



Legal Newsletter Q1/2015

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 This latest roundup provides insight on the latest amended and repealed laws and regulations affecting different sectors.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. Email: fpekin@pekin-pekin.com



BANKING & FINANCE

Annex 1 of the Regulation on Measurement and Evaluation of Capital Adequacy of Banks has been amended

Following an amendment to paragraph 59 of Annex 1 to the Regulation on Measurement and Evaluation of Capital Adequacy of Banks (the "Regulation on Capital Adequacy") receivables of banks arising from consumer loans other than (i) housing loans; (ii) loans extended to persons who are receiving their retirement pensions via banks as a result of a protocol executed by and between the bank and the Social Security Institution and for the time frame that the payment of the pension through the bank continues and (iii) cash loans extended via credit cards for the purchase of goods and services are included amongst the risk weighted items. Limbs (i) to (iii) who have a remaining maturity of 12 to 24 month has been allocated 150% risk weight while those with a remaining maturity of over 24 months has been allocated 200% risk weight. Prior to the amendment, only the receivables of banks arising from consumer loans other than vehicle and housing finance loans were included amongst the risk weighted items.

Communiqué (No: 2015/2) Amending Communiqué on Reserve Requirements (No: 2013/5)

There has been two amendments to the Communiqué on the Required Reserves (Communiqué No. 2013/15) (*published in the Official Gazette dated December 25, 2013 and numbered 28862*) (the "**Communiqué**") in 2015. Following the first amendment; reserve requirement ratios for foreign exchange denominated liabilities of banks and financial companies other than term deposits and participation funds with a term between 3 to 5 years have been regulated as 5 % while reserve ratios for the same liabilities with a term of more than 5 years have been regulated as 6%.. Following the second amendment the reserve requirement ratios for foreign exchange denominated liabilities of banks and financial companies other than term deposits and participation funds with a term up to (including) one year have been increased to 20% from 18% while the same liabilities with a term up to (including) two years have been increased to 14% from 13%.

In addition the amount of the required reserves to be held for Turkish Lira liabilities with the Central Bank may, up to 60%, be kept in US Dollars by multiplying such amounts with the corresponding coefficient shown in the table set forth in Article 7 of the Communiqué. Some of these coefficients have been amended.

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

Article 7 of the Regulation on Procedures and Principles for Determination of Qualifications of Loans and Other Receivables by Banks and Provisions to be Set Aside (the "**Provisions Regulation**") (*published in the Official Gazette dated November 1, 2006 and numbered 26333*) has been amended in order to permit banks to apply 0% reserve ratios on loans extended for transit trade, sales and deliveries which are deemed as exports and, foreign currency saving services; whereas prior to the amendment, only export credits could be subject to 0% reserve ratio.

Secondary collaterals involve valuable metals other than gold, shares which are traded on the market and mortgages given that there is an appraised value. While valuating collaterals, 75% of the secondary collaterals are to be considered in the calculation of the total amount. Following an amendment to Article 9 of the Provisions Regulation, insurance policies on commercial receivables and Credit Guarantee Fund suretyships which are not guaranteed by the Undersecretariat of Treasury have been included under secondary collaterals. These items were not part of any group prior to the amendment.

Finally, the effectiveness date of Provisionary Article 6 has been extended to December 31, 2015. The Provisionary Article 6 stipulates special conditions and provides certain exceptions for the benefit of banks regarding reconditioning and reclassification of loans extended to be used on naval sector.

Regulation on the Procedures and Principles Regarding Factoring Companies

BRSA has introduced the Regulation on the Procedure and Principles Regarding Factoring Companies (the "**Factoring Regulation**") (*published in the Official Gazette dated February 4, 2015 and numbered 29257*). The Factoring Regulation entails principles and procedures on the transactions executed by factoring companies. The Factoring Regulation repeats to a significant extent, what was already provided under the BRSA Circular dated July 8, 2010.

The Factoring Regulation includes provisions in relation to (i) refraining from discounting receivables that are not documented by an invoice or a document serving as an invoice, (ii) measures to prevent the same invoices to be subject to more than one factoring transactions or cancelled invoices to be subject to a factoring transaction, (iii) "know your customer" guidelines, (iv) procedures to follow in case a receivable is discounted against a bill of exchange and (v) transfer of future receivables.

Lastly, it should also be noted that a Central Invoice Registration System has been implemented to prevent duplicity. The invoices subject to discounting are required to be registered with the Central Invoice Registration System.

Regulation on Distance Contracts Regarding Financial Services

The Ministry of Customs and Trade has issued the Regulation on Distance Contracts Regarding Financial Services (the "**Distance Contracts Regulation**") (*published in the Official Gazette dated January 31, 2015 and numbered 29253*). The Distance Contracts Regulation is based on the provisions of the Consumer Protection Law (*published in the Official Gazette dated November 28, 2013 and numbered 28835*).

The Distance Contracts Regulation entails the methods and principles that are applicable only in distance contracts on payments regarding banking, lending, insurance, individual retirement and investment services. Also pursuant to Article 2, the provisions included in the Distance Contracts Regulation will only be applied on the initial contract for a given financial service.

An important provision of the Distance Contracts Regulation is that the consumer is given a 14 day right of withdrawal. The Distance Contracts Regulation also encompasses the rules and limitations regarding these rights such as limiting or restricting the right on certain services with fluctuating services such as FOREX trades or options.

Amount to be paid by Banks upon presentment of a dishonoured check has been increased

The amendment made on the Communiqué No. 2010/2 (the "**Communiqué**"), includes that the maximum amount to be paid by the banks upon presentment of a dishonoured check has been increased to TL 1,200.

Leasing, Factoring, and Financing Companies and Banks are Exempted from the Revolving Loan Prohibition

The Central Bank of the Republic of Turkey amended Clause 1.1.1 (Utilisation of the Loan) of Section III (Credits) of its Capital Movements Circular upon the letter of the Undersecretariat of Treasury dated November 7, 2014 and numbered 33111. In accordance with such amendment, leasing, factoring and financing companies and banks are allowed to obtain revolving loans from banks and financial institutions resident abroad.

Regulation on Procedures and Principles Regarding the Financial Crimes Investigation Board Electronic Notification System

The Ministry of Finance has introduced the Regulation on Procedures and Principles Regarding the Financial Crimes Investigation Board Electronic Notification System (the "**MASAK Regulation**") (*published in the Official Gazette dated March 30, 2015 and numbered 29311*). The MASAK Regulation sets forth the principles and procedures on the electronic notification system to be used by the Financial Crimes Investigation Board of Turkey (the "MASAK") such

as; the types of companies which are obliged to open accounts, types of companies which may choose to open accounts, procedures for applying for an account, by when obligors should have opened their accounts, provisions regarding the electronic notifications and penalties for failing to comply with the provisions of the MASAK Regulation.



CAPITAL MARKETS

Issuances of International Institutions

The Capital Markets Board (the “**CMB**”) has published the Communiqué No. VII-128.4.a, which amends the Communiqué on Foreign Capital Market Instruments, Depositary Receipts and Foreign Investment Funds (the “**Amendment**”) (*O.G. January 22, 2015, 29244*). With the Amendment, the principles to be applied regarding the sale or trading of non-equity capital market instruments owned by the international institutions in which the Turkish public institutions such as Republic of Turkey Prime Ministry Undersecretariat of Treasury or Republic of Turkey Central Bank are members or shareholders, have been regulated in detail. The issuances to be made in this scope have been facilitated.

Prohibition at Capital Increases

The CMB has published Communiqué No. VII-128.1.a, which amends the Communiqué on Shares (“**Amendment**”) (*O.G. February 27, 2015, 29280*). Certain issues covered within the Amendment include:

- Companies which will be publicly offered or whose shares of which will be traded on the stock exchange shall not carry the conditions to be excluded from the scope of Capital Markets Law regarding growth of financial statements, and
- The performance of the obligation to contribute capital in cash in capital increases to be made by publicly held companies cannot be made by way of deduction of the debts of the company arising from transfer of assets other than cash.

Limitation to the Scope of Significant Transactions

The CMB has published Communiqué No. II-23.1.a, which amends the Communiqué on Common Principles Regarding Significant Transactions and the Right to Exit (“**Amendment**”) (*O.G. February 27, 2015, 29280*). The main issues set in the Amendment are as follows:

- Performance of the obligation to contribute capital in cash in the capital increases to be made by publicly held companies by way of deduction of the debts of the company arising from transfer of assets other than cash, shall no longer be deemed as a significant transaction (The Communiqué No. VII-128.1.a prohibits such transactions from being conducted as indicated in the Newsletter Entry: [“Prohibition at Capital Increases”](#))
- In the case a non-publicly held company takes over a publicly held company in a

merger transaction, controlling shareholders of the non-publicly held company and persons acting together with them shall make a tender offer in order to protect rights and interests of investors.

New Requirement for Non-Publicly Held Companies Subject to Takeovers

The CMB has published the Communiqué No. II-23.2.a which amends the Communiqué on Mergers and Demergers ("**Amendment**") (*O.G. February 27, 2015, 29280*). Pursuant to the Amendment, in the merger transactions where a non-publicly held company takes over a publicly held company the shares of which are traded on the stock exchange, the non-publicly held company shall meet the requirements regarding public offering, which are stated in the Communiqué No. VII-128.1 on Shares.

A New Exemption Regarding Tender Offers

The CMB has published the Communiqué No. II-26.1.a which amends the Communiqué Regarding Tender Offers ("**Amendment**") (*O.G. February 27, 2015, 29280*). The main points covered in the Amendment are set out below:

- The obligation to make a tender offer does not occur as a result of share purchase in a certain percentage from the shareholders having management control in a publicly held company, provided that the purchaser already shares the management control equally or in less percentage under a written agreement concluded before the share transfer with the other shareholder having management control and on the condition that the purchaser owns 50% or less of the total voting rights of the company, after such share transfer.
 - The provisions on redetermination of the tender offer price regarding share purchase of the target company for a higher price than the tender offer price during the voluntary tender offer process have been removed.
-

Liquidity Requirement for the Brokerage Firms

The CMB has published the Communiqué Serial No. V/135 which amends the Communiqué on the Principles regarding Capital and Capital Adequacy of Brokerage Firms (*O.G. March 20, 2015, 29301*) ("**Amendment**"). Certain issues covered in the Amendment are as following:

- The brokerage firms shall have the liquid equity in the amount of the risks to appear regarding the service they render, in addition to the minimum equity amount required for their operation. In this regard, the amount calculated as liquid equity shall not be less than 60% of the minimum equity amount determined in the Amendment.
- The methods to be applied in the calculation of the capital adequacy are restructured.

Evaluation principles to be applied in the calculation of liquid equity and capital adequacy have been broadened so as to cover all of the OTC derivative instruments.

Investor Compensation Center

The CMB has published the Regulation on the Investor Compensation Center ("**Regulation**") (*O.G. February 27, 2015, 29280*). Investor Compensation Center ("**ICC**") is a public legal entity established with the purpose of executing compensation decisions taken by the CMB pursuant to the Capital Markets Law in cases where investment firms fail to fulfill their cash payment and capital market instrument delivery obligations arising from investment services and activities. The Regulation mainly determines principles and procedures regarding the management and operation of the ICC.



CORPORATE

Consumer Goods & Retail

New Regulation on Commercial Advertisement and Unfair Commercial Practices

Regulation Regarding Commercial Advertisement and Unfair Commercial Practices (*O.G. January 10, 2015, 29232*) (the "Regulation") has been published by the Ministry of Customs and Trade in order to be effective as of the date of publication except for Article 8 which shall be effective as of one year upon publication, whereas the previous regulation (*O.G. June 14, 2003, 25138*) has been abolished on the same date. The Regulation includes more detailed provisions such as advertisements regarding children, implicit advertisements and written and oral visuals in advertisements. Furthermore, the regulation has also covered the subject of unfair commercial practices regarding customers in Articles 28 and further.

New Law Regarding the Regulation of Retail Trade

Law Regarding Regulation of Retail Trade (Law No. 6585) (*O.G. January 24, 2015, 29236*) (the "Law") has been published in order to be effective as of its date of publication. Pursuant to Article 4 and Article 5 of the Law, retailers are obliged to submit the required application and perform the necessary transactions in order to obtain licenses regarding opening and working through a retail information system named PERBİS which is to be established by the Ministry of Customs and Trade. Furthermore, as per Article 7 the payments arising from the sales between manufacturer or suppliers and retailers for fast moving consumer goods which deteriorate within 30 days cannot exceed 30 days upon delivery date. Lastly, the Law also regulates administrative fines in case of non-compliance with the rules set out therein.

A New Consumer- friendly Regulation Regarding Subscription Agreements has been introduced

Regulation Regarding Subscription Agreements (*O.G. January 24, 2015, 29246*) (the "Regulation") has been published by the Ministry of Customs and Trade in order to be effective as of 3 months upon the date of its publication. Accordingly, the delivery of a copy of the

subscription agreement to the consumer has been made mandatory as indicated in Article 5 of the Regulation. Furthermore, pursuant to Article 13, the subscription agreements could only be extended upon the approval or request of the consumer. Additionally, Article 21 entails the right of consumers to terminate subscription agreements with indefinite term or which has a term of more than one year without justification and without paying any penalties for breach of the contract. Accordingly, Article 16 sets a limit to the amount the consumer is indebted in the event of termination of the subscription agreement by the consumer before the termination date.

The Regulation Regarding Contracts Executed Outside of Workplace has been introduced

The Regulation Regarding Contracts Executed Outside of Workplace (the "Regulation") has been published by the Ministry of Customs and Trade (*O.G. January 14, 2015, 29236*). The Regulation entails that a direct sales company must receive an Authorization Certificate from the Ministry of Customs and Trade in order to engage in direct sales and accordingly the sales contracts must be in writing to be valid. The Authorization Certificate is valid for 2 years and in the event of non-compliance with the Regulation, the Authorization Certificate of the direct sales company shall be cancelled and will not be renewed for a year; the cancellation shall be made public on the Ministry website. The consumer has a right to withdraw from the sales contract without cause or penalty within 14 days under Article 8 of the Regulation. In the event that the vendor is not in compliance with the legislation or fails in its statutory duties to provide information to the consumer, the consumer's right of withdrawal without cause or penalty shall be applicable beyond the statutory 14 day period. Following from the above, and with the rapid expansion of the direct sales market in Turkey, it is stated that the government has increased its efforts to regulate this area.

Energy & Natural Resources

No More Independent Auditors in the Energy Market

The Regulation Regarding the Abolishment of the Regulation Regarding Audits For Real and Legal Persons in Business in the Energy Market carried out by Independent Auditing Firms (*O.G. March 25, 2015, 29306*) has been published in order to be effective as of its date of publication. Accordingly, real and legal persons in the energy market will be subject to audits which are carried out by the Energy Market Regulatory Authority and no longer by independent auditors as determined in the Regulation Regarding Procedures and Principles to be Followed in Audits and Preliminary Investigations and Investigations Carried Out in the Electronic Market (*O.G. January 28, 2003, 25007*).

Intellectual Property

Accuracy of the Documents Submitted via Online Methods

Amendment to the Regulation on the Implementation of Statutory Decree numbered 556 regarding the Protection of Trademark has been published (*O.G. January 18, 2015, 29240*). The Amendment entails that the documents submitted for trademark applications or any other

requests via electronic means are considered as being in accordance with their originals only if the applicant or requesting party makes a statement in this direction and all documents are signed via online means. In case the applicant or requesting party makes false statements or submits inaccurate documents, such person shall undertake any legal and criminal liability. Additionally, there are some amendments made regarding the documents requested by the Turkish Patent Institute in case the address, commercial title or type of the trademark holder company is changed.

Others

- The Regulation Regarding Package Tour Contracts has been published by the Ministry of Customs and Trade (O.G. January 14, 2015, 29236).
- The Regulation Regarding Instalment Sale Contracts has been published by the Ministry of Customs and Trade (O.G. January 14, 2015, 29236).



DISPUTE RESOLUTION

The Communiqué Regarding the Tariff of Fees in the International Arbitration

The Communiqué Regarding the Tariff of Fees in International Arbitration (**the “Communiqué”**) was published in the Official Gazette dated March 4, 2015, numbered as 29285 and entered into force on March 15, 2015.

Pursuant to Article 1, the provisions of the Communiqué shall apply in cases where the parties and the arbitral tribunal cannot agree on the determination of the fees or if the arbitration agreement does not contain any provisions concerning the determination of the fees or if no reference has been made by the parties in this respect to the established international rules or institutional arbitration rules.

In the event the mandate of one of the arbitrators or the arbitral tribunal is terminated due to the following reasons specified under Article 7 of the International Arbitration Law (Law No. 4686) (O.G. July 5, 2001), the relevant arbitrator or the arbitral tribunal shall not be entitled to an arbitrator fee:

- if the arbitrator is challenged due to the fact that (i) he does not possess the qualifications that were agreed to by the parties, or (ii) there exists a reason for challenge in accordance with the arbitration procedure agreed by the parties, or (iii) the existing circumstances give rise to justifiable doubts as to his impartiality or independence,
- if the arbitrator fails to perform his duties without a justifiable reason,
- if the arbitrator becomes *de jure* or *de facto* unable to perform his functions and withdraws from his office or if the parties agree on the termination of his mandate.

The arbitrators are entitled to an arbitrator fee upon the termination of arbitration

proceedings and the amount of fee to be paid to the arbitrators shall be determined as follows from the Communiqué which is in force as of the date of the arbitral award.

The amount of the arbitrator fee shall be determined according to table below and apportioned amongst the arbitrators provided that the chairman's fee shall be 10% more than the other arbitrators:

Amount in Controversy	Fee for Single Arbitrator	Fee for Three or More Arbitrators
For the first TRY 500,000.00	5 %	8 %
For the following TRY 500,000.00	4 %	7 %
For the following TRY 1,000,000.00	3 %	6 %
For the following TRY 3,000,000.00	2 %	4 %
For the following TRY 5,000,000.00	1 %	2 %
For the amount exceeding TRY 10,000,000.00	0,1 %	0,2 %



EMPLOYMENT AND SOCIAL SECURITY

The Social Security Circular regarding the Requests made in order to benefit from the Social Security Premium Supports Retroactively

Social Security Circular No. 2015/10 (the "**Circular**") has been published by the Social Security Institution Social Security Premiums General Directorate on March 18, 2015. Under the Circular; it is stated that after an employer benefits from a specific social security premium support by choosing the respective Code number in relation to such support and preparing monthly premium and service document, such employer will not be able to change the social security premium that he has benefited before with a different support. Upon the publication of the Circular, the requests to be made by employers in that direction will be rejected by the Social Security Institution.

The Social Security Treaty between Turkey and Korea has been approved

Social Security Treaty (the "**Treaty**") which had been signed between the Republic of Turkey

and the Republic of Korea on August 01, 2012 in Ankara was ratified with Law No. 6556 dated October 14, 2014. Upon the official letter of the Turkish Ministry of Foreign Affairs dated November 25, 2014 and No. 715921; the Council of Ministers has approved the Treaty by Decree No. 2014/7101 (*published in the official gazette dated February 06, 2015 and No. 29259*).

Pursuant to Article 28 of the Treaty, this treaty will be effective on the first day of the third month following the month in which the last diplomatic and written notification is made by any party to the other party in relation to the completion of all essential domestic procedures for the enforcement of this Treaty.

The Announcement of Social Security Institution in relation to Social Security Premium Supports granted to Employers for their Disabled Employees

According to an announcement published by the Social Security Institution on February 09, 2015; employers who want to benefit from social security premium supports introduced for disabled employees in Article 30/6 of the Turkish Labor Code No.4857 do not need to submit official approval of Turkish Labor Agency (“**İŞKUR**”) regarding disabled employees to the Social Security Institution in each year. In accordance with the new practice; employers may notify their disabled employees via the screen “Disabled and Unemployment Supports Management” formed under the e-declaration program.

The Social Security Circular regarding the Lower and Upper Limits of Earnings that are subject to the Social Security Premium

Social Security Circular No. 2015/4 (the “**Circular**”) has been published by the Social Security Institution Social Security Premiums General Directorate on January 19, 2015. Under the Circular, the social security parameters varied depending on the minimum wage amounts for the year 2015 have been explained. In this regard, the amounts that shall be considered between January 01, 2015 and January 31, 2015 in relation to the lower and upper limits of the daily and monthly earnings are subject to the social security premium, administrative fines, benefit for temporary capacity, foreign service debts, social security premiums to be paid by the general insurance policy holders and voluntary insurance policy holders are explained within the scope of the Circular.

This legal newsletter has been prepared for informational purposes only; it has not been prepared for advertising purposes or with the intention of creating an attorney-client relationship. It does not seek to provide information on all legal developments in Turkey with the quarter specified. None of the information contained in this legal newsletter shall constitute legal advice or anything akin thereto. To unsubscribe email the Editor: newsletter@pekin.pekin.com