PEKİN & PEKİN

Legal Newsletter 4/2016

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 This latest roundup provides insight on the latest amended and repealed laws and regulations affecting different sectors.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

Q4/2016 Amendments to the Communiqué on Mandatory Reserves

The Central Bank of the Republic of Turkey (the "**CBRT**") has amended the Communiqué on Mandatory Reserves (Communiqué no. 2013/15) (*published in the Official Gazette dated December 25, 2013 and numbered 28862*) (the "**Communiqué**") on October 22, 2016, on November 1, 2016, on November 19, 2016, on November 26, 2016 and finally on January 11, 2017.

The required reserve ratios to be allocated for foreign exchange liabilities had been decreased for a rate of 0.5 % for each maturity with the amendment dated November 26, 2016 and have been further decreased for a rate of 0.5 % for each maturity with the amendment dated January 11, 2017. Additionally, the amendments dated November 26, 2016 and January 11, 2017 decreased the required reserve rates for a rate of 1 % (0.5 % each) for foreign exchange liabilities other than deposits/participation funds existing as of August 28, 2015 for each maturity.

Furthermore, coefficients to be multiplied with probability tranches of 30-35%, 35-40% and 40-45% determined for the required reserves to be allocated in USD for maximum 60% of the Turkish Lira liabilities, had been decreased to 1.5, 1.9 and 2.3, respectively, with the amendment dated November 1, 2016 and have been further decreased to 1.4, 1.7 and 2.1, respectively, with the amendment dated November 19, 2016.

As per the amendment dated October 22, 2016, a newly introduced paragraph provides that coefficients to be multiplied with probability tranche of 0-5 % shall be 1 for the required reserves to be allocated in standard gold of which the resource is processed or scrap and collected from Turkish residents for maximum 5% of the Turkish Lira liabilities. Additionally, such standard gold shall be collected from Turkish residents after October 3, 2016 and the processed or scrap nature of the gold shall be documented with a Refinery Registration Letter.

Finally, pursuant to the amendment dated November 1, 2016, the required reserves in foreign exchange shall be allocated in the accounts of the CBRT in cash and in a manner to have the maximum average of 4 points (instead of 3 points).

Q4/2016 The Law on Pledge over Movable Assets in Commercial Transactions and the secondary legislation related thereto have entered into force as of January 1, 2017

The Law on Pledge over Movable Assets in Commercial Transactions (Law No. 6750) (the "**Pledge Law**") is published in the Official Gazette dated October 28, 2016 and numbered 29871. Furthermore, the Regulation on Establishment of Pledge Interest in Commercial Transactions and Exercise of Rights upon an Event of Default (the "**Pledge Regulation**") is issued by the Ministry of Customs and Trade (the "**Ministry**") and published in the Official Gazette dated December 31, 2016 and numbered 29935. Both the Pledge Law and the Pledge Regulation have entered into force as of January 1, 2017.

The Pledge Law and the Pledge Regulation bring major reforms to establishment, perfection and foreclosure of the pledges over certain movable assets which are included under the scope thereof. Especially, the Pledge Law abolishes the Law on Commercial Enterprise Pledge (Law No.1447) (*published in the Official Gazette dated July 28, 1971 and numbered 13909*) and therefore, legal regime provided for the pledges to be established over the commercial enterprises is changed materially upon the entry in force of the Pledge Law.

The Pledge Law and the Pledge Regulation shall not apply to, *inter alia*, pledges related to financial agreements and capital market instruments, derivatives and cash deposits. According to the Pledge Law, any movable asset registered with the land registry for any reason is also excluded from the scope of the Pledge Law. According to Article 5 and Article 11 of the Pledge Law and the Pledge Regulation, respectively, the Pledge Law and the Pledge Regulation shall be applied to the pledges established over the following movable assets (together, the "**Movable Assets**") and allow the pledge over the Movable Assets without delivery of the pledged assets to the respective pledgee: (i) receivables, (ii) perennial trees bearing fruit, (iii) intellectual property rights; (iv) raw materials, (v) animals, (vi) any revenues and incomes, (vii) licenses and permits which are not required to be registered with other registries, except for those having an administrative permit nature; (viii) rental incomes, (ix) tenancy rights, (x) movable enterprise assets including machinery, tools, equipment, motor vehicles and any electronic tools such as electronic communication tools; (xi) consumables; (xii) stocks; (xiii) agricultural products; (xiv) trade names and/or enterprise names; (xv) commercial or tradesman enterprises; (xvi) commercial plates and commercial lines; (xvii) commercial projects; (xviii) wagons; and (xix) other movable assets, rights and jointly owned properties in possession of third parties.

Pursuant to Article 4 of the Pledge Law, in order to establish pledge over all or some of the Movable Assets, a pledge agreement shall be executed in writing or through an electronic platform and such agreement shall be registered with a public registry established by the Ministry (the "**Movable Asset Registry**"). Accordingly, the Regulation on Movable Asset Registry (the "**Registry Regulation**") is issued by the Ministry, published in the Official Gazette dated December 31, 2016 and numbered 29935 and entered into force as of January 1, 2017 in order to regulate the rules ensuring (i) maintenance of the Movable Asset Registry records in an accurate and lawful manner; (ii) publicity of the Movable Asset Registry records and (iii) legal certainty of third parties' rights. The Registry Regulation also stipulates the legal structure and administrative organisation of the Movable Asset Registry and regulates duties and responsibilities of the Movable Asset Registry officers (including the review of the pledge agreements to be registered in order to determine whether such agreements fulfil the legal requirements provided by the Pledge Law and the Pledge Regulation). Pursuant to Article 15 of the Registry Regulation, the movable asset registry platform (the "**MARP (*TARES*)**") (which is later on announced to be an online platform maintained by Turkish Notary Publics) shall be established. The Registry Regulation envisages that all registration, amendment, cancellation and assignment transactions stipulated by the Pledge Law and the Pledge Regulation in relation to the Movable Assets shall be performed via MARP (*TARES*).

As per the Pledge Law, as a condition to the registration of a pledge agreement with the Movable Asset Registry, the signatures of the parties to the respective written pledge agreement shall be approved by a Notary Public; or the pledge agreement shall be executed in writing before an officer of the Movable Asset Registry; or the pledge agreement executed through an electronic platform shall be approved with the secured electronic signature. As per Paragraph 7 of the same Article, clauses limiting the pledgor's ability to dispose of the Movable Assets are null and void as well as clauses restricting sub-pledging or re-hypothecation. That being said, if the pledgor transfers a pledged Movable Asset to any third party, the pledgor is required to notify the Movable Asset Registry and make the respective transfer registered therewith.

As per the Pledge Law and the Pledge Regulation, pledge over Movable Assets can be registered in first and continuing degrees. The rank and the security amount of a degree shall be determined in the pledge agreement as well as the right to advance in the vacant degrees of the pledgee (if any). Additionally, in cases where several pledges are established over a Movable Asset without indicating any rank or degree, the priority among the respective pledgees shall be determined considering the date on which the respective pledges are established.

Pursuant to the Pledge Law and the Pledge Regulation, upon the occurrence of an event of default, with respect to the pledges established after January 1, 2017, the pledgee shall either (i) request the transfer of the title of the respective Movable Asset from the execution office or (ii) transfer its secured claim to an asset management company which will acquire the rank and degree of the transferor following the respective transfer. In order for a pledgee to request the transfer of title of the respective Movable Asset from the execution office, such pledgee shall have the first degree (or the first priority) pledge over the respective Movable Asset. If the first degree (or first priority) pledgee does not request the transfer of the pledged Movable Asset within one week, other pledgees shall be entitled to request so from the execution office. In case that the total amount of the secured claim of the first degree (or the first priority) pledgee exceeds the value of the pledged Movable Asset, the first degree (or the first priority) pledgee shall credit the exceeding amount to the account of execution office.

The value of the pledged Movable Asset shall be determined according to the procedure provided under the Regulation on Determination of the Value of Movable Assets in Commercial Transactions issued by the Ministry, published in the Official Gazette dated December 31, 2016 and numbered 29935 and entered into force as of January 1, 2017 (the "**Value Determination Regulation**"). As per the Pledge Law and the Value Determination Regulation, the value of the Movable Assets may either be determined between the pledgor and the pledgee before the establishment of the pledge without outsourcing any expertise service provider entity; or the respective pledgee shall apply to the court of peace (*sulh hukuk mahkemesi*) where the pledgor is resident and such court shall make the real persons or legal entities, which are entitled to provide expertise services, determine the value of the respective pledged Movable Asset within 3 days following the application of the respective pledgee to the court.

Q4/2016 Communiqué on Maximum Interest Rates to be Applied to Credit Card Transactions is issued

The Banking Regulation and Supervision Agency (the "**BRSA**") has introduced the Communiqué on Maximum Interest Rates to be Applied to Credit Card Transactions (the "**Communiqué**") and published the same in the Official Gazette dated November 12, 2016 and numbered 29886. The Communiqué, having the purpose of regulating the maximum rates for contractual interest and default interest to be applied to the credit card transactions, is entered into force on January 1, 2017 and abolished the Communiqué on Maximum Interest Rates to be Applied to Credit Card Transactions (*published in the Official Gazette dated October 22, 2014 and numbered 29153*).

According to the Communiqué, (i) the maximum contractual interest rate shall be (A) 1.84 % per month for credit card transactions in Turkish Lira and (B) 1.47 % per month for credit card transactions in foreign currency and (ii) the maximum default interest rate shall be (A) 2.34 % per month for credit card transactions in Turkish Lira and (B) 1.97 % per month for credit card transactions in foreign currency. The Communiqué provides that such maximum rates shall also be applied respectively for dividend payments in relation to the credit card transactions conducted by the participation banks. Finally, the Communiqué envisages that the maximum monthly interest rates shall be announced each year, for periods of January – March, April – June, July – September and October – December.

Q4/2016 Amendments to the Communiqué on Printing Forms of Checkbooks, on Amounts which the Banks are Obliged to Pay to the Holders and on Notification and Announcement of Prohibition Decisions on Check Issuance and Opening Check Accounts

In the Official Gazette dated November 19, 2016 and numbered 29893, the Central Bank of Republic of Turkey (the "**CBRT**") has amended the Communiqué on Printing Forms of Checkbooks, on Amounts which the Banks are Obliged 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 revised its name as the "Communiqué on Printing Forms of Checkbooks and Determination of the Amounts which the Banks are Obliged to Pay to the Holders" ("the **Communiqué**"). According to the amendment, all references to "check number" under the Communiqué have been changed to "serial number" and all provisions related to the CBRT's authority to resolve on or to remove prohibitions imposed for check issuance and check account maintenance (i.e. Article 1 (c) and Article 5 of the Communiqué) have been abolished. Finally, the minimum requirements related to the form of the checks have been slightly amended.

Moreover, the CBRT further amended the Communiqué and published such amendment in the Official Gazette dated January 20, 2017 and numbered 29954. Accordingly, the reference amount in order to determine the amounts which the banks are liable to pay for the fully or partially unpaid checks have been increased to TL 1,410 from TL 1,290 for each check leaf submitted to the banks for payment. 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 the Communiqué have been increased to TL 815 from TL 740.

Q4/2016 Amendment to the Regulation on the Principles and Procedure regarding the Provision of Foreign (Cross-Border) Financing within the scope of Law No. 4749

The Undersecretariat of Treasury (the "**Treasury**") introduced an amendment to the Regulation on the Principles and Procedure regarding the Provision of Foreign (Cross-Border) Financing within the scope of Law No. 4749 (*published in the Official Gazette dated December 25, 2014 and numbered 29216)* (the "**Regulation**") on November 23, 2016 to become effective as of December 25, 2014, in a retroactive manner. The amendment mainly relates to the obligations of entities benefitting from a Treasury guarantee or on-lending within the scope of Law Regarding Public Finance and Debt Management (Law No. 4749) (*published in the Official Gazette dated April 9, 2002, No. 24721*) ("**Law No. 4749**").

The Regulation sets forth that entities benefitting from Treasury guarantee or on-lending shall open a bank account (the "**Account**") for depositing the revenues and other amounts received in connection with the project (in relation to which a Treasury guarantee or on-lending is utilized) and maintain such amounts for the repayments to be made in connection with the underlying financing arrangement for the respective project. Prior to the amendment, the

Regulation set forth that entities benefitting from Treasury guarantee or on-lending shall deposit the abovementioned amounts to the Account on a monthly basis; whereas the amendment provides for depositing the respective amounts not on a monthly basis but based on the term of the liabilities of the relevant entity arising from the underlying financing arrangement.

The exact time for making such deposits is determined in accordance with the respective entity's ability to fulfil its obligations arising from the underlying financing arrangement on a timely manner. For instance, the Regulation envisages that entities fulfilling such obligations on the relevant due date or within twenty five (25) days following such due date (provided that the relevant default interest or penalty is duly paid) may deposit the relevant amounts until the next due date under the underlying financing arrangement; however, entities failing to fulfil their previous liabilities on the relevant due date, or within twenty five (25) days following such due date, shall deposit the relevant amounts three months before the next due date.

The Provisional Article 1 introduced under the Regulation with the amendment envisages that transactions currently benefitting from a Treasury guarantee or on-lending should be restructured in accordance with the amendment. The amendment also provides for an administrative monetary penalty to be imposed on entities acting in violation of the amended Regulation.

Q4/2016 Amendment to the Regulation on Measurement and Evaluation of Capital Adequacy of Banks

The Banking Regulation and Supervision Agency (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*) (the "**Regulation**") and published such amendment in the Official Gazette dated December 9, 2016 and numbered 29913.

Accordingly, the definition of the Small and Medium Sized Enterprises has been revised as to enterprises having a lower financial turnover than the threshold to be determined by the BRSA. Additionally, the maximum liability amount which a debtor client or a debtor risk group may have against the bank and its subsidiaries having a quality of consolidated financial entity, has been changed to the retail credit limit to be determined by the BRSA instead of TL 2,75 million. Furthermore, with regards to the receivables secured with mortgage of residences, the formula of the acceptable security amount in relation to the real estate has been amended. Finally, the BRSA indicated under Annex I of the Regulation that the banks are entitled to authorise one or more credit rating agenc(y)(ies) for determination of the risk weight to be applied and the name(s) of the authorised credit rating agenc(y)(ies) shall be notified to the BRSA.

Q4/2016 Amendment to the Regulation on Procedures and Principles for Determination of Qualifications of Loans and Other Receivables by Banks and Provisions to be Set Aside

The Banking Regulation and Supervision Agency (the "**BRSA**") has amended the Regulation on Procedures and Principles for Determination of Qualifications of Loans and Other Receivables by Banks and Provisions to be Set Aside (*published in the Official Gazette dated November 1, 2006 and numbered 26333*) (the "**Regulation**") on December 14, 2016.

Paragraph 6 of Article 7 of the Regulation related to further restructuring of the credits which had been already restructured and thus classified under the second group has been abolished. Additionally, three provisional articles (i.e. Provisional Articles 11, 12 and 13) have been inserted into the Regulation.

As per the Provisional Article 11, until December 31, 2017, it has been determined that the general provision rates to be applied, (i) for the total of cash commercial credits and non-cash commercial credits which are monitored under the first group shall be at least 0.5 % and 0.1 %, respectively; (ii) for the total of small or medium sized cash or non-cash working capital credits, cash and non-cash credits utilised for the purpose of transit trade, export, sales and deliveries deemed to be export, foreign exchange earning services and activities and syndication credits provided for financing large sized public auctions, which are monitored under the first group shall be at least 0 %; (iii) for the total of cash credits and non-cash credits which are monitored under the first group and not included in (i) or (ii) above shall be at least 1 % and 0.2 %, respectively; (iv) for the total of cash commercial credits which are monitored in second group, small or medium sized working capital credits, credits utilised for the purpose of transit trade, export, sales and deliveries deemed to be export, foreign exchange earning services and activities shall be at least 1 % and for non-cash credits having the same nature shall be at least 0.2 %; and (v) for the total of cash credits and non-cash credits which are monitored under second group and not included in (iv) above shall be at least 2 % and 0.4 %, respectively.

As per the newly introduced Provisional Article 12, credits and other receivables may be subject to a restructuring until December 31, 2017, according to the procedure and subject to the conditions provided thereunder.

Finally, pursuant to Provisional Article 13 of the Regulation which is deemed to be entered into force as of July 21, 2016, the time periods envisaged for the credit classification under Article 4 of the Regulation shall start from January 21, 2017 with respect to the obligations of some real persons and legal entities which have been adversely affected (i.e. closed, transferred to Directorate General of Foundations or to Undersecretariat of Treasury or dismissed etc.) by the State of Emergency Decree-Laws issued after July 20, 2016.

Q4/2016 Amendment to the Regulation on Credit Transactions of Banks

The Banking Regulation and Supervision Agency (the "**BRSA**") has amended the Regulation on Credit Transactions of Banks (*published in the Official Gazette dated November 1, 2006 and numbered 26333*) on September 27, 2016 and entered into force on its publication in the Official Gazette. According to the amendment, for credits to be extended by banks, the banks are no longer required to obtain an account status letter for transactions which do not exceed a threshold of TL 1 million which has been increased from TL 250,000.

Q4/2016 Amendment to the Regulation on Accounting Practices and Financial Statements of Financial Leasing, Factoring and Finance Companies

The Banking Regulation and Supervision Agency (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 "**Regulation**") on December 14, 2016 and inserted therein a provisional article pursuant to which the time periods envisaged for the calculation of general provisions and special provisions under paragraphs 1 and 6 of Article 6 of the Regulation shall start from January 21, 2017 with respect to the obligations of some real persons and legal entities which have been adversely affected (i.e. closed, transferred to Directorate General of Foundations or to Undersecretariat of Treasury or dismissed etc.) by the State of Emergency

Decree-Laws issued after July 20, 2016. This Provisional Article 2 shall be deemed to be entered into force as of July 21, 2016.

Q4/2016 Amendment to the Regulation on Procedures and Principles for Qualifications of Loans and Provisions to be Set Aside

The Banking Regulation and Supervision Agency (the "**BRSA**") has amended the Regulation on Procedure and Principles for Qualifications of Loans and Provisions to be Set Aside *(published in the Official Gazette dated June 22, 2016 and numbered 29750)* (the "**Regulation**") on December 14, 2016 and postponed its entry in force until January 1, 2018. Accordingly, Provisional Article 2 of the Regulation has been abolished as such provisional article regulated the general provisions rate to be applied until January 1, 2018.

Finally, Provisional Article 1 of the Regulation has also been amended that the BRSA may grant an extension to the banks which do not bring their status in compliance with Article 9 of the Regulation until January 1, 2018, based on the BRSA's consideration following the application of the respective bank.

Q4/2016 Amendment to the Communiqué on Uniform Accounting Plan and Prospectus to be applied by Participation Banks

The Communiqué on Uniform Accounting Plan and Prospectus to be applied by Participation Banks (*published in the Official Gazette dated January 26, 2007 and numbered 26415*) (the "**Communiqué**") was amended on 22 December 2016 to enter into force as of 1 June 2017.

The amendment adds and removes certain accounts within the scope of the uniform accounting plans to be adopted by participation banks and listed under Article 8 of the Communiqué. Additionally, the amendment introduces two new accounts: (i) Electronic Money Funds and (ii) Payment Funds Protection Account, allocated to amounts collected in respect of electronic money issued by duly authorized electronic money institutions or banks and to amounts collected as payment funds as defined under the Regulation on Payment Services, Electronic Money Issuance and Payment Institutions and Electronic Money Institutions (*published in the Official Gazette dated June 27, 2013 and numbered 29043*), respectively.

For a detail list of the accounts added to or removed from the uniform accounting plans of participation banks, please refer to the Communiqué.

Q4/2016 Amendment to the Communiqué on Uniform Accounting Plan and Prospectus

The Communiqué on Uniform Accounting Plan and Prospectus (*published in the Official Gazette dated January 26, 2007 and numbered 26415*) (the "**Communiqué**") which sets forth the accounting system to be adopted by banks (other than participation banks) was amended on 22 December 2016 to enter into force as of 1 June 2017.

The amendment introduces, changes and removes certain accounts within the scope of the uniform accounting plans to be adopted by banks (other than participation banks) and listed under Article 8 of the Communiqué. Additionally, the amendment introduces three new accounts: (i) Electronic Money Funds; (ii) Payment Funds Protection Account; and (iii) Turkish Lira Funds Accepted by Participation and Investment Banks, allocated to (a) amounts collected in

respect of electronic money issued by duly authorized electronic money institutions or banks , (b) to amounts collected as payment funds as defined under the Regulation on Payment Services, Electronic Money Issuance and Payment Institutions and Electronic Money Institutions (*published in the Official Gazette dated June 27, 2013 and numbered 29043*), and (c) to amounts collected as debtor funds as per Article 60 of the Banking Law (Law No. 5411) (*published in the Official Gazette dated November 1, 2005 and numbered 25983*), respectively.

For a detail list of the accounts added to or removed from the uniform accounting plans of banks (other than participation banks), please refer to the Communiqué.

Q4/2016 Communiqué on Implementation of Barcode Checks has been introduced on December 31, 2016

The Ministry of Customs and Trade (the "**Ministry**") and the Undersecretariat of Treasury (the "**Treasury**") have introduced the Communiqué on Implementation of Barcode Checks (*published in the Official Gazette dated December 31, 2016 and numbered 29935*) (the "**Communiqué**") in order to regulate the procedures and principles on (i) the definition and content of the barcode and MERSIS number to be inserted into the check leafs; (ii) establishment of the Barcode Scanning and Information Sharing System (the "**System**"); and (iii) disclosure of data maintained within the System to third parties. As per Article 1 of the Communiqué, checks printed by Turkish banks and Turkish branches of foreign banks are under the scope of the Communiqué.

The Communiqué introduces the Barcode Check Report which shall be furnished via the System and pursuant to Article 4 of the Communiqué, the Barcode Check Report shall contain information related to, *inter alia*, the identity of the check account holder, serial number of the respective check and other checks owned by the check account holder (i.e. formerly paid or unpaid checks; or whether there is any injunction on such checks etc.).

According to Article 5 of the Communiqué, the System shall be maintained and operated by Turkish Banking Association Risk Centre (the "**Risk Centre**") and the Risk Centre is entitled to share the data processed in the System (including the Barcode Check Report) with certain entities authorised to exchange data (the "**Authorised Entities**") to which the Risk Centre is entitled to provide information or from which the Risk Centre is authorised to receive information in accordance with the provisions of the Banking Law (Law No. 5411).

As per Article 6 of the Communiqué, the banks are required to register the real persons and legal entities which open a check account within such bank, as well as the authorised representatives of such legal entities, with the System. Additionally, Article 7 of the Communiqué indicates that real persons and legal entities for which a barcode check is issued shall register their checks with the System before the presentation date of the respective barcode check. Finally, Article 8 of the Communiqué sets forth the rules and the procedure to be applied for protection by the Risk Centre of data maintained within the System and the legal responsibilities of the Risk Centre and the Authorised Entities for the protection of data processed in the System.

The Communiqué envisages that the banks shall no longer print and deliver any check leaf which does not bear a barcode as of December 31, 2016.

Finally, Articles 4, 6 and 8 of the Communiqué entered into force as of January 1, 2017 and Article 7 of the same shall enter into force as of December 31, 2017.

Q4/2016 General Corporate

- The Communiqué on the Signing of Articles of Incorporation of Companies before Trade Registry Offices (the "**Communique**") has been published in the Official Gazette dated December 6, 2016 and numbered 29910. The Communiqué regulates the procedures and principles during the signing of articles of incorporation of the companies and signature declarations before Trade Registry Offices.

  As per Article 5 of the Communiqué, the founders or their representatives shall sign the articles of incorporation before the provincial directorate of Trade Registry where the company will be incorporated. The representatives must submit a document (e.g. notarized power of attorney) which indicates their authority and power to sign on behalf of founders.

  In case the articles of incorporation which has been signed before the Trade Registry Office has not been submitted to the Trade Registry in three months as of the date of approval, the founders must made a declaration expressing their willing to proceed the incorporation process

- Cabinet Decree regarding the procedure and principles of the tenders made as per Article 3 of Public Procurement Law numbered 4734 (the "**Decree**") (*published in the Official Gazette dated February 22, 2010 and numbered 27501*) has been amended. Negotiated tendering procedure has been added to the tendering procedures regulated under Article 10 of the Decree. As per Article 22 of the Regulation the approved person status will be granted to the real and legal persons operating minimum for 2 years who provide the conditions stated in this Regulation in order to benefit from simplified procedures and authorities regarding customs operations and applications. As per the amendment regulated under Article 22/2, the condition to operate minimum for 2 years shall not be taken into consideration for the persons subject to transfer, merger or partial demerger. Furthermore, new conditions also have been regulated regarding the required conditions to have approved person status as per Article 24.

- Regulation on Process and Privacy of Personal Health Data (the "**Regulation**") has been published in the Official Gazette dated October 20, 2016 and numbered 29863. The aim of the Regulation is to regulate the procedures and principles to provide necessary privacy requirements of the systems where the personal health data is kept processed and transferred.

- The Regulation on Environmental Permit and License (*published in the Official Gazette dated September 10, 2014 and numbered 29115*) has been amended. The annexes regarding waste management, application forms for temporary certificate of activity has been amended.

- Law Regulating Movable Property Pledges in Commercial Transactions (the **"Law"**) has been published in the Official Gazette dated October 28, 2016 and numbered 29871. This Law has repealed the Law on Commercial Enterprise Pledge numbered 1447 as per Article 17 of the Law. The object of this Law is to popularize the use of movable property pledges, extend the scope of movable properties that are subject to this law, providing publicity of the pledges and presenting alternative ways for foreclosing of the pledges. The scope of this Law is the procedures and principles regarding establishing movable property pledges, effect of such pledges to third parties, Movable Property Pledges Registry, determination superiority between pledgees, rights and

liabilities of parties and third parties, exercising of the pledges and determination of the procedure related to pledges.

As per Article 4 of the Law, the pledge shall be established once the pledge agreement is registered before Movable Property Pledges Registry. The pledge agreement must include the parties of pledge agreement and the scope and amount of the loan.

- The following movable properties are subject to the establishment of movable property pledge;
- Receivables
- Trees bearing products for multiple years
- Rights subject to intellectual property rights
- Raw materials
- Animals
- All kind of incomes and revenues
- All kind of licenses and permits which are not subject to other registries and which do not have the characteristic of administrative permit certificate
- Rental Income
- Tenancy Rights
- Movable enterprise equipment
- Consumable materials
- Stocks
- Agricultural product
- Commercial title and/or name of enterprise
- Commercial enterprise and/or tradesman enterprise
- Commercial plates and commercial lines
- Commercial projects
- Wagons
- Abovementioned movable properties, rights and joint ownership rights possessed by third parties.

Q4/2016 Real Estate & Construction

The General Communiqué of National Estate (the "**Communique**") has been published in the Official Gazette dated October 8, 2016 and numbered 29851. The purpose of the Communiqué is to regulate the procedures and principles

regarding the right of easement and/or utilization permit with respect to state-owned lands for the construction of marinas. The Communiqué determines the procedure for application, tender, pre-license, establishing right of easement and/or granting utilization permit to the investors.

Q4/2016 Employment

- Regulation on Maternity Leave and Part-Time Working following Unpaid Leave (the "**Regulation**") has been published in the Official Gazette dated November 8, 2016 and numbered 29882. The Regulation determines the maternity leave, the part-time works and their practice for the employee following birth or adoption.

  As per Article 5 of the Regulation, maternity leave shall be in total sixteen weeks, eight of which must be taken before and eight of which must be taken after giving birth. Where the mother is pregnant with more than one child, a further two weeks shall be added to the eight-week antenatal maternity leave period. However, if the employee so wishes and her health allow her to carry on working, the employee may, with the approval of her doctor, continue to work until three weeks before giving birth. In such cases, the unused portion of the eight-week antenatal maternity leave shall be added to the eight-week post-natal maternity leave period.

  The maternity leave period before giving birth which could not been used due to the preterm birth shall be taken after giving birth.

  If the mother dies during or after giving birth, the maternity leave which could not be used will be taken by the father.

  Eight week of maternity leave shall be also used by the family who adopted a child younger than three years old as of the date of adoption.

  The period of maternity leave specified above may be increased before and after birth in accordance with the employee's state of health and the characteristics of the employment. Any extension to the period of ante and post-natal maternity leave must be determined in light of a doctor's report.

  If the employee so wishes, the mother or adoptive parents may use unpaid maternity leave. Unpaid maternity leave will be 60 days for the first birth, 120 days for the second birth, 180 days for the following births. 30 days will be added to such terms in the event of multiple pregnancy.

- Regulation on Private Employment Agencies (the "**Regulation**") has been published in the Official Gazette dated October 11, 2016 and numbered 29854. The regulation covers the principles and procedures regarding the establishment of private employment agencies (the "Agency"), its activities and its inspection.

  As per Article 6 of the Regulation, temporary working agreement shall be executed between the Agency and the employee. In other words, the employer will be Agency in such temporary working agreement and the Agency executes a temporary labor supply contract with the party who will employ the employee (the "Temporary Employer"). Such agreements must be executed in writing and commencement and termination date, type of work, service charge of the Agency and the liabilities of Agency and the Temporary Employer must be indicated in such agreements.

  The Regulation indicates the cases where a temporary working agreement may be executed such as the Agencies cannot do agency business with state institutions and organizations as per Article 4 of the Regulation.

The Regulation also specifies the required conditions and documents for the activity license of the Agencies.

Q4/2016 Energy & Natural Resources

- Communiqué on Administrative Fines Applicable for the year 2017 as per Article 16 of Electricity Market Law numbered 6446 has been published in the Official Gazette dated December 8, 2016 and numbered 29912. The communiqué regulates the administrative fines to be applied to the legal persons by Electricity Market Regulatory Board.
- Communiqué on Administrative Fines Applicable for the year 2017 as per Article 16 of the Amendment Law on LPG and Electricity Market Law has been published in the Official Gazette dated December 8, 2016 and numbered 29912.
- Communiqué on Administrative Fines Applicable for the year 2017 as per Article 19 of Petroleum Market Law numbered 5015 has been published in the Official Gazette dated December 8, 2016 and numbered 29912.
- Communiqué on Administrative Fines Applicable for the year 2017 as per Article 9 of Natural Gas Market Law has been published in the Official Gazette dated December 8, 2016 and numbered 29912.
- Amendment Regulation on Technical Evaluation of Power Generation based on Wind Sources has been published in the Official Gazette dated November 8, 2016 and numbered 29882. Pursuant to the amendment, unlicensed power generation applications for production plants which are subject to prelicense and production license applications shall not be approved.
- Petroleum Communiqué (*published in the Official Gazette dated July 17, 1989 and numbered 20224*) has been abolished.
- Communiqué on Administrative Fines Applicable for the year 2017 as per Article 77 of Consumer Protection Law numbered 6502 has been published in the Official Gazette dated December 3, 2016 and numbered 29907.

Q4/2016 Competition

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 document is provided, or information or document is 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 10, 2016, and numbered 29914*, which entered into effect on January 1, 2017. Accordingly, the penalty to be determined pursuant to the Article cannot be less than TL 18,377.

CAPITAL MARKETS

Q4/2016 Establishment of Money Market in Borsa İstanbul A.Ş.

A regulated money market ("**Market**") has been established in the Turkish exchange; Borsa İstanbul A.Ş. ("**BIST**"), where collateralized borrowing and lending transactions of banks and brokerage firms supplying and demanding Turkish Lira are executed. Banks and brokerage firms authorized in accordance with the BIST regulations and İstanbul Takas ve Saklama Bankası A.Ş. ("**Takasbank**") may trade on the Market.

Members may place orders for their own accounts, and for the accounts of investment funds / investment trusts and customers, whilst Takasbank provides central counterparty (CCP) service for the Market and guarantees the settlement by acting as buyer to the seller and seller to the buyer for any transaction executed.

DISPUTE RESOLUTION

Q4/2016 The Expert Law Entered into Force

The Expert Law was published in the Official Gazette dated November 24, 2016 and numbered 29898 (Law No. 6754). Expert opinion is widely used as a tool in courts throughout different justice systems and is also a very important part of the Turkish judicial system. However, according to the Turkish Ministry of Justice, the previous system of experts was an obstacle to the efficiency and effectiveness of the judicial system since the laws and provisions on experts have been spread out throughout many different laws and regulations. Law No. 6754 aims to develop and improve the current judicial system and bring together all the provisions that apply to expert opinions. Therefore, introducing a law that brings a coherent system regarding this field is a significant step for development of the judicial system. Limiting the scope of the mission of an expert is one of the most important points of Law No. 6754. In the new law, the scope of the mission of an expert is limited to questions of fact. This means that experts can no longer be used to answer or examine questions of law which is an issue at the sole discretion of judges.

Furthermore, Law No. 6754 establishes the rules concerning the qualifications for experts, their education, and how they will be audited. This way, it hopes to form an effective and active organizational structure. Law No. 6754 is divided into three sections:

The articles of the first part are primarily focused on the guiding principles for experts. Their duty should be guided by principles such as righteousness, independence, impartiality, confidentiality and objectiveness.

The second part of the Law establishes the organizational structure. This organizational structure concerning experts is an entire new level for the development of the court proceedings in Turkey. Embedded within the Ministry of Justice, the new structure includes a Department of Experts, an advisory committee for experts and numerous regional committees for experts. These units focus on issues regarding experts; their registry, acceptance, fees etc.

The final part of the Law focuses on the conditions required to be accepted or banned as an expert; these include but are not limited to educational conditions, technical expertise, five years' experience etc. The Law No. 6754 also introduces an opportunity for legal entities to produce expert opinions meaning that not only real persons but also legal entities shall serve as experts to assist the Courts concerning the legal proceedings.

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