

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 This latest roundup provides insight on the latest amended and repealed laws and regulations affecting different sectors.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

Q2/2017 Amendment to the Regulation in relation to the Transactions of Banks Subject to Prior Authorization and Indirect Shareholding in Banks

The Banking Regulation and Supervision Agency amended the Regulation in relation to the Transactions of Banks Subject to Prior Authorization and Indirect Shareholding in Banks (*published in the Official Gazette dated November 1, 2006 and numbered 26333*) on June 9, 2017 with immediate effect. According to the amendment, the banks shall take the necessary security measures for their respective branches by evaluating the features of the respective branch such as its size, operating volume, physical conditions and location as well as by considering the decisions of special provincial security commission. Additionally, banks' resolutions in relation to such measures shall be justified and adopted in written form.

Q2/2017 Amendment to the Regulation on Financial Holding Companies

The Banking Regulation and Supervision Agency amended the Regulation on Financial Holding Companies (*published in the Official Gazette dated November 1, 2006 and numbered 26333*) (the "**Regulation**") on June 6, 2017 and the respective amendment (the "**Amendment**") shall be deemed effective as of January 1, 2017.

According to Article 4 of the Regulation, four conditions are required to be satisfied cumulatively by a parent company (a joint stock company established in Turkey) of which at least one subsidiary is a credit institution, in order for such parent company to be classified as a financial holding company. Prior to the Amendment, one of the conditions listed under Article 4 was that the ratio of (i) total assets average of its subsidiaries established as a bank, a financial lease company, a factoring company and a finance company; to (ii) total assets average of its subsidiaries established as a credit institution and a financial institution shall be at least 10% (including) as of the last three accounting periods.

According to the Amendment, such condition has been amended so that the ratio of (i) total assets average of one of its credit institution subsidiaries, as of the last three accounting periods; to (ii) total assets average of all subsidiaries established as a credit institution and a financial institution shall not be or exceed 95%.

Q2/2017 Council of Ministers Decree Regarding Payments which can be Made in Turkish Lira within Free Zones (Decree No. 2017/10051)

The Council of Ministers issued a decree regarding payments which can be made in Turkish Lira within free zones (Decree No. 2017/10051) (*published in the Official Gazette dated May 11, 2017 and numbered 30063*) (the "**Decree**")

with immediate effect and abolished the Council of Ministers' previous decree regarding payments which can be made in Turkish Lira within free zones (Decree No. 85/9801).

As per the Decree, all payments in free zones shall be made in Turkish Lira. Such requirement shall not apply to the payments in relation to trades between free zones and other countries. In such a case, such payments may be made in a foreign currency or in Turkish Lira. Additionally, all tariffs and fees with respect to leases, licenses, permits, documents and the services provided and activities performed by operators shall be denominated and paid in Turkish Lira.



CORPORATE

Q2/2017 General Corporate

- The Communiqué on Payments Made by Joint Stock Companies and Limited Companies In Accordance with the Law No. 4054 (Communiqué No. 2017/4) (*published in the Official Gazette dated March 31, 2017 and numbered 30024*) has been amended by a Communiqué which has been published in the Official Gazette dated April 25, 2017 and numbered 30048. Pursuant to the amendment, the fees obtained for the incorporation and capital increase procedures can be obtained by “The Union of Chambers and Commodity Exchanges of Turkey” and the payment receipts can be issued by the said authority.
- Amendments to the Application Regulation on Service Procurement Tender (“**Regulation**”) has been published in the Official Gazette dated June 29, 2017 and numbered 30109.

Article 31 of the Regulation which covers the submission of the documents has been amended. As per the amendment, the official documents which are in the scope of the Convention Abolishing the Requirement for Attestation of the Foreign Public Documents shall be exempted from attestation of The Consulate of the Republic of Turkey or the Ministry of Foreign Affairs of the Republic of Turkey. In addition, as per the amendments, in case there is an agreement between the Republic of Turkey and other States or between other States that contains provisions governing the signature, stamp or seal of the documents, the attestation of the documents issued in these countries may be made in accordance with the provisions of the agreement or contract.

- Amendments to the Application Regulation on Consultancy Service Procurement Tender (“**Regulation**”) has been published in the Official Gazette dated June 29, 2017 and numbered 30109.

Article 30 of the Regulation which covers the submission of the documents has been amended. As per the amendment, the official documents which are in the scope of the Convention Abolishing the Requirement for Attestation of the Foreign Public Documents shall be exempted from attestation of The Consulate of the Republic of Turkey or the Ministry of Foreign Affairs of the Republic of Turkey. In addition, as per the amendments, in case there is an agreement between the Republic of Turkey and other States or between other States that contains provisions governing the signature, stamp or seal of the documents, the attestation

of the documents issued in these countries may be made in accordance with the provisions of the agreement or contract.

Q2/2017 Transportation, Logistics & Defense

- The Regulation on Commercial Aviation with Very Light Aircraft has been published in the Official Gazette dated May 27, 2017 and numbered 30078 ("**Regulation**").

The Regulation sets forth the requirements for fixed wing aircrafts (under 750 kg) and rotating wing aircrafts (under 600 kg) which operate in Turkish airspace. The Regulation outlines rules for the legal characteristics the related company must possess, including ownership of share capital, licensing, aircraft registration and subscription amounts.

According to the Regulation, companies will receive up to six months to modify contradictions to the Regulation before administrative sanctions under the Turkish Civil Aviation Law (Law No. 2920) (*published in the Official Gazette dated October 19, 1983 and numbered 18196*) will be enforced.

- Amendments to The Regulation on Airport Ground Services has been published in the Official Gazette dated June 17, 2017 and numbered 30099. Article 7 regarding powers and liabilities of domestic air carriers and Article 8 regarding powers of institutions for ground services have been amended. The first subclause of the first paragraph of the Article 7 has been altered as follows:

The domestic air carrier is entitled to carry out all or some of the ground service types, except for the transportation service specified under Article 5 of this Regulation by obtaining Group B work permit for its own behalf.

First sentence of the first paragraph of the Article 8 has been altered as follows:

Domestic air carriers are entitled to carry out all or some of other types of services except for transportation services from the airport ground service types specified under Article 5 for themselves by taking working license of Group B.

Q2/2017 Consumer Goods & Retail

- The Communiqué on Branding of Turkish Products, Settling Turkish Goods Image and Supporting Turquality (Communiqué No. 2006/4) (*published in the Official Gazette dated May 24, 2016 and numbered 26177*) has been amended by Communiqué No. 2017/2 (*published in the Official Gazette dated June 1, 2017 and numbered 30083*) (the "**Communiqué**").

The Communiqué codifies the extent of the activities regarding support of the projects presented to the Ministry of Economy by Turkish Exporters Assembly, Exporters' Association, and Producers' Society and Producers' Association ("**Institutions**") which will be conducted by such Institutions, in order to promote the products which will enter foreign markets. According to the Communiqué, Institutions shall be supported for at least one and at most four years per project starting from the date they are covered by the Ministry. In addition, for each Institution, up to two projects can be supported at the same time. Pursuant to the altered version of the Article 16 of the Communiqué, to be able to benefit from the contributions, companies are

required to get Development Road Map prepared by the consultancy companies authorized by the Ministry.

In addition to above, letters of guarantee shall be taken from banks or participation banks. In the guarantees provided from foreign banks, counter guarantee of one or several of the Turkish banks or participation banks is required. All costs related to the collateral shall be covered by the bidders. The Institution is authorized to determine the scope and form of the letters of guarantee to be issued.

- Amendments to the Regulation on the Application Regulation on Product Purchase Tender ("**Regulation**") has been published in the Official Gazette dated June 29, 2017 and numbered 30109. Article 29 of the Regulation which covers the submission of the documents has been amended. As per the amendment, the official documents which are in the scope of the Convention Abolishing the Requirement for Attestation of the Foreign Public Documents shall be exempted from attestation of The Consulate of the Republic of Turkey or the Ministry of Foreign Affairs of the Republic of Turkey. In addition, as per the amendments, in case there is an agreement between the Republic of Turkey and other States or between other States that contains provisions governing the signature, stamp or seal of the documents, the attestation of the documents issued in these countries may be made in accordance with the provisions of the agreement or contract.

Q2/2017 Telecommunications, Media & Technology

- The Regulation on Internet Collective Usage Provider has been published in the Official Gazette dated April 11, 2017 and numbered 30035 ("**Regulation**").

The Regulation determines internet collective usage provider as "real persons and legal entities that provide internet facilities in a certain place and for a certain period of time" and sets forth its obligations and responsibilities such as obligation to register and keep the access record for two years.

This Regulation also regulates obligations of internet usage providers for commercial purposes and sanctions of not meeting these obligations.

Q2/2017 Industrial Property

- The Regulation Regarding the Implementation of Industrial Property Law (Law No. 6769) has been published in the Official Gazette dated April 24, 2017 and numbered 30047 ("**Regulation**").

The purpose of this Regulation is to clarify procedures and principles about protection of trademarks, geographical signs, designs, patents, utility models and traditional product names by issuing certification. The Regulation also regulates the details regarding these rights such as application procedure for the aforementioned intellectual rights, appeal procedure against Turkish Patent and Trademark Office's decisions, pre-emptive rights on designs, registry and alteration requests, renewal and licensing.

- The Regulation on the Code of Practice and Disciplinary Regulation for Patent and Trademark Attorneys ("**Regulation**") has been published in Official Gazette dated May 18, 2017 and numbered 30070.

The purpose of this Regulation is to regulate the procedures and principles related to the methodology and discipline to be pursued in determining the facts that require the disciplinary penalty for patent and trademark attorneys. Significant rules introduced by the Regulation include prohibition of aggressive marketing methods, obligation to avoid any attitude and behavior which would damage the profession's

reputation, confidentiality obligation. According to the Article 5 of the Regulation, attorneys cannot make any written or oral explanations on behalf of the Turkish Patent and Trademark Office.

It is assumed that the attorney is acquainted with the rules of the profession. Failure to follow the Code of Practice and fulfil related duties may result in disciplinary boards issuing sanctions such as warning, reprimand, suspension and dismissal.

- The Turkish Patent and Trademark Office's Re-examination and Evaluation Board Regulation has been published in Official Gazette dated May 12, 2017 and numbered 30064 ("**Regulation**").

Objections to the final judgement of the Re-examination and Evaluation Board ("**Board**") shall be made within two months starting from the notification date. The Board relies on demand and justification when examining objections. Yet, significant and severe procedural mistakes, and the circumstances which should be investigated by the board in question, may be investigated without regard to demand and justification.

A lawsuit against the final decisions of the Board shall be filed within two months from the notification of the decision to Ankara Civil Courts for Intellectual and Industrial Property Rights.

Q2/2017 Energy & Natural Resources

- The Regulation on Environmental Impacts of Gas and Types of Diesel Oil has been published in the Official Gazette dated April 1, 2017 and numbered 30025 ("**Regulation**").

The scope of the Regulation is to regulate environmental aspects of fuels used in internal combustion vehicles with positive ignition and compression ignition, including inland water vehicles, off-highway moving machinery, agriculture and forestry tractors, in terms of protection of environment and human health.

As per Article 5 of the Regulation, upon entry into force, the importation, description and presentation of the fuels defined in this Regulation shall be based on the technical specifications determined by Republic of Turkey Energy Market Regulatory Authority ("**EMRA**") within the scope of EN 228 and EN 590 standards.

Additional claims of the Ministry of Environment and Urbanization ("**Ministry**") regarding the environmental and human health features of the gas and types of diesel oil shall be evaluated by EMRA and brought into regulation if it is found convenient.

- The Regulation on Operating Organization, Quality and the Training of the Operating Personnel and Personnel License of the Operator in Nuclear Plants has been published in the Official Gazette dated April 5, 2017 and numbered 30029 ("**Regulation**").

Regulation covers the responsibilities of the legal entity authorized by the Turkish Atomic Energy Authority ("**Authority**") to grant permission or license to perform an activity related to nuclear power plants, to operate the organization, to delegate the operating personnel, application process and to examine the license of the operator and the institution.

- The Regulation on Management System in Nuclear Facilities has been published in the Official Gazette dated April 8, 2017 and numbered 30032 ("**Regulation**").

The purpose of this Regulation is to establish the basic requirements for maintaining and improving the management system in order to ensure the maintenance of precautionary safety, to develop leadership skills at all levels of management and to support a strong security culture in establishing, operating, or closure of nuclear facilities.

This Regulation shall apply to institutions which establish, operate, decommission or close nuclear plants and to all activities related to nuclear installations of such institutions.

It regulates various subjects such as principles of responsibility, leadership role of the managers and their responsibilities regarding management of the institution, security culture and resource management.

- The Regulation Regarding the Competition on Pre-Licenses Applications for Establishing Production Plant Based on Wind and Solar Energy ("**Regulation**") has been implemented by Republic of Turkey Energy Market Regulatory. The Regulation determining the rules of the above mentioned competition has been published in the Official Gazette dated May 13, 2017 and numbered 30065.
- Amendment to Regulation on Natural Gas Market Distribution and Customer Service has been published in the Official Gazette dated June 9, 2017 and numbered 30091 ("**Regulation**").

There have been several amendments on Article 14, Article 18, Article 36, Article 38, Article 44, Article 45, Article 46, Article 47, Article 48, Article 49, Article 51, Article 53 and Article 66 of the Regulation. The most remarkable amendment to the Regulation is in Article 14 which has been amended as follows:

- a) "The bid bond to be given together with the proposal and the performance bond to be given in case of obtaining the license;
- b) Turkish Lira deposits and Turkish Lira cash blocked in bank or participation bank accounts on behalf of the Institution,

The letter of guarantee for the bank or participation bank, which is issued as Turkish Lira, can be given.

- Regulation on Technical Evaluation of Applications for Solar Power has been published in the Official Gazette dated June 30, 2017 and numbered 30110 ("**Regulation**").

The purpose of this Regulation is to determine the procedures and principles of formation of technical opinion applications based on solar energy in order to ensure effective and efficient use of solar energy in the production. The scope of this Regulation is technical assessment of applications for electricity generation facilities based on solar energy.

The Regulation on Technical Evaluation of License Applications Based on Solar Energy (*published in the Official Gazette dated June 1, 2013 and numbered 28664*) has been abolished by this Regulation.



CAPITAL MARKETS

Q2/2017 Amendment on the Guideline on Material Events

Guideline on Material Events issued under the Communiqué on Material Events No. II-15.1 has been amended by the Capital Markets Board (“CMB”) decision dated May 15, 2017 and numbered 21/732.

An obligation of disclosure arises following the filing of a criminal complaint within the scope of the Article 115 of Capital Markets Law (Law No. 6362) (*published in the Official Gazette dated December 30, 2012 and numbered 28513*) by the CMB against the shareholders who directly or indirectly own at least 10% of the total capital or total voting rights of a Turkish listed company or the shareholders who own privileged shares that provide the right to choose or nominate members of the board of directors notwithstanding the above mentioned rate, in the event that there has been a decision of non-prosecution regarding the relevant parties, a lawsuit filed against the relevant parties, interim decisions regarding such lawsuits or finalization of such decisions, since these situations may affect the value of capital markets instruments, their prices or investment decisions of the investors.



DISPUTE RESOLUTION

Q2/2017 Procedure to be followed concerning divorce judgments

Registration of divorce judgment of Turkish citizens divorced abroad had been a serious problem in Turkey since it requires action for recognition or enforcement of foreign court judgments before Turkish courts. However, The Ministry of Justice and Abroad Turkish Citizens and Relative Communities concluded a work in order to solve this problem. The solution is not limited with only Turkish citizens but also covers all foreigners divorced abroad.

Decree Regarding Regulations To Be Made In the Scope Of State Of Emergency (Decree No. 690) (*published in Official Gazette dated April 29, 2017 and numbered 30052*) has brought a new system on registration of divorce judgments rendered by foreign courts or administrative authorities with state register by way of adding Article 27/A to Law on Civil Registration Services (Law No. 5490) (*published in Official Gazette dated 26 April, 2006 and numbered 26153*).

Pursuant to new regulation, judgments regarding annulment, nullity or existence of marriage and judgments of divorce rendered by foreign courts or administrative authorities shall directly be registered with state register without obtaining any recognition or enforcement judgment in Turkey provided that (i) application for registration should be made by both parties or their attorneys (ii) judgment should be rendered by a judiciary or an administrative authority which is deemed competent in that subject pursuant to legislations of relevant state and should have been duly finalized (iii) judgment should not be clearly against public order of Turkey. In case such conditions are not met, parties are obliged to apply to Turkish Court in order to obtain recognition or enforcement judgment for registration.

Relevant transactions to be made with state register shall be carried out by foreign representatives of Turkey located in the place where the relevant judgment was rendered or domestic Civil Registry Offices designated by Ministry of Domestic Affairs.

Therefore, provided that the above mentioned conditions are fulfilled, without the requirement of action for recognition or enforcement, parties will be counted as divorced by Turkish authorities within the scope of judicial authority decisions rendered abroad.



EMPLOYMENT

Q2/2017 Restructuring of Public Receivables followed by Social Security Institution

The Law regarding the Restructuring of Certain Receivables and Amendments on Certain Laws and one Statutory Decree (Law No. 7020) (*published in the Official Gazette dated May 27, 2017 and numbered 30078*) ("**Restructuring Law**") entered into force on the date of its publication.

Public Receivables falling under the scope of Restructuring Law:

The following public receivables which are related to March 2017 and the previous periods and which have not been paid until the publication of Restructuring Law will be subject to the restructuring.

- Social security premium, unemployment insurance premium, retirement pension and institution provision, social security support premium;
- Stamp tax, special transaction tax and contribution to education amount followed by Social Security Institution ("**SSI**");
- Voluntary insurance premiums and community insurance premiums belonging to individuals;
- Administrative fines;
- Difference arising from minimum workmanship premium;
- Social Security support premium of 4/b (Bag-Kur);
- Public receivables arising from the failure of employers and individuals to fulfil or to comply with their obligations in relation to the occupational diseases, sickness, maternity, disablement, ordinary disablement and death in accordance with the relevant provisions of Laws No. 5510, No. 506, No. 1479 and No. 5434.

Application Period and Payment Procedure:

In order to benefit from the restructuring of accrued receivables according to the Restructuring Law, the application must be made until June 30, 2017 and the first two instalments of the amounts must be paid to the respective collection offices of the SSI until August 31, 2017 (including this date).

Instalment period, interest to be applied and calculation shape:

Persons benefiting from the restructuring provisions will have a choice to pay their restructured debts either in instalments or in advance.

Those who use option to pay in instalments will be able to pay 6, 9, 12, 18 equal instalment debts in two-month periods.

In the event that the calculated amount is fully paid within the first instalment payment period; no interest will be calculated for the period from the date of issuance of the Restructuring Law to the date of payment, and 50% discount will be apply to the amount which will be calculated on the basis of monthly change rates of YI-UFE instead of accessory receivables.

Payments to be made by instalments will be multiplied by the following coefficients depending on the payment period. Subsequently, the instalment amount to be paid in two-month periods will be calculated by dividing the amount found in instalments.

- For 6 equal instalments (1,045),
- For 9 equal instalments (1,083),
- For 12 equal instalments (1,105),
- For 18 equal instalments (1, 15).

Q2/2017 Insurance Premium Incentive for the Employment of Social Assistance Recipients

As known, through the Law No. 6704 (*published in the Official Gazette dated April 20, 2016 and numbered 29695*), there has been an arrangement for the insurance premium incentive for the employers employing social assistance recipients.

The Regulation (*published in the Official Gazette dated June 06, 2017 and numbered 30104*) outlined the procedures and principles regarding the application of insurance premium incentive for the employment of social assistance users.

The issues which are explained within the scope of the Regulation are as follows;

- Purpose of the incentive for the employment of social assistance recipients;
- Conditions for employing premium incentives for workers;
- Conditions for benefiting from incentives in terms of workplace;
- Incentive amount;
- Functioning of insurance premium support;
- Application form;
- Situations where aid cannot be implemented.

The Regulation will enter into force on January 1, 2018.

Q2/2017 Announcement regarding the Utilization of Minimum Wage Support for Workplaces Signing Collective Labour Agreement

Employers who have declared that they cannot benefit from the updated minimum wage support although they signed collective labour agreement between the periods May 1, 2017 and December 31, 2017 are required to apply to the Ministry of Labour and Social Security, The General Directorate of Labour's Union Membership and Department of Statistics.

Q2/2017 Circular on the Restructuring of Social Security Institution Receivables

Through the Circular (Circular No. 2017-21) issued by the SSI, the procedures and principles regarding the application of the restructuring of public receivables followed by the SSI were explained and the forms and documents that will be used in the restructuring have been published.

Certain issues which are explained under the Circular would be stated as follows:

- Type and period of receivables in the scope of restructuring;
- Period of application to restructuring, place, form and instalment payment periods;
- Procedures and principles of restructuring;
- Debts which are not included in the scope of restructuring.

Q2/2017 Amendment to the Regulation on Vocational Training for the Employees working in the Hazardous and Most Hazardous Occupations

The Regulation on the Amendment to the Regulation on Vocational Training for the Employees working in the Hazardous and Most Hazardous Occupations (*published in the Official Gazette dated May 11, 2017 and numbered 30063*) was entered into force.

Through this Regulation;

- It becomes compulsory for employees to have the professional qualification certificates given in the Regulation on Examination, Measurement, Evaluation and Documentation of the Vocational Qualifications Authority (*published in the Official Gazette dated October 15, 2015 and numbered 29503*);
- Employees must complete at least 32 hours of training modules in order to be considered as having received vocational training.

Q2/2017 Circular regarding the Amendments on the Implementation of General Health Insurance and Restructuring of General Health Insurance Receivables

Certain amendments were made in the implementation of General Health Insurance with the Law No. 6824 (*published in the Official Gazette dated March 8, 2017 and numbered 30001*).

This time, the Circular (No. 2017-16) of the Social Security Institution and the procedures and principles regarding the application are explained.

The procedures and principles explained in the Circular are as following:

- Fixed GHI premium amount and registration procedures for insured people within the scope of 60 / g;
- GHI coverage of Turkish citizens who do not reside in Turkey, those who are reported to be Turkish nobility;
- Restructuring and Calculation of General Health Insurance debts.

Q2/2017 The Ratification of Social Security Treaty between Turkey and Belgium

Social Security Treaty (the “**Treaty**”) which had been signed between the Republic of Turkey and the Kingdom of Belgium on April 11, 2014 in Ankara was ratified with Law No. 6982 dated April 3, 2017 (*published in the official gazette dated April 03, 2017 and numbered 30027*).

Pursuant to Article 56 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. At the time of the entry into force of the Treaty, the General Social Security Treaty signed between the Republic of Turkey and the Kingdom of Belgium on July 2, 1966 in Brussels and the texts which amended or supplemented this Treaty shall be abolished.

Q2/2017 The Ratification of Social Security Treaty between Turkey and Hungary

Social Security Treaty (the “**Treaty**”) which had been signed between the Republic of Turkey and Hungary on February 24, 2015 in Budapest was ratified with Law No. 6961 dated April 03, 2017 (*published in the official gazette dated April 03, 2017 and numbered 30027*).

Pursuant to Article 47 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.

Q2/2017 The Ratification of Social Security Treaty between Turkey and Tunisia

Social Security Treaty (the “**Treaty**”) which had been signed between the Republic of Turkey and the Republic of Tunisia on May 28, 2013 in Ankara was ratified with Law No. 6981 dated April 04, 2017 (*published in the official gazette dated April 04, 2017 and numbered 30028*).

Pursuant to Article 47 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.

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