

Banking & Finance

Establishment and Operation of Financial Leasing, Factoring and Financing Companies

The Regulation on the Establishment and Operation Principles of Financial Leasing, Factoring and Financing Companies (*published in the Official Gazette dated April 24, 2013 and numbered 28627*) has been issued by the Banking Regulatory and Supervision Agency ("BRSA"). Back in December the Law on Financial Leasing, Factoring and Financing Companies (*published in the Official Gazette dated December 13, 2012 and numbered 28496*) was put into force to replace previous laws governing financial leasing, factoring and financing companies. A number of matters that were introduced under this law have been regulated in more detail under the regulation including setting out the procedures to follow when there is BRSA involvement. This includes transactions which require BRSA approval such as incorporation, obtaining an operation licence, opening branches in Turkey or abroad, share transfers, merger, acquisition and liquidation and transactions that only require a notification to the BRSA such as amendments to Articles of Association. In addition, the regulation sets out corporate governance rules and accounting principles (including a description of the types of credit facilities that should be considered as subordinated debts when calculating equity) applicable to financial leasing, factoring and financing companies.

Amendment to Communiqué on Statutory Reserves

The Communiqué on Statutory Reserves (Communiqué No. 2005/1) (*published in the Official Gazette dated 16 November 2005 and numbered 25995*) (the "**Communiqué**") was amended on 17 May 2013 to enter into force as of 24 May 2013. The amendment to Article 5 of the Communiqué amends statutory reserve ratios depending on the type of account held with the Central Bank.

Amendment to 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*) was amended on 19 April 2013 to enter into force as of 1 June 2013. The amendment to the first paragraph of Article 8 of the Communiqué introduces amendments, adds and removes certain accounts. For a detailed list, please refer to the Communiqué.

Amendment to Regulation on Loan Operations of Banks

Paragraph 2 of Article 4 of the Regulation on Loan Operations of Banks (*published in the Official Gazette dated April 30, 2013 and numbered 28633*) was amended by the BRSA to be effective as of 30 April 2013. The amendment provides that paragraph 4 of Article 5 shall not apply to members of the Board of Directors or General Directors of a bank or companies that fall within the scope of a bank's risk group in cases where loans will be granted to persons or entities that fall within the bank's risk group. Paragraph 4 of Article 5 provides that persons authorised to extend loans shall not participate in decision making processes in cases where loans will be granted to themselves, their spouses and children or other real or legal persons falling within the risk group.

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Fethi Pekin
Managing Partner
fpekin@pekin-pekin.com

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Amendment to Communiqué on Deposit and Credit Interest Rates and Participation Rates to Profit and Loss of Participation Accounts and Benefits Banks Generate from Loan Transactions other than Interest (Communiqué No: 2006/1)

Article 4 of the Communiqué on Deposit and Credit Interest Rates and Participation Rates to Profit and Loss of Participation Accounts, and Benefits Banks Generate from Loan Transactions other than Interest (Communiqué No: 2006/1) (*published in the Official Gazette dated December 9, 2006 and numbered 26371*) has been amended. As per the amendment, the maximum contractual and default interest rates on the overdraft accounts shall not exceed the contractual and default interest rates set forth under Article 3 of the Communiqué on Maximum Interest Rates to be imposed on Credit Card Transactions (Communiqué No: 2006/1) (*published in the Official Gazette dated April 2, 2006 and numbered 26127*). With this amendment, maximum interest rates and advantages other than interest to be imposed by banks on loans other than the credits originated from rediscounts shall freely be determined on the condition that the maximum contractual interest rate will not exceed 2.12% for TL, 1.70% for USD and 1.64% for EUR and the default interest rate will not exceed 2.62% for TL, 2.20% for USD and 2.14% for EUR.

Amendment to the Communiqué on Decree No. 32 on the Protection of the Value of Turkish Currency

Articles 3, 5 and 6 of the Communiqué on Decree No. 32 on the Protection of the Value of Turkish Currency (*published in the Official Gazette dated May 29, 2008 and numbered 26890*) have been amended to enter into force immediately. As per the amendment to Article 3, transfers of gold, silver and platinum from local or foreign bank accounts have also been recognized as a way of creating depository accounts of gold, silver and platinum whereas the previous version only allowed physical delivery or sale by banks. The purity rate of 1000/1000 for gold and 100/100 for silver and platinum is required for the electronic transfer of gold, silver and platinum. In addition, pursuant to Article 5 of Communiqué, purity rates, to which the gram correspondence of gold depository accounts will be converted, have been changed to 995/1000 and 1000/1000. The rates for silver and platinum depository accounts have been preserved. Finally, as per the amendment to Article 6, profit share is also mentioned amongst the types of revenues that may be generated from gold, silver or platinum depository accounts.

Principles and Procedures for the Implementation of the Law on Combat against Financing of Terrorism

The Regulation on Principles and Procedures for the Implementation of the Law on Combat against the Financing of Terrorism (*published in the Official Gazette dated May 31, 2013 and numbered 28663*) has been put into force by the Ministry of Justice, Ministry of Internal Affairs, Ministry of External Affairs and the Ministry of Finance to enter into force immediately. The regulation introduces detailed provisions for implementation of the measures laid out under the Law on Suppression of the Financing of Terrorism (Law No. 6415) (the "**Law No. 6415**") (*published in the Official Gazette dated February 16, 2013 and numbered 28561*). The Law No. 6415 had been put into force with a view to adopt provisions of the International Convention for the Suppression of the Financing of Terrorism and resolutions of the United Nations Security Council on terrorism and suppression of financing of terrorism. The regulation lays out procedures to be followed for implementation of asset freezing requests from the United Nations Security Council or other States as well as requests from Turkey for implementation of asset freezing requests in other States. Principles and procedures of implementing and legal consequences of implementing asset freezing decisions are also regulated. Finally, the regulation introduces provisions on management and control of frozen assets and duties of a commission which will act as a supervisory organ to monitor implementation of the regulation.

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Interest Rates Imposed on Credit Card Operations as per the Amended to Communiqué numbered 2013/9

Article 3 of the Communiqué on Maximum Interest Rates imposed on Credit Card Operations (*Communiqué numbered 2006/1 and published in the Official Gazette dated April 2, 2006 and numbered 26127*) has been amended to enter into force as of July 1, 2013. The amendment regulates the maximum contractual and default interest rates imposed on credit card operations. As per the amendment, the maximum monthly contractual interest rate shall not exceed 2.12% for Turkish lira, 1.70% for USD and 1.64% for EUR currencies, whereas maximum monthly default interest rate shall not exceed 2.62% for Turkish lira, 2.20% for USD and 2.14% for EUR currencies.

Capital Markets

New Communiqué on Real Estate Certificates

The Capital Markets Board ("CMB") has introduced a new Communiqué on Real Estate Certificates ("Communiqué No: VII-128.2"); *published in the Official Gazette dated July 5, 2013 and numbered 28698* which is in line with the new Capital Market Law and aims to reflect recent conditions of the market. Communiqué No: VII-128.2 regulates that real estate certificates can be issued through public offering or by selling to qualified investors with or without public offering. In addition to that, the CMB stipulates that the issuers are obliged to obtain bank guarantees for the public offering of real estate certificates and in any case said guarantees cannot be less than the issuance value of the relevant real estate certificates. Real estate certificates can be issued both in local and foreign markets.

A New Communiqué on Issuance of Capital Market Instruments

On June 28, 2013 the Communiqué on Issuance of Capital Market Instruments (the "Communiqué No. II-5.2") was published in the Official Gazette numbered 28691.

Communiqué No. II-5.2 enables, in the event of any issues where the book-building method is applied, the book-building forms may be signed by the investors may be signed via electronic signatures or may be filled out and confirmed without electronic signature, provided that the required security measures are taken by the authorised institutions.

For the sale of the capital market instruments through public offering, the Communiqué No. II-5.2 provides new instruments (the shares listed under the BIST-30 Index, Eurobonds and private sector debt instruments traded at the exchange) as the assets to be blocked.

The upper limit for the number of natural and/or legal persons to buy the capital market instruments by way of private placement is increased to 150, in accordance with the European Union regulations.

The Communiqué No. II-5.2 provides that the application of the book-building method for an issuance of the capital market instruments does not mean that those demands shall be satisfied.

A New Communiqué on Prospectuses and Issuance Certificates

Communiqué on Prospectuses and Issuance Certificates ("Communiqué No. II-5.1", *published in the Official Gazette dated June 22, 2013 and numbered 28685*) is promulgated, within the scope of adaption of European Union Regulations.

Under the Communiqué, issuers are granted flexibility in terms of issuing either one stand-alone prospectus or a set of documents including information notes regarding the

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issuer, capital market instrument note and the briefs. Furthermore, certain requirements and exemptions for preparation of prospectus are re-arranged. Meanwhile as a new issue brought by the Communiqué No. II-5, issuance certificates shall be prepared and approved where the capital market instruments are issued without public offering or issued in abroad or issued without providing prospectuses or circulars.

New Share Communiqué

The new Capital Market Law (numbered 6362) provides several new concepts such as approval of the prospectus instead of registration of the capital markets instruments and issuance of shares below their nominal value. In this regard, the Communiqué on Principles for the Sale and Registration of the Shares with the CMB (Serial No. I/40) and Communiqué on Principles Regarding Issuance of Participated Dividend Shares (Serial No. III/10) were required to be revised and replaced with the Share Communiqué (the "Communiqué No: VII-128.1, published in the Official Gazette dated June 22, 2013 and numbered 28685). Under the Communiqué No: VII-128.1, provisions regarding share issuances of publicly held companies are regulated in line with the Capital Market Law. In addition, several issues including but not limited to the principles regarding the initial public offering of shares, capital increase, conditional capital increase and issuance of shares below their nominal value, issuance of participated dividend shares, and quasi-equity instruments are also regulated under the Communiqué No: VII-128.1.

A New Communiqué on Debt Instruments

Communiqué on Debt Instruments ("Communiqué No: II-31.1", published in the Official Gazette dated June 7, 2013 and numbered 28670) entered into force on July 7, 2013. Under the Communiqué, issuance limits of the issuers defined under the Communiqué, have increased depending on their credit rating. In addition, under the Communiqué No: II-31.1, issuers could be provided with additional issuance limits under the same conditions (i.e. credit ratings). Furthermore, the capital markets instruments which are deemed as the debt instruments based on their qualifications are also regulated under the Communiqué No: II-31.1. Moreover, the CMB has also regulated the local and foreign issue limits and exchange rates applicable for issuances in foreign currencies.

A New Communiqué on Principles Regarding Real Estate Investment Trusts

Communiqué on Principles Regarding Real Estate Investment Trusts ("Communiqué No: III-48.1") was published in the Official Gazette dated May 28, 2013 and numbered 28660. According to the announcement made by the CMB, this Communiqué reduced procedural obligations of real estate investment trusts in terms of obtaining approvals from the CMB for incorporation, transformation and share transfers following public offerings. Furthermore, the CMB has provided the real estate investment trusts with new finance opportunities by enabling them to issue real estate certificates. Under the Communiqué No: III-48.1, the CMB aimed to develop public disclosure requirements and increase transparency for related party transactions by bringing in new obligations for real estate investment trusts.

Competition

Update on secondary legislation

As indicated in our Q1 Newsletter, the Competition Board is working heavily on the formulating of secondary legislation of competition law, which may be argued to lack significant regulations to date, since the beginning of the year. In the second quarter of the year, the Competition Board finalized and enacted the Block Exemption Communiqué on Specialization Agreements, Communiqué No. 2013/3 (the "Communiqué") and issued a new guideline on horizontal cooperation agreements ("Guidelines"), among other preparations such as announcement of the draft guidelines on the assessment of abuse of dominant position through exclusionary behaviour.

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Subject to terms and conditions therein, the Communiqué will be applicable to unilateral specialisation agreements¹, reciprocal specialisation agreements² and joint production agreements³ between two or more parties which are active in the same product market and the combined market share of whom does not exceed 25%; and will allow these agreements to be exempt, as a group, from the application of Article 4 of the Law No. 4054. It is expected that the Communiqué, together with the further clarifications provided by the Guidelines (although the scope of the Guidelines is wider than specialisation agreements and covers all horizontal cooperation agreements) will be an important tool for undertakings operating in the same product market and envisaging a cooperation for specialization in production or distribution.

Corporate

Stock Corporations Websites

Regulation on Internet Websites to be Opened by Stock Corporations was published on May 31, 2013. This Regulation covers the procedures and principles for websites of corporations. This Regulation also covers the content of websites and the time period websites shall be opened.

Communiqué on Commercial Books

The Communiqué on Commercial Books (*published in the Official Gazette dated December 19, 2012 numbered 28502*) was amended on June 6, 2013. The amendments are with respect to the closing date and form of the approval of the legal books of the Company.

Communiqué on Electronic General Assembly System applied to meetings of Joint Stock Companies' General Assemblies

The Communiqué on Electronic General Assembly System applied to the meetings of the Joint Stock Companies' General Assemblies was amended on June 29, 2013. The amendment covers articles on voting and the period of voting.

Communiqué on required provisions in the Articles of Association of Joint Stock Companies and Limited Liability Companies under Turkish Commercial Code

The Communiqué on **required provisions in the** Articles of Association of Joint Stock Companies and Limited Liability Companies under the Turkish Commercial Code was published on June 29, 2013. The Communiqué is about the postponement of the deadline for Companies to comply their Articles of Association with Turkish Commercial Code. As per the Communiqué the deadline for amendments of the Articles of Association has been postponed to July 1, 2014.

¹ agreements by virtue of which one party agrees to fully or partly cease the production of certain products or to refrain from producing those products and to purchase them from the other party, who agrees to produce and supply those products

² agreements by virtue of which two or more parties on a reciprocal basis agree to fully or partly cease or refrain from producing certain but different products and to purchase these products from the other parties, who agree to produce and supply them;

³ agreements by virtue of which two or more parties agree to produce certain products jointly;

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Consumer Goods & Retail

Regulation on Vegetables and Fruits Trade and Wholesaler Market

The Regulation on Vegetables and Fruits Trade and Wholesaler Market (*published in the Official Gazette dated July 7, 2012, numbered 28346*) was amended on July 1, 2013. The amendments cover the articles on transfer of the place of business, vendors and purchasers and notifications.

Dispute Resolution

Regulations on Website to be opened by equity companies

Among the innovations brought by the Turkish Commercial Code numbered 6102, a significant increase regarding the provisions related to "transparency in business" is notable. Pursuant to Article 1524 of the Turkish Commercial Code it became obligatory for equity companies to set up a website and make announcements as set forth in the relevant legislation.

In that respect, the Regulation on the Websites to be Opened by Equity Companies ("**Regulation**") (*Published in the Official Gazette dated May 31, 2013 and numbered 28663*) entered into effect on July 01, 2013. The purpose of the Regulation is to regulate the required procedure and principles regarding opening websites by equity companies in order for them to publish the legally mandatory announcements in accordance with Article 1524 of the Turkish Commercial Code.

Pursuant to the Regulation, companies to be incorporated following the entry into effect of the said Regulation must open a website within three months starting from the date of registration with the relevant Trade Registry and must allocate a part of that website to publish the required legal announcements.

The Regulation also stipulates that the following information must be permanently published on the website: (i) Central Registry System Number (MERSIS) of the company, (ii) commercial title of the company, (iii) registered office of the company, (iv) undertaken capital and paid capital of the company, (v) names and surnames of the chief of and members of the board of directors at joint stock companies; directors of the board of directors at limited liability companies; managers of limited partnerships divided into shares, (vi) in the event a legal entity became member of the board of directors at joint stock companies or limited liability companies, explanation on the real person acting as the representative of that legal entity, name and surname of that real person as well as the Central Registry System Number (MERSIS) of that company, commercial title of that company, registered office of that company, (vii) name and surname/commercial title of the appointed auditor, place of residence/place of its registered office, information on its registered branch, if any.

There are also other types of information stated within the Regulation which are required to be published during the relevant periods (for instance six months) on the websites.

Furthermore, concerning the companies established prior to entry into force of the Regulation, these companies must also open a website within three months from July 01, 2013 and must allocate part of that website to publishing the required legal announcements. Regarding companies with websites, such must allocate a part of their website to publish the required legal announcements within the said period.

In the event of non-compliance with the obligation to build a website and not publish the required announcements on that website shall constitute cause for the annulment of the relevant decisions. In addition, managers and members of the board of directors who are at fault for such negligence shall be held liable.

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Therefore, the requirements and periods brought by the Regulation must be taken into due consideration by companies.

Employment

Working Conditions of Female Employees

Regulation on Working Conditions of Female Employees on Night Shifts (*published in the Official Gazette dated July 24, 2013 and numbered 28717*) superseding the former Regulation on Working Conditions of Female Employees (*published in the Official Gazette dated August 9, 2004 and numbered 25548*) recaps that female employees cannot be employed for more than 7,5 hours a day on night shifts for whatever reason and further extends the default post-natal period during which a female employee giving birth cannot be employed on night shifts from 6 months to 1 year.

Regulation on Emergency Cases in Workplaces (*published in the Official Gazette dated June 18, 2013 and numbered 28681*) regulates principles and procedures regarding preparation of emergency plans, prevention, protection, evacuation, firefighting, first aid and similar issues and responsibilities of both employers and employees in this respect.

Regulation on Foreigners and International Protection (*published in the Official Gazette dated April 11, 2013 and numbered 29615*) stipulates provisions regarding the entrance, stay and exit of foreigners and regulates establishment principles and procedures of General Immigration Directorate in charge of foreigners requesting protection from Turkey. Accordingly, foreigners who have resided in Turkey for more than 8 years shall be granted an indefinite term residence permit. However it should be noted that the Regulation shall become effective as of April 11, 2014 except for the provisions on organization of the General Immigration Directorate.

Tax

Our Tax Legal Alerts can be viewed [here](#).

Energy & Climate Change

The Turkish Petroleum Law

The Turkish Petroleum Law was published on June 11, 2013. The Law regulates searching, conducting, encouraging and controlling, petrol and production activities. The objective of this law is to enable expedient, continuous and effective exploration, the development and production of petroleum resources of the Republic of Turkey in accordance with the national interest. This Law covers the principles and procedures for regulating, guiding, encouraging, inspecting petroleum exploration and production activities in Turkey, gathering, evaluating and presenting the information and data required for exploration and production.

New Production Licenses in Electricity Market for the Facilities under Construction

Regulation Regarding the Issuance of the New Production Licenses in the Electricity Market for the Facilities which have started their Construction was published on May 4, 2013. The Regulation covers principles and procedures of the new production licenses issued by the relevant Authority to the license holders whose production license has been cancelled or stopped even though the facility construction has started in accordance with the provisions of the Electricity Market Law dated 14/3/2013 numbered 6446.

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Technical Evaluation of Licenses' Regarding the Solar Energy Based Applications

The Regulation on the Technical Evaluation of the License' Regarding the Solar Energy Based Applications was published on June 1, 2013. The scope of this regulation is to define the procedure and principles regarding the technical evaluation of the applications based on solar energy with the intention of efficient and active use of solar energy in electricity production.

Pharmaceutical, Healthcare & Biotechnology

Food Supplements - Importation, Production, Process and Release to Market

The Regulation on Importation, Production, Process, and Release to the Market of Food Supplements was published on May 2, 2013. The Regulation covers the procedures and principles of importation, production, process, release to the market of food supplements.

Insurance

General Terms of Professional Liability Insurance

The Communiqué on General Terms of Professional Liability was published on May 26, 2013. The Issue, geographical border and out of warranty situations of the insurance is regulated by this Communiqué.

Arbitration for Insurance Matters

The Regulation on Arbitration for Insurance Matters (*published in the Official Gazette dated July 17, 2007 numbered 26616*) was amended on July 24, 2013. The amendments are with respect to the articles related to the assignment of the president of the commission, income and expense of a commission and the insurance arbitration system.

Real Estate & Construction

Construction Materials

The Regulation on Construction Materials is published on July 10, 2013. This Regulation defines procedures and principles for releasing construction materials to the market and their availability in the market. The Regulation establishes rules on attachment of the CE stamp and performance declarations regarding the principal characteristics of construction materials.

Telecommunications, Media & Technology

Consumer Rights in Electronic Communication Sector

The Regulation on Consumer Rights in the Electronic Communication Sector (*published in the Official Gazette dated July 28, 2010, numbered 27655*) was amended on June 20, 2013. Amendments cover restricting or preventing services and the authorities of the consumer complaints settlement mechanism and information technology communication authority.

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Transportation, Logistics & Defence

Highway Transportation Regulation

Highway Transportation Regulation (*published in the Official Gazette dated June 11, 2009, numbered 27255*) has been amended by the Official Gazette dated May 23, 2013, numbered 28655. The amendments cover articles on inalienability of the authorization certificate and mergers.

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