

Banking & Finance

Amendment to the Council of Ministers Decree on Resource Utilisation Support Fund

Resource Utilisation Support Fund (Kaynak Kullanımını Destekleme Fonu) ("RUSF") imposed by the Decree of the Council of Ministers of Turkey (Decree No. 88/12944) has been amended by the Decree of the Council of Ministers of Turkey (Decree NO. 2011/2519) wherein it is stipulated that the importation of electricity and any credit/loan obtained for the financing of such shall be exempt from RUSF.

Amendment to the Communiqué on Legal Reserves

Communiqué on Legal Reserves (published in the Official Gazette dated November 16, 2005 and numbered 25995) (the "Communiqué") has been amended pursuant to which banks may not set aside legal reserves (i) in a foreign currency (US dollars or euros) exceeding 40% of their Turkish lira liabilities and/or (ii) in standard gold exceeding 20% of their Turkish lira liabilities.

Cheque Law

Cheque Law (Law No. 5941) has been amended by the Law No. 6732 (published in the Official Gazette dated February 3, 2012 and numbered 28193). Pursuant to the amendment, in the event a cheque bounces, the drawer of the dishonoured cheque will be banned from drawing cheques and/or opening checking accounts with banks for 10 years by the judgment of the public prosecutor. Such judgment shall be lifted if the amount of the dishonoured cheque is paid in full together with the default interest to be calculated in accordance with the "default interest rate in commercial transactions" as specified under the law for the period between presenting the cheque for payment and the actual date of payment. Additionally, such ban shall be lifted *ex officio* at the expiry of 10 years by the Central Bank.

Furthermore, it is envisaged that cheques shall be issued in different forms for (i) merchants and (ii) non-merchants. Accordingly, merchants using non-merchant cheque books for cheques drawn by them or another person on behalf of them for business purposes shall be sentenced to imprisonment for a period of six months and two years. In addition, (i) persons who make false declarations shall be sentenced to imprisonment for a period between three months and two years, (ii) persons who draw cheques regardless of the fact that they are barred from drawing cheques and opening checking accounts shall be sentenced to imprisonment for a period of between one and three years unless such action of the drawee necessitates heavier sanctions to be applied, (iii) persons who draw bearer cheques without using the appropriate bearer cheque leaf shall be given an administrative fine of TL300 to TL3,000 per leaf, and (iv) persons who issue or cause to be issued cheque books without the relevant authority shall be sentenced to imprisonment for a period of between two and five years and be given a judicial fine of up to 1,500 days.

Furthermore, banks and their employees shall be subject to the following sanctions under the following circumstances:

(i) a bank employee who issues a merchant cheque book to a person who is not a merchant shall be given a judicial fine of between 50 and 150 days;

(ii) a bank employee who issues a cheque book "x" to a person without obtaining the necessary declaration or "y" to a person barred from drawing cheques and/or opening checking accounts or "z" to a legal entity in which a person who is barred from drawing cheques and/or opening checking accounts is working as part of the management or as a representative shall be given a judicial fine of between 50 and 150 days;

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(iii) a bank employee who refuses to carry out actions for dishonoured cheques as set out under the Cheque Law shall be sentenced to imprisonment of up to one year, provided that a complaint has been filed in this respect;

(iv) a bank employee who does not make a payment even though there are sufficient funds to honour a cheque or who refuses to make the minimum payment required by the Cheque Law for dishonoured cheques shall be sentenced to imprisonment of up to one year, provided that a complaint has been filed in this respect;

(v) a bank employee who opens a checking account for a person or entity that is barred from opening a checking account and/or drawing cheques shall be sentenced to imprisonment for a period of between three months and one year; and

(vi) if a bank acts contrary to its obligations regarding the obtainment and retaining of necessary documents or, if the bank fails to give the address of the drawer of such cheque to the holder of the cheque where a cheque is dishonoured, the relevant bank shall be given an administrative fine of TL500-5,000.

See also Dispute Resolution - Bounced Cheques

Capital Markets

Amendment to Corporate Governance Principles

The Communiqué Serial: IV, No: 56 on corporate governance principles which applies to companies listed on the Istanbul Stock Exchange ("ISE"), has been revised by the Capital Markets Board ("CMB") via an amendment published in the Official Gazette dated February 11, 2012 and numbered 28201. The important amendments are as follows:

At least half of independent directors shall either be domiciled in Turkey or shall stay in Turkey for more than six months in a calendar year. Prior to the amendment, this condition was required for all independent directors.

Important amendments have been introduced for significant transactions (e.g. transferring or renting out all or a significant portion of company assets, establishing rights *in rem* on all or a significant amount of company assets, and granting privileges to third parties or changing the scope and subject of already provided privileges), which can be directly executed if the majority of independent directors provide their consent. General assembly approval is required if the majority of independent directors do not approve such transactions and the BoD insists. The CMB has also brought in certain disclosure requirements for these procedures.

The requirement on the number of independent directors representing the free float rate of the company has been abolished. The amendment requires that independent directors shall comprise one-third of the BoD.

Further to the amendment, independent directors may be appointed for a term of up to three years, instead of a period of three years.

The amendments also include the requirement to appoint a woman to the BoD of a listed company.

Amendment to Real Estate Investment Companies Communiqué

The Communiqué on Principles regarding Real Estate Investment Companies ("REICs") was amended by the CMB on January 31, 2012. Further to the explanation by the CMB, the amendment seeks to adapt REICs with the evolving needs of the market and corporate governance requirements. The amendment enables REICs (i) to use advisory services provided by related parties within the fee cap determined by the CMB, (ii) to open participation accounts at participation banks, and (iii) to issue lease asset-backed

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securities. Furthermore, the rules on the independent directors of real estate investment trusts have been harmonised with the corporate governance principles for listed companies.

Registered Capital System Threshold Decrease

As per the amendment published in the Official Gazette dated February 29, 2012 and numbered 28219, the threshold to enter into the registered capital system has been decreased from TL3,500,000 to TL100,000.

ISE Authority to Prevent Manipulation

As per a new article added to the ISE Regulation following its publication in the Official Gazette dated February 28, 2012 and numbered 28218, the ISE Board has been authorised to take preventive measures, as necessary, regarding real and legal persons trading on the ISE if their actions would be deemed dangerous and preventing open, organised and honest trading on the ISE. If these actions reoccur, the ISE can make a decision to boycott these persons for a period of up to 180 days. Names and titles of persons subject to said measures shall be published in the Public Disclosure Platform.

Competition and Energy

Market Report

The Competition Board (the "Board") issued a report (the "Report") in March 2012 aiming to determine the competition conditions in certain markets, the behavioural, structural and legal reasons that hinder the development of competition in the same and to offer solutions to the relevant decision-makers to set aside such problems. The Report analyses and comments on the energy, transportation, broadband internet access, digital platform management, banking, pharmaceuticals and fast moving consumer goods retail markets¹.

Here are the findings and comments of the Board related to the energy market:

Electricity Market

Effective regulations shall be enacted to separate the transmission and distribution operations, which are considered natural monopolies, from other related operations open to competition.

Precautions will be taken to decrease the transition costs to maintain a competitive environment in retail sales including sales to households. Further coordination between the Board and the Electricity Market Regulatory Authority to more effectively continue the liberalisation of the market and to support the competitive structure related to the same shall be established.

Natural Gas Market:

Transmission and distribution operations, which are considered natural monopolies, shall be effectively regulated.

A competitive pricing structure shall be established.

The concentration in the market, which has a history of public monopoly, shall be decreased.

BOTAS shall be restructured to better serve its purpose.

¹ The Board has further categorised certain markets e.g. the energy market and has separately analysed and commented on the electricity market and natural gas markets as sub-categories of the energy market.

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Dispute Resolution

Bounced Cheques

In the judgment of the Court of Appeals dated September 20, 2011 (File No. 2011/9584 E., 2011/10582 K.) the argument was whether banks are subject to a prescription period of six months or 10 years for making payments in return for bounced cheques in accordance with Article 10 of the Law Pursuant to the Regulation of Payments by Cheque and Protection of Cheque Holders (Law No. 3167) which states that in case of a bounced cheque or an insufficient balance, banks are obliged to make payments to person other than the drawers of such cheques up to the amount of TL20,000.

In its judgment the Court of Appeals approved the decision of the Local Court, which states that with regard to bounced cheques, banks are subject to a prescription period of 10 years for making the payment of the amount that they are legally liable for.

Employment & Labour Law

Foreign Health Professionals

The Regulation on the Working Procedures and Principles of Foreigners in Private Health Institutions was published in the Official Gazette dated February 22, 2012 and numbered 28212. Such regulation covers all foreign members of the health professions except dentists, pharmacists, midwives and nurses who work in private health institutions. Moreover, such regulation states the requirements for foreign health professionals who wish to exercise their profession in Turkey.

Energy & Climate Change

Liability of Electricity Market Players

The Electricity Market Balancing and Reconciliation Regulation (published in the Official Gazette dated April 14, 2009 and numbered 27200) was amended on March 3, 2012. The Amendment Regulation sets forth new sanctions regarding the security increase liability of market participants.

Natural Gas Storage

A new regulation on The Election of Legal Entities that Applied to Perform Natural Gas Storing Activities in the Same Place was issued on February 21, 2012. This regulation aims to regulate the evaluation criteria for natural gas storage license applications and procedures for election among the legal entities that applied to obtain this license in the event that more than one legal entity applied for the same area.

Wind & Solar

A new Communiqué on the Measurement Standards Regarding Wind Power and Solar Power License Applications was issued on February 22, 2012. This Communiqué regulates procedures for the measurement to be made in compliance with the standards in license applications by determining essential issues such as the obligations of applicants, location and construction of the measurement stations, and measurement period and records of the measurement data.

Akkuyu Nuclear PP

A new circular on the Akkuyu Nuclear Power Plant Project was issued on March 21, 2012. This circular sets forth that all governmental bodies will conclude promptly all

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kinds of procedures regarding the completion of the Akkuyu Nuclear Power Plant Project.

See also Competition – Market Report and Banking & Finance - Amendment to the Council of Ministers Decree on Resource Utilisation Support Fund

Tax

New Incentive Package

The Ministry of Economics has recently announced the enactment of a new economic incentive package. Currently, the Turkish government supports the following three incentive packages:

- 1. General Incentive:** VAT exemption, customs tax exemption
- 2. Regional Incentive:** VAT exemption, customs tax exemption, tax reduction, social security premium support, allocation of premises for investment, interest payment support
- 3. Incentive for Large Scale Investments:** VAT exemption, customs tax exemption, tax reduction, social security premium support, allocation of premises for investment

With the new incentive package, a fourth and new incentive, namely the "Incentive for Strategic Investments" will be available to investors. The advantages provided under the same are as follows:

- 4. Incentive for Strategic Investments:** VAT Exemption, customs tax exemption, tax reduction, social security premium support, allocation of premises for investment, VAT return

Furthermore, the new incentive package will provide relief regarding withholdings available on income tax, prolonged support in organised industrial zones and further expense deduction. Pursuant to the new incentive package, priority investments, such as investments related to mining, transportation of people and goods by railway or sea, education institutions (i.e. primary, middle and high schools), pharmaceuticals and the defence sector will enjoy a further tax reduction, social security premium support and interest payment support.

A new regime for regional investments has also been determined under the new incentive package, such that each city in Turkey has been placed in a certain zone on the basis of the level of development and any investment in the least developed cities will enjoy maximum incentives.

Transportation

Air Travel

Civil Aviation Safety Management System Regulation was enacted on January 13, 2012 introducing certain safety measures in parallel with the ICAO Document 9859, which includes safety policies and safety risk management.

Pharma, Healthcare & Biotechnology

Transplantation Services

The Regulation on Organ and Tissue Transplantation Services was enacted by the Ministry of Health on February 1, 2012, introducing principles and procedures to be complied with during the provision of organ and tissue transplantation services and

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setting forth a supervision mechanism with respect to the transplantation activities performed by organ and tissue source centres and laboratories.

Intensive Care Units

The Communiqué Regarding the Implementation of Principles and Procedures for Intensive Care Unit Services in Health Facilities with Beds (published in the Official Gazette dated July 20, 2011 and numbered 28000) was amended on February 18, 2012. Such amendment includes changes with respect to the minimum bed and space requirements in intensive care units as well as room qualifications.

Telecoms, Media & IT

Internet Services

The Communiqué on the Service Quality Regarding Internet Service Provider Management was enacted on February 17, 2012, introducing principles and procedures with respect to the measurement of service quality by internet service providers, excluding mobile communication service providers.

Call Centre Quality Targets

A new Communiqué on the implementation of Annex 4 of the Regulation on Electronic Communication Service Quality was on March 17, 2012. This Communiqué aims to regulate call centre services by specifying the rules and procedures regarding the assessment and the supervision of service quality and the determination of target values.

Industrial Manufacturing & Service Industries

CE Mark

A new regulation on the CE Mark was issued on February 23, 2012. This regulation aims to regulate the rules and procedures of CE Mark usage by specifying the usage and conformity assessment methods and procedures.

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