the license. However, the temporary Article 20 of the Regulation makes a temporary exemption to this provision and mineral oil license holders and distributors has the right to produce base oil from waste mineral oil without including this activity to the subtitle of their license until January 1, 2018.

Q1/2016 Energy Efficiency Law

Communiqué on Administrative Fines applicable for the year 2016 as per Article 10 of the Energy Efficiency Law numbered 5627 has been published in the Official Gazette dated February 24, 2016 and numbered 29634 and the administrative fines applicable for the year 2016 has been determined as follows;

Administrative Fines

Article 10 of the Energy Efficiency Law	Administrative Fines stated in the Law (TL)	Administrative Fines which has been applied in the year 2015 (TL)	Administrative Fines that will be applied in the year 2016 (TL)
Fines determined in paragraph (a) sub-paragraph (2)	10.000 50.000	17.972 89.875	18.974 94.890
Fines determined in paragraph (a) sub-paragraph (3)	500	895	944
Fines determined in paragraph (a) sub-paragraph (7)	5000	8.984	9.485
Fines determined in paragraph (a) sub-paragraph (8)	20000	35.946	37.951
Fines determined in paragraph (a) sub-paragraph (9)	20000	35.946	37.951

Q1/2016 Electricity Market Licensing Regulation

Electricity Market Licensing Regulation (*published in the Official Gazette dated November 2, 2013 and numbered 28809*) has been amended by the Amendment Regulation on Electricity Market Licensing Regulation (*published in the Official Gazette dated December 23, 2015 and numbered 29571*) in accordance with the amendments to Electricity Market Licensing Regulation, Energy Market Regulatory Authority has adopted new resolutions. Amongst other changes, we would like draw energy market investor's attention to a procedural change as to pre-licensing mechanism which has been introduced into Turkish electricity market on 2013 which requires the generation license applicants to be initially granted a pre-license. As additional requirement pre-license applicants for those other than wind, solar, hydraulic or geothermal power plants shall obtain the decision within the scope of the Environmental Impact Assessment Regulation before pre-license application.

Q1/2016 Electric Power Production without License

Amendment to the regulation and communiqué in respect of Electric Power Production without License (*published in the Official Gazette dated October 2, 2013 and numbered 28783*) have been published. It has been stated that the share transfer shall be prohibited between the application date and operation date for the wind and solar energy premises with an attempt to assign the connection capacities to the actual investors; relatives, spouses, children and employees of the distribution companies' directors shall not operate without license in the related distribution areas and it shall be prohibited to handover the projects or transfer the shares before the production phase of the projects.

EMPLOYMENT

Q1/2016 Amendments to Labor Code

Amendment to Income Tax Law and Certain Laws numbered 6663 has been published in the Official Gazette dated February 10, 2016 and numbered 29620. Pursuant to the amendments to Article 74 of the Labor Code numbered 4857, in case the decease of the mother during or following the birth of the child, the maternity leave right of the deceased mother following the birth may be used by father. Additionally adoptive parent of a child under the age of three shall benefit from the 8 months maternity leave as of the date that the adopted child starts living with the adoptive parent(s).

After the expiration of the leave right of parents regulated under Article 74 of the Labor Code, one of the parents has the right to demand to work part time until the beginning of the month following the commencement date of compulsory primary school provided that each parents are employed. Furthermore this demand shall not cause a valid reason to terminate the employment contract.

Additionally, the amendments regulate the circumstances and the required notices to change back to full-time work for the employee who has taken the advantage of the aforementioned right. Accordingly, the employment contract of the substitute employee shall expire automatically.



COMPETITION

Q1/2016 Amendment to the Communiqué on Right of Access and Protection of Trade Secrets

The Communiqué on Right of Access and Protection of Trade Secrets (Communiqué No.: 2010/3) published in the Official Gazette dated April 8, 2010 and numbered 27556 has been amended by a Communiqué dated January 31, 2016 and numbered 29610. Pursuant to the amendment, relevant undertakings should now completely fill the "Access to File Request Form" attached to the Communiqué in order to claim the confidentiality of information provided to/obtained by the Competition Board during the implementation of the Law on the Protection of Competition.

Q1/2016 Amendments to the Communiqué on the Application Procedures for Infringements of Competition (Communiqué No. 2012/2) and the Communiqué Concerning the Mergers and Acquisitions Subject to Approval of the Competition Board (Communiqué No. 2010/4)

Pursuant to amendment communiqués both published in the Official Gazette dated February 13, 2016 and numbered 29623, undertakings should now provide also their MERSIS (Central Registration System) numbers in addition to other information such as title, address, telephone and fax numbers during merger & acquisition clearance applications and complaint applications before the in cases of violation of the Law on the Protection of Competition.

Q1/2016 A New Block Exemption Communiqué on Research and Development Agreements

The Block Exemption Communiqué on Research and Development Agreements numbered 2003/2 (*published in the Official Gazette dated August 27, 2003 and numbered 25212*) has been abolished whereas the new Block Exemption Communiqué on Research and Development Agreements (numbered 2016/5) is came into force with the Communiqué published in the Official Gazette dated March 16, 2016 and numbered 29655. The new Communiqué broadened the extent of the exemption and revised the scope of the restrictions.



CAPITAL MARKETS

Q1/2016 Amendments on Investment Services and Activities Legislation

The Communiqué Regarding Principles on Investment Services and Activities and Ancillary Services No. III-37.1 and Communiqué on Principles of Establishment and Operation of the Investment Institutions No. III-39.1 has been amended by the CMB on January 14, 2016 (O.G. January 14, 2016, 29593). With such amendments the items below entered into force:

In order to encourage brokerage firms to conduct investment banking activities, investment and development banks are now allowed to make transactions on shares in Borsa Istanbul, provided that they take over an existing brokerage firm of the relevant banks.

Before opening an account for leveraged transaction, in order for the investors to gain experience, they must be directed to a trial account first that will remain active for at least six business days to make at least 50 transactions.

Brokerage firms' advertising, marketing and announcement regarding the leveraged transactions are now subject to specific procedures and principles.

In order to avoid conflict of interests, it is prohibited to provide individual portfolio management services and investment advisory services to leveraged transaction clients.

Investment institutions licensed to deal on own account must produce a list of over-the-counter derivatives and underlying assets and publish these in their website.

Brokerage firms may request from professional clients the indemnification of any losses occurred in their collaterals for leveraged transaction.

Brokerage firms must report all electronic platforms, including their programs, modules and expansions used for their transactions and over the counter derivatives to the Turkish Capital Markets Association.

Q1/2016 Amendments Regarding Share Prospectus Formats and Regulatory Manuals

The CMB has published Communiqué on Shares No. VII-128.1 (O.G. June 22, 2013, 28685), within this publication, prospectus formats and manuals came into effect. Certain issues covered by the amendment of share prospectus formats and manuals are as follows:

The summary document has been revised in accordance with European Union (EU) standards. On February 8, 2016 the European Securities and Markets Authority (“ESMA”) has reviewed the above-mentioned regulations and concluded that a prospectus drawn up in accordance with Turkish requirements can constitute a valid prospectus under the EU Prospectus Directive.

The content of the statements given by the persons responsible from the prospectus has been amended. Hereinafter, statement of responsibility shall be taken from the institutions preparing the specialized agency reports.

Additionally, formats of certain offering documents have been updated.

Q1/2016 Amendments on the Money Laundering and Financing of Terrorism Legislation

The Ministry of Finance amended the Regulation on Measures regarding Prevention of Laundering the Proceeds of Crime and Financing of Terrorism (O.G. January 8, 2008, 26751) and the Regulation on Program of Compliance with Obligations of Anti-Money Laundering and Combating Financing of Terrorism (O.G. September 16, 2008, 26999) with a decision on March 18, 2016. Pursuant to the amendments, a compliance officer for the execution of compliance program shall be assigned in 30 days following the official operation permission of the relevant institution. Additionally, Central Bank of Republic of Turkey, development and investment banks, institutions other than banks who have the authority to issue bank cards or credit cards, authorized exchange offices given in legislation on foreign exchange, financing and factoring companies within the scope of legislation on money lending, reinsurance companies, financial leasing companies, institutions furnishing settlement and custody services within the framework of capital markets legislation are obliged to assign compliance officer at administrative level without developing a compliance program in 30 days following the operation permission of the relevant institution.



DISPUTE RESOLUTION

Q1/2016 Constitutional Court’s Decision Regarding the Partial Annulment of Article 20 of the Code of Civil Procedure Numbered 6100

Published in the Official Gazette dated February 23, 2016 and numbered 29633, the Constitutional Court partially annulled Article 20 of the Civil Procedural Law (Law No. 6100) (*Published in the Official Gazette dated February 4, 2011 and numbered 27386*) (“CPL”) regulating “*the procedure with respect to the decision of incompetence or non-jurisdiction*”.

As per Article 20 of the CPL, in case a lawsuit is rejected by the Court due to incompetence or non-jurisdiction, the parties to a lawsuit must apply to the Court by requesting that the file be sent to the competent Court/the Court which has jurisdiction within two weeks starting from the date when the decision became final and if the decision is final when rendered by the Court, as from the date of decision. In case there is no application within two weeks, the lawsuit shall be deemed as it has never been filed as per the same Article.

The expression “*One of the parties must apply to the Court which rendered the decision within two weeks as of the date of decision if the decision is definitive when rendered by the Court...*” provided under Article 20 of the CPL was brought before the Constitutional Court claiming that it is conflicting with Article 36 of the Constitution. Pursuant to Article 43 of the Establishment of the Constitutional Court and Trial Procedures (Law No. 6216) (*Published in the*

Official Gazette dated April 4, 2011 and numbered 27894), the provision is also examined in accordance with whether it conflicts with Article 13 of the Constitution.

The Question of Unconstitutionality

Article 13 of the Constitution provides that “Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality”.

In its decision, the Constitutional Court emphasized that in democratic societies, in terms of fundamental rights and freedoms, liberty is the rule, restraint is exception. Article 13 specifies to what extent fundamental rights and freedoms might be restrained.

Under Article 36 of the Constitution, it is stipulated that “Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures.” This article secures the **right to legal remedies** in the widest sense.

The Constitutional Court indicated in its decision that it is clearly seen that there is a violation of right to a fair trial thus of right of access to Court under Article 20 as it provides that the two weeks period shall begin running “*as of the date of decision if the decision is definitive when rendered by the Court...*”. Based on the rule, the time period would start just from the date of the definitive decision without a need to announcement or notice. Hence right to legal remedies of the parties is violated by this time limitation which results that there is a violation of Article 13 and Article 36 of the Constitution.

Based upon the above, the Constitutional Court annulled the expression “*as of the date of decision if the decision is definitive when rendered by the Court...*” provided under Article 20 of the CPL. However, it was also decided by the Constitutional Court that the annulment decision shall enter into effect 9 months after its publication in the Official Gazette due to a possible legal gap creating a violation of public interest.

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