

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 This latest roundup provides insight on the latest amended and repealed laws and regulations affecting different sectors.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

Q1/2017 Amendment to the Outsourcing Regulation

The Banking Regulation and Supervision Agency has amended the Regulation on Outsourcing of Support Services by Banks (*published in the Official Gazette dated November 5, 2011 and numbered 28106*) (the “**Outsourcing Regulation**”) on March 4, 2017 with immediate effect. Prior to the amendment, the Outsourcing Regulation envisaged that the (i) collection, (ii) counting, (iii) distribution and (iv) delivery services in relation to negotiable instruments can only be conducted by companies incorporated and operating pursuant to the Law on Private Security Services (Law No. 5188) (*published in the Official Gazette dated June 26, 2004 and numbered 25504*). However, with the amendment, the Outsourcing Regulation now allows banks to outsource the abovementioned services listed under limbs (i) to (iv) from service providers duly authorized by Information and Communication Technologies Authority in accordance with the Law on Postal Services (Law No. 6475) (*published in the Official Gazette dated May 23, 2013 and numbered 28655*) as well, in addition to the companies subject to the Law on Private Security Services (Law No. 5188).

Q1/2017 Amendment to the Communiqué on Credit Risk Reduction Techniques

The Banking Regulation and Supervision Agency has amended the Communiqué on Credit Risk Reduction Techniques (*published in the Official Gazette dated September 6, 2014 and numbered 29111*) on March 2, 2017 with immediate effect. The amendment mainly focuses on the role of financial collaterals in the evaluation of credit risk and application of credit risk reduction techniques. Pursuant to the amendment, banks shall systematically record financial collaterals obtained as security for credit transactions, the time period for which such financial collaterals will be under pledge or subject to assignment as the case may be, for which credit such financial collaterals have been provided and the risk amounts in relation to which such financial collaterals have been taken into account in credit risk reduction calculations and the date of such calculations.

The amendment also envisages that in cases where banks obtain financial collateral for a specific credit, such match-up (between the respective collateral and the credit) shall continue during the protection period, or in cases where the relevant collateral is provided for a period extending beyond the maturity of the relevant receivable, until the maturity date of the respective receivable. In addition, banks can obtain a collateral to stand as security for a client’s multiple risks provided that matching such collateral with more than one risk will not cause a retroactive maturity mismatch with respect to the prior risk such collateral has been matched with.

Furthermore, the amendment envisages that the value of the collateral rendered ineffective in credit risk reduction calculation due to a reduction in the credit amount can be released or re-used in credit risk reduction.

Q1/2017 Amendment to the Communiqué on Financial Statements to be Disclosed by Banks and Statements and Footnotes Related Thereto

The Banking Regulation and Supervision Agency has amended Provisional Article 2 of 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*) and regulated that until January 1, 2018, basic arithmetic average of last 3-month's data calculated as of the last day of each month shall be used for the submission of data in the consolidated liquidity coverage ratio table as per paragraph 2 of Article 13 thereof.

Q1/2017 Amendment to the Regulation on Calculation of Liquidity Coverage Ratio of Banks

The Banking Regulation and Supervision Agency has amended the Regulation on Calculation of Liquidity Coverage Ratio of Banks (*published in the Official Gazette dated March 21, 2014 and numbered 28948*) (the "**Regulation**"). Pursuant to the amendment to the Regulation, for the purpose of paragraphs 3 and 4 of Article 4 of the Regulation, consolidated total liquidity coverage ratio and consolidated foreign exchange liquidity coverage rate shall be calculated as of the last day of month until January 1, 2018. Additionally, Consolidated Liquidity Coverage Rate Notification Table has been replaced with another table as attached to the amendment to the Regulation on Calculation of Liquidity Coverage Ratio of Banks.

Q1/2017 Regulation on Outsourcing of Valuation Services by Banks and Authorization and Activities of Entities to Provide Valuation Services to Banks

The Banking Regulation and Supervision Agency has introduced the Regulation on Outsourcing of Valuation Services by Banks and Authorization and Activities of Entities to Provide Valuation Services to Banks (*published in the Official Official Gazette dated January 12, 2017 and numbered 29946*) (the "**Regulation**") , in order to regulate the procedures and principles on (i) outsourcing of valuation services by banks, (ii) authorization and activities of entities to provide valuation services to banks, and (iii) abolishment of their respective authorizations. The Regulation entered into force immediately upon its publication in the Official Gazette and abolished the Regulation on the Authorization and Activities of Entities to Provide Valuation Services to Banks (*published in the Official Gazette dated November 1, 2006 and numbered 26333*).

According to Article 4 of the Regulation, valuation service is defined as independent determination of the fair value of banks' (i) assets and liabilities booked in their respective balance sheets; (ii) collaterals provided to banks for loans and other receivables; (iii) rights and obligations arising from agreements to which the respective bank is a party, rights and obligations or shares subject to mergers, demergers or share transfers; (iv) incomes or expenses arising from activities other than those listed in Article 4 of the Banking Law; which are not traded on a regulated market or of which the fair value cannot be determined for any reason.

As per the Regulation, during the valuation activities, valuation agency's shareholders, directors and valuation experts are required to avoid any conflict of interest, to prevent from any interaction which may affect their impartialness and to express their respective opinions on the valuation activity without considering their own benefits. Article 6 of the Regulation further lists certain specific situations where the independence is deemed to be removed. Additionally, the Regulation provides in its Article 7 that persons providing valuation services shall perform professional care and diligence while planning, conducting and finalizing the valuation services and preparing the report. Similarly, the banks are under obligation, inter alia, (i) to develop written internal policies and procedures related to their activities to be performed with valuation agencies; and (ii) not to conduct activities which may create pressure over the valuation agencies or may hamper the independence and bank reputation.

Furthermore, the Regulation regulates rules and principles related to the procedure of authorization of the valuation agencies; by envisaging the minimum requirements to be satisfied by the valuation agencies for the authorization and the required documents and information which the valuation agency shall submit to the Banking Regulation and Supervision Agency together with the authorization application. As per Article 11, valuation agencies which are deemed appropriate by the Banking Regulation and Supervision Agency shall be authorized to “provide valuation services for immovables, immovable projects and rights and benefits arising from immovables”.

Pursuant to the Regulation, in order for the banks to outsource the valuation services, a report evaluating whether any situation which may prevent independence of the relationship between the bank and the valuation agency occurred or not shall be submitted to the bank’s board of directors and a written agreement, which shall include, inter alia, (i) subject matter, scope, purpose and duration of the valuation service; (ii) a fee arrangement against the services to be provided; (iii) rights and obligations of the parties; and (iv) a covenant to buy a professional liability insurance against any damages arising from valuation services, shall be executed by and between the bank and the valuation agency. As per Article 15, valuation agencies are required to buy a professional liability insurance having the minimum policy amount of TL 500,000.

Finally, the Regulation lists under Article 18, certain cases of violation as a result of which the authorization of the valuation agency shall be abolished. That being said, the Banking Regulation and Supervision Agency may abolish the authorization of the valuation agency for a temporary period upon consideration of violation’s nature and aggravation of the parties’ faults.



CORPORATE

Q1/2017 General Corporate

- Article 1530 of Turkish Commercial Code (Law No. 6102) has been amended and the amendment has been published in the Official Gazette dated January 2, 2017 and numbered 29936. As per the amended article, annual interest rate to be applied to the late payments in case the default interest rate has not been determined by the agreement or whether it is determined but such article is invalid, the applicable annual interest rate shall be 10.75% and minimum reimbursement amount to be requested for the expenses regarding collection of receivables shall be TL 150,000.
- The Regulation on the Licenses regarding Workplace Opening and Operating (the “**Regulation**”) (*published in the Official Gazette dated August 10, 2005 and numbered 25902*) has been amended. Accordingly, pursuant to the amendment to Article 5 of the Regulation, the liquid and gas cylinder tube distribution centers and retail stores and their depots where the tubes are stored shall have the necessary camera recording system for the detection of entry into and departure from the places in order to obtain a workplace opening and operating license.

- The Regulation for Implementation of Electronic Tenders (*published in the Official Gazette dated February 25, 2011 and numbered 27857*) has been amended. The amendment covers the application regarding issuance of letters of guarantee and sample documents for applications.

Q1/2017 Transportation

The Regulation on Commercial Air Transport Operators (SHY-6A) (*published in the Official Gazette dated November 16, 2013 and numbered 28823*) ("**Regulation**") has been amended. Accordingly, the operator shall appoint a responsible manager and a quality and safety system manager who shall undertake the task of supervising the integrity and continuity of the whole organization pursuant to the civil aviation legislation. In addition, the operator shall appoint managers responsible for flight operations, ground service operations, maintenance, flight training and safety.

As per Article 4 of the Regulation, the organized wholesale natural gas market shall be operated by the market operator authorized by Energy Market Regulatory Board (EPDK). The transactions in the organized wholesale natural gas market shall be performed through the Continuous Trade Platform which is an electronic system established by market operator authorized by the Energy Market Regulatory Board. As per Article 6 of the Regulation, the Continuous Trade Platform matches the offers and acceptances of the market contributors, and such matches are approved by the market operator pursuant to the Regulation and Market Operating Procedures and Principles.

The Regulation also stipulates the general obligations and rights of the (i) market contributors who are the legal entities that signed the Standard Transmission Contract which is a contract executed between transmission company and the supplier or the importer for determining the standard conditions of transmission services, or the Continuous Trade Platform Participation Contract which is a contract executed between the market operator and license holders for such license holders to participate in the Continuous Trade Platform, (ii) market operator, and (iii) transmission company.

Q1/2017 Consumer Goods & Retail

Regulation on Commercial Advertisement and Unfair Commercial Applications ("**Regulation**") (*published in the Official Gazette dated January 1, 2015 and numbered 29232*) has been amended. The amended articles have been published in the Official Gazette dated January 4, 2017 and numbered 29938.

Pursuant to the previous version of Article 9 of the Regulation, evidencing the argument of the advertisement with documents obtained from relevant departments of universities or independent research entities was mandatory. However, such condition is required only for comparative advertisements in the new version of such article.

Article 27 of this Regulation is amended and pursuant to the added paragraph, it is required to explain in the advertisement in case the internet speed and coverage zone may change considering the infrastructure of the area.

Q1/2017 Intellectual Property

The Turkish intellectual property legislation has been substantially changed by enactment of the Law on Industrial Property (Law No. 6769) ("**Industrial Property Law**") upon being published in the Official Gazette dated January 10, 2017 and numbered 29944. Before enactment of the Industrial Property Law, intellectual property rights used to be regulated and protected under various Decrees with Force of Law. The Industrial Property Law abolished (i) the Decree with Force of Law Regarding the Protection of the Trademarks (No. 556) which regulates the registered trademarks and the relevant protections regarding violations regarding the trademark rights, (ii) the Decree with Force of Law Regarding

the Protection of the Patents (No. 551) which regulates the registration of patents and the relevant protections regarding violations regarding the patents, and (iii) the Decree with Force of Law Regarding the Protection of the Geographical Indications (No. 555) which regulates the registration and protection of the geographical indications; and regulated all industrial property rights in one code.

One of the major changes brought by the Industrial Property Law is that the name of the Turkish Patent Institute has been changed into Turkish Patent and Trademark Office (the “Office”) and as per Article 26 of the Industrial Property Law the role of the Office has been strengthened by authorizing the Office for cancelation of the trademarks pursuant to the applications regarding non-use of the trademark. In addition, as per Articles 18 and 20 of the Industrial Property Law, the opposition period regarding the registration of the trademarks has been shortened to two months from three months. Pursuant to Article 5(3), the Industrial Property Law introduced the “letter of consent” and “co-existence letter” to the Turkish Law, by which the owner of an earlier registered trademark may give prior consent to the registration and use of an identical or similar trademark.

As for the industrial designs, the Industrial Property Law adopted a new definition regarding design and adopted the wording “designs” rather than “industrial designs” pursuant to Article 55 of the Industrial Property Law and extended the scope of the protection regarding designs under Turkish Law. In addition, similar to the provisions on the trademarks, the opposition period has been shortened to three months from six months according to Article 67 of the Industrial Property Law.

The Industrial Property Law abolished the unexamined patent registration system provided under Patent Decree Law.

Q1/2017 Employment

The term of enactment of the provisions pertaining to occupational safety specialist requirement envisaged under Provisional Article 4 of the Law on Occupational Health and Safety (Law No. 6331) (*published in the Official Gazette dated June 30, 2012 and numbered 28339*) has been extended by Article 35 of the Law on the Amendments on the Turkish Republic Retirement Law, some Laws and the Decree Laws (Law No. 6770) (*published in the Official Gazette dated January 27, 2017 and numbered 29961*). As per the foregoing amendment, the requirement for the employees of the “very dangerous” hazard classed workplaces to employ an occupational safety specialist with class (A) certificate instead of an occupational safety specialist with class (B) certificate has been postponed to January 1, 2020, and the requirement for the employees of the “dangerous” hazard classed workplaces to employ an occupational safety specialist with class (B) certificate instead of an occupational safety specialist with class (C) certificate has been postponed to January 1, 2019.

Q1/2017 Energy & Natural Resources

- The Regulation on Nuclear Definitions (*published in the Official Gazette dated September 9, 1991 and numbered 20986*) (“Regulation”) has been abolished. All references made to the Regulation shall be considered to be made to the relevant regulations published by the Turkish Atomic Energy Authority.
- The Regulation on Petroleum Market Licence (*published in the Official Gazette dated June 17, 2004 and numbered 25495*) has been amended. The former version of Article 44(7) states that “*In case non concurrence between Supply and sale has been detected, oil supply which is free of special consumption tax shall be ceased temporarily by Energy Market Regulatory Board until it is determined that the sale has been made in compliance with law.*” Pursuant to the amendment which is published in the Official Gazette dated March 11,

2017 and numbered 30004, sales with low special consumption tax have been included to the scope of before mentioned article.

- The Regulation Regarding Building Supervision of Nuclear Power Plants has been published in the Official Gazette dated March 31, 2017 and numbered 30024 (“**Regulation**”).

The scope of the Regulation is to regulate the supervision regarding security requirements of nuclear plants and also the qualities of supervision entities which are authorized to inspect such requirements. Additionally, the Regulation also regulates the scope of the service agreement to be made between the licensed constructor and supervision entities.

Construction and manufacturing activities shall not be started unless the service agreement which is made between nuclear supervision entity and licensed constructor is submitted to the Turkish Atomic Energy Authority. The powers which are granted to the nuclear supervision entities shall not be transferred to another entity.

The documents to be submitted in order to obtain the license which are required by building supervision entities are also specified in the Regulation.

- The Communiqué on the Administrative Fines (Communiqué No. 2017/1) (the “**Communiqué**”) which shall be applied in 2017 pursuant to Article 10 of the Energy Efficiency Law (Law No. 5627) has been published in the Official Gazette dated March 31, 2017 and numbered 30024. The administrative penalties, which were determined under Article 10 of the Energy Efficiency Law increased by 3.83% pursuant to the revaluation rate of 2016.
- Regulation on the Organized Wholesale Natural Gas Market (the “**Regulation**”) has been published in the Official Gazette dated March 31, 2017 and numbered 30024. The aim of the Regulation is to ensure the determination of the price of natural gas in the market under objective and transparent conditions. The Regulation covers the procedures and principles regarding the wholesale natural gas sales market, which allows market participants to trade, and /or to dissipate instabilities in the transmission system and establishes the obligations of the contributors to the Organized Wholesale Natural Gas Market.



COMPETITION

Q1/2017 Payment of Competition Authority Fee in Company Incorporations and Share Capital Increases

Pursuant to the Regulation on Payments to be made by Joint Stock and Limited Companies (*published in the Official Gazette dated October 1, 2004 and numbered 25600*) (the “**Regulation**”), companies were required to pay a contribution fee in the amount of 4/10,000 of the share capital of the company to be incorporated and 4/10,000 of the increased share capital amount to the bank account of Competition Authority. As per the Communiqué No. 2017/4 (*published in the Official Gazette dated March 31, 2017 and numbered 30024*) (the “**Communiqué No. 2017/4**”) issued by the Competition Board, such contribution is now required to be paid to the trade registries during the registration procedure of company incorporations or share capital increases. The Regulation has been abolished on March 31, 2017, the date on which the Communiqué No. 2017/4 has entered into force.

Q1/2017 Amendment to the Communiqué on Mergers and Acquisitions Subject to Approval of the Competition Board (the “Communiqué No. 2010/4”)

Certain provisions of Communiqué No. 2010/4 have been amended pursuant to the Communiqué No. 2017/2 (*published in the Official Gazette dated February 24, 2017 and numbered 29989*). As per the Communiqué No. 2017/2, Article 7(2) of the Communiqué No. 2010/4 has been abolished. The abolished Article 7(2) provided that thresholds applied to merger and acquisition notifications to be reviewed by the Competition Board every two years. Furthermore, the Communiqué No. 2017/2 introduced a provision with respect to acquisition of securities trading on the stock exchange from different sellers via a series of transactions and provides that the filing with the Competition Board may be made following completion of the transaction provided that (i) the transaction is notified without delay; and (ii) voting rights attached to the acquired securities are not exercised or exercised only to maintain full value of the investments based on a derogation granted with a decision of the Competition Board. The third and the last amendment to the Communiqué No. 2010/4 is related to merger or acquisition transactions realized by the same persons or same parties in the same relevant product market. Accordingly, two or more merger or acquisition transactions realized between the same persons or same parties in the same relevant product market within a period of three years shall be considered to be a single transaction in the calculation of thresholds stipulated under Article 7 of the Communiqué No. 2010/4. This period was two years before the amendment. The Communiqué No. 2017/2 entered into force on its publication date of February 24, 2017.

Q1/2017 New Block Exemption Communiqué with respect to Vertical Agreements in Motor Vehicle Sector (the “Communiqué No. 2017/3”)

The Competition Board has issued a new communiqué on block exemptions in the motor vehicle sector after a sector inquiry carried out by the Competition Authority and obtaining opinions and amendment proposals of stakeholders. The Communiqué No. 2017/3 (*published in the Official Gazette dated February 24, 2017 and numbered 29989*) is almost same with the previous communiqué (*Communiqué No. 2005/4 – published in the Official Gazette dated November 12, 2005 and numbered 25991*), which has been abolished on the same date when the Communiqué No. 2017/3 has entered into force. With the Communiqué No. 2017/3, new provisions have been introduced whereas certain other provisions have been amended for the development of Turkish competition legislation and harmonization with EU legislation. Agreements enjoying block exemption in accordance with the provisions of Communiqué No. 2005/4 and failing to meet the block exemption conditions stipulated under the Communiqué No. 2017/3 shall be revised within two years in order to meet the conditions stipulated under the new communiqué. The Competition Board has also issued guidelines including detailed explanations on provisions of the Communiqué No. 2017/3 and their implementation.



CAPITAL MARKETS

Q1/2017 Amendment to the Communiqué on Principles Regarding Investment Services, Activities and Ancillary Services

The Capital Markets Board has amended certain provisions of the Communiqué on Principles Regarding Investment Services, Activities and Ancillary Services (*published in the Official Gazette July 11, 2013 and numbered 28704*) (“**Communiqué**”) on February 10, 2017 with immediate effect.

Pursuant to amended Article 27 of the Communiqué the leverage ratio decreased from 100:1 to 10:1 in leveraged transactions and the initial margin requirement for leveraged transactions has been increased from TL 20,000 to TL 50,000 (or its equivalent in foreign currency).

Q1/2017 Amendment to the Communiqué Regarding Debt Instruments

The Capital Markets Board has amended certain provisions of the Communiqué Regarding Debt Instruments (*published in the Official Gazette dated June 7, 2013 and numbered 28670*) (“**Communiqué**”) on February 18, 2017 with immediate effect.

The Communiqué includes the below provisions:

- The term “note” has been changed to “financing note”.
- Domestic and cross border issuances are separated more clearly and the documents which are required for both type of issuance are slightly changed.
- Domestic issuances can be made through the public offering or without the public offering. The domestic bond issuances which are made without the public offering can be made through: (i) the sale to qualified investors, (ii) the private placement if the minimum nominal value is TL 100,000.
- The authority of the Capital Markets Board has been broadened. According to the amendment, Capital Markets Board may (i) request that a bank or a third party guarantees the payment obligations regarding the debt instruments (ii) request the limitations in the sale conditions (iii) reduce the validity period of the issuance document.
- In addition, the Amendment reduces the fee of application from 0.2% to 0.15% for the issuances of which their maturity period is longer than 730 days.



DISPUTE RESOLUTION

Q1/2017 Amendment to the Commercial Advertisement and Unfair Commercial Practices Regulation

The Regulation on Commercial Advertisement and Unfair Commercial Practices, which is the primary resource under which companies willing to advertise in Turkey have to abide by, has been amended through a new regulation published in the Official Gazette dated January 4, 2017 and numbered 29938.

A number of changes have been introduced through the new regulation. One of the key changes the regulation has brought concerns the burden of proof. The amendment requires that all advertisements need to be proven of their truth through “scientific data”. Previously, the content of advertisement and its statements were required to be proven with scientific reports. These reports could be obtained from various organizations, independent accredited institutions and/or universities. The amendment requires that only comparative advertisements need to be proven of their truth through documents obtained from such institutions. However, when deemed necessary this requirement can also apply to non-comparative advertisements.

The new regulation has introduced a couple of material changes and prohibitions to the rules regarding comparative advertising. Any declaration made regarding health benefits or food supplements cannot be subject of comparative advertising. Declarations regarding nutritional benefits can only be the subject of comparative advertising when this is suitable with the relevant legislation. In addition, comparative advertisements cannot be contradicting to the principles set out by the Advertisement Board. This way, the government hopes to set principles for companies to which they have to abide by when preparing an advertisement. Lastly, testimonies by persons or institutions are no longer allowed for comparative advertisements. In other words, comparative advertisements can only show its competitors through trademarks, logos etc.

Furthermore, the regulation has added an obligation to disclose regarding electronic communication. The advertiser must disclose that the connection speed and scope, if stated in the advertisement, can be subject to change due to infrastructure, geographical conditions, network density etc. In addition, if the alleged speed is reached in a testing environment, it must be stated in the advertisement that not all consumers can obtain that level. Lastly, consumers must be fully informed on any fair usage quota, speed quota or any other limitations.

Consequently, it is noted that the advertising practice for advertising in Turkey has been materially altered through this amendment of the Commercial Advertisement and Unfair Commercial Practices Regulation.

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