

Banking & Finance

Changes to treasury support for SMEs

The Council of Ministers Decree regarding Procedures on Treasury Support to be provided to Credit Insurance Institutions (published in the Official Gazette dated July 15, 2009 and numbered 27289) (the "Decree") regulates the procedures of the Undersecretariat of the Treasury support to be provided to Credit Insurance Institutions which provide surety to the credits and facilities of small- and medium-sized enterprises and Kredi Garanti Fonu A.S. The Amendment to the Decree (published in the Official Gazette dated July 3, 2011 and numbered 27983) ("Amendment") introduces a change with respect to the maturity terms of the available credits. Accordingly, the sub-provision (b/2) of clause (1) of Article 4 of the Decree in relation to the conditions of the credits to benefit from treasury support has been amended and restated as "The minimum maturity term of the credits is six months and the maximum term of maturity of the credits is eight years; of which the term without principle payment shall not exceed two years. The maximum maturity term of working capital credits made available in the maritime sector is three years of which the term without principle payment shall not exceed one year; and the maximum maturity term of investment credits made available in the maritime sector is eight years of which the term without principle payment shall not exceed three years. Interest accrued in connection with the term without principle payment shall be collected at the end of one year arrears." Additionally, the Amendment also implements changes to the conditions of the support to be provided. Accordingly, the application period for treasury support has been increased to four years from two years.

Amendment to the Communiqué on Legal Reserves

The Communiqué on Legal Reserves (published in the Official Gazette dated November 16, 2005 and numbered 25995) (the "Communiqué") has been amended by the Communiqué enacted by the Central Bank of the Republic of Turkey (published in the Official Gazette dated September 12, 2011 and numbered 28052) ("Amendment to the Communiqué") which abolished the gold reserve accounts among the deductible items enumerated under Article 4. Additionally, the legal reserve ratio regarding (i) FX demand deposits, notice deposits and FX private current accounts, deposits/participation accounts up to one month, three months, six months and one year maturities has been decreased to 11% from 11.5% and (ii) FX deposits/participation accounts with one year and longer maturity and cumulative FX deposits/participation account has been decreased to 9% from 9.5%. Banks are required to set aside their mandatory reserves in their accounts kept by the Central Bank of the Republic of Turkey in Turkish lira for their Turkish lira liabilities and in USD and/or in Euro for their liabilities in foreign currency. However, pursuant to Article 6 of the Communiqué, banks may set aside 10% of their Turkish lira liabilities in a foreign currency. Such ratio has been increased to 20% by the Amendment to the Communiqué.

The abovementioned amendments will be effective as of the calculation period dated 30 September 2011 and the legal reserves calculated using the new ratios will be maintained starting from 14 October 2011.

Independent auditing principles

The Regulation on Principles and Procedures regarding Auditing Principles (published in the Official Gazette dated January 13, 2010 and numbered 27461) (the "Regulation") envisages the terms and conditions of the auditing principles to be abided by independent auditing institutions. Article 12 of the Regulation has been amended (published in the Official Gazette dated July 26, 2011 and numbered 27270) whereby the authority of Banking Regulation and Supervision Agency to temporarily revoke the authority of the independent auditing institution in case of the repetitive failure to abide by the Regulation has been abolished.

In This Issue

Banking & Finance
Capital Markets
Corporate
Competition
Tax
Dispute Resolution
Energy & Climate Change
Healthcare, Pharmaceuticals
& Biotechnology
Transportation, Logistics &
Defence

To discuss how these developments affect your business interests please contact:

Fethi Pekin
Managing Partner
fpekin@pekin-pekin.com

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

Amendments to external auditing regulation for banks

The Regulation on the Authorisation and Activities of Institutions to perform External Audit in Banks (published in the Official Gazette dated November 11, 2006 and numbered 26333) (the "Regulation on External Auditing") lays down the principles and procedures governing the authorisation, activities and revoking powers of the external audit institutions that conduct external audits in banks. Such regulation has been amended (published in the Official Gazette dated July 26, 2011 and numbered 27270) whereby certain articles in relation to the (i) principle of independence and cases eliminating independence, (ii) revocation of power, (iii) effectiveness of external audit, (iv) obligations of the authorised audit institution, and (v) submission of external audit reports have been amended.

Capital Markets

Regulation of forex operations

As of 31 August 2011, upon the entry into force of the Communiqué of the CMB Serial No. V/125 on Principles regarding Leveraged Sale and Purchase Transactions and Institutions to Realize these Transactions, the leveraged sale and purchase of foreign exchange, commodities and precious metals are considered to be activities falling under the duty and authority of Capital Markets Board (the "CMB") and under the scope of the Communiqué, leveraged sale and purchase operations shall only be realized by institutions authorized by the CMB.

Leveraged sale and purchase operations to be undertaken by authorized institutions are classified as follows:

- a. Direct acceptance and/or realization of orders from clients (Market makers)
- b. Acceptance of client orders as a representative and forwarding such orders to other institutions for realization purposes (transaction intermediary-White label)
- c. Introducing investors to services of other institutions regarding leveraged purchase and sale transactions and intermediation with regards to the execution of contracts or bringing together future contractual parties in return for a commission (Introducing broker)

The carrying out of any marketing, advertisement or promotion activities regarding leveraged sale and purchase operations and of any services subject to authorization under the scope of the Communiqué of the CMB Serial No. V/125 via any media channel, including the electronic environment by overseas institutions addressing investors resident in Turkey, are deemed as contrary to the capital markets legislation. Accordingly, as mentioned above, the institutions providing these services will be subject to administrative and criminal sanctions when detected by the Board.

On the other hand regarding the purchasing and selling of those materials physically, all types of derivative transactions executed on or off exchanges, transactions executed in the interbank market and transactions performed by banks in order to provide liquidity for brokerage firms are exempt from the provisions of this Communiqué.

Amendments to related party transactions

Communiqué Serial: IV, No: 52 Amending the Communiqué Serial: IV, No: 41 on Principles to be followed by Firms under the Capital Market Law entered into force upon publication in the Official Gazette dated 20 July 2011 and numbered 28000.

The valuation report threshold has been decreased for related party transactions. The Communiqué abolished the distinction between publicly traded companies and other

In This Issue

Banking & Finance
Capital Markets
Corporate
Competition
Tax
Dispute Resolution
Energy & Climate Change
Healthcare, Pharmaceuticals
& Biotechnology
Transportation, Logistics &
Defence

To discuss how these developments affect your business interests please contact:

Fethi Pekin
Managing Partner
fpekin@pekin-pekin.com

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

public companies and the CMB can henceforth oblige both types of companies to make a valuation on the related party transactions and to make a public disclosure.

Amendments to the Asset Backed Securities Communiqué

The Communiqué Serial: III No: 46, (published in the Official Gazette dated 20 July 2011 and numbered 28000) amended the Communiqué Serial: III, No: 38 on Principles Regarding Asset Backed Securities. Factoring institutions are thus allowed to issue asset covered securities backed by factoring receivables as collateral. The Investors' Protection Fund has been granted broader authorisation for the management and liquidation of the cover asset pool in the event an issuer becomes insolvent.

New communiqué for investment companies

The Communiqué Serial: VI, No: 30 on Principles Regarding Investment Companies (published in the Official Gazette dated 5 August 2011 and numbered 28016) abolished the Communiqué Serial: VI and stipulated new provisions regarding the establishment, public offering, internal control and risk management systems and portfolio restrictions of investment companies. The main provisions of the communiqué are (i) minimum issued capital is increased (ii) at least one shareholder of the investment company must be a leading shareholder (iii) a minimum 20% of the distributable profit has to be paid in cash as the first dividend, and (iv) investment companies are henceforth allowed to repurchase their own stocks but they will not be able to issue privileged shares.

Permission to share buybacks for publicly traded companies

In light of the provisions of new Turkish Commercial Code (No.6102), the CMB issued a new principal decision dated 10 August 2011 and numbered 26/767 allowing publicly traded companies to repurchase their own shares. The buyback ratio has been determined as 10% of a company's issued/paid-in capital subject to certain conditions stipulated in the said decision.

Increase of margin for short selling transactions

On August 11, 2011, the CMB announced that Article 25 the Communiqué Regarding Margin Trading, Short Sales and Lending and Borrowing of Securities (Communiqué Serial No. V/65) (published in the Official Gazette dated July 14, 2003, No. 25168) was amended. According to such amendment, the CMB increased the minimum margin ratio that a client of a brokerage firm shall maintain in order to start short selling transactions from 50% to 70%.

Inspection authority to the Minister

Further to an amendment to the Law No. 3046 regarding the Establishment and Functions of Ministries published in the Official Gazette 17 August 2011 and numbered 28016, the relevant Minister has been granted the capacity to inspect all activities and operations of the CMB (among other government institutions with administrative and financial independence such as the Banking Regulation and Supervision Agency, the Energy Market Regulatory Authority and the Competition Board).

Dematerialization of government debt securities

The CMB has resolved on its meeting dated August 25, 2011 and numbered 832, that the domestic government debt securities shall be in dematerialized form, starting from June 30, 2012.

In This Issue

Banking & Finance
Capital Markets
Corporate
Competition
Tax
Dispute Resolution
Energy & Climate Change
Healthcare, Pharmaceuticals
& Biotechnology
Transportation, Logistics &
Defence

To discuss how these developments affect your business interests please contact:

Fethi Pekin
Managing Partner
fpekin@pekin-pekın.com

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.pekın.com

Competition

M&A clearance

The Communiqué Regarding the Amendment to the Communiqué concerning Mergers and Acquisitions Calling for the Authorization of the Competition Board No.2010/4" (Communiqué No. 2011/2) (the "Communiqué") has been enacted by the Competition Authority and entered into force upon being published in the Official Gazette dated September 30, 2011 No. 28070. Pursuant to the Communiqué, merger and acquisition clearance applications filed before the Competition Board will include one hardcopy and one softcopy of the notification form and the related documents.

Corporate

Organized Industrial Zone Regulation

According to the amendment to the Organized Industrial Zone Regulation (published in the Official Gazette dated August 4, 2011 and numbered 28015), if the time period between the ordinary and extraordinary general assembly meetings is less than six months, only information and documents regarding the agenda will be sent with the invitation to the extraordinary meeting and discharged members of the board of directors and the board of auditors may not be elected in the same general assembly.

Dispute Resolution

Consumer protection

The new Turkish Code of Obligations (which shall come into effect on July 1, 2012, Law No.6098, 2011) has been drafted to give more rights to buyers, in alignment with the Law Regarding the Protection of the Consumer (Law No. 4077, 1995) (the "LPC"), and introduces major changes to the product liability provisions of the current Code of Obligations (Law No. 828).

Specifically, having purchased a defective product, among the optional rights of the buyer i.e. (i) renunciation of contract and a refund, (ii) replacement of the goods by non-defective generic goods and (iii) reduction in price in proportion to the defect, another option to request free repair presented by the LPC is also introduced in the new Code of Obligations, provided that he/she informs the seller of the defect within 30 days from the delivery of the product.

Further, as per the current Code of Obligations' provisions related to ordinary sales i.e. sales not considered as commercial sales and in which neither party is the consumer, the purchaser shall examine goods purchased immediately upon delivery and inform the seller of any defect regarding the qualities guaranteed by the seller in order to hold the seller responsible. The wording "immediately" is amended in the new Code of Obligations to "as soon as possible" in order to protect the benefits of the buyer. Accordingly, if the purchaser fails to perform such notification duty, the purchaser is deemed to have accepted the defective good, unless defects in the goods are hidden.

Also, with regard to the prescription period for raising claims related to product liability, the provision has been increased from one (1) year in the current Code of Obligations to two (two) years in the new Code of Obligations.

In This Issue

Banking & Finance
Capital Markets
Corporate
Competition
Tax
Dispute Resolution
Energy & Climate Change
Healthcare, Pharmaceuticals
& Biotechnology
Transportation, Logistics &
Defence

To discuss how these developments affect your business interests please contact:

Fethi Pekin
Managing Partner
fpekin@pekin-pekın.com

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.pekın.com

Tax

Lease certificates & withholding tax

On June 29, 2011 the Council of Ministers passed a decree (dated April 26, 2011 and No. 2011/1854) (published in the Official Gazette dated June 29, 2011 and No. 27979) (the "Decree") in connection with different tax laws in order to amend the withholding rates imposed on lease certificates issued abroad by asset lease companies resident in Turkey and lease certificates issued by asset lease companies within the scope of the Communiqué on Principles regarding Lease Certificates and Asset Lease Companies (Communiqué Serial No. III/43) (published on the Official Gazette dated April 1, 2010 and No. 27539) (the "Communiqué") issued by the CMB. Specifically, the Decree envisages (i) 10% withholding tax over lease certificates issued by asset lease companies with a maturity of less than one year; (ii) 7% withholding tax over lease certificates issued by asset lease companies with a maturity from one to three years; (iii) 3% withholding tax over lease certificates issued by asset lease companies with a maturity from three to five years and (iv) 0% withholding tax over the lease certificates issued by asset lease companies with a maturity of more than five years. Thus, the Decree provides the non-resident certificate holders with an opportunity to pay reduced tax for their income derived from these securities

Energy & Climate Change

Environmental Auditing Regulation

According to Article 3 of the amendment to the Environmental Auditing Regulation (published in the Official Gazette dated August 16, 2011 and numbered 28027), all sources of pollution and violations under the Environmental Law (published in the Official Gazette dated August 11, 1983 and numbered 2872) and related legislation that occur in the zones of sovereignty and jurisdiction, including free and restricted economic zones within the boundaries of the Republic of Turkey, are to be subject to supervision.

Healthcare, Pharmaceuticals & Biotechnology

Promotion activities of medicinal products for human use

The Regulation regarding the Promotion Activities of Medicinal Products for Human Use (published in the Official Gazette dated August 26, 2011 and numbered 28037) provides for the requirements with respect to promotion activity for the rational use of medicinal products for human use. The promotion activity includes the information provided to doctors, dentists and pharmacists regarding the use of medicinal products and their side effects.

Exclusive of international congresses held in Turkey, officially unauthorized medicinal products for human use may not be advertised to members of the health profession. Promotion may not cause risky situations, or be encouraging or misleading. The promotion activity may not materially provide benefits to the members of health profession. In the case of any violation of promotion activities, certificates granted by the Ministry of Health may be revoked and violating employees may not participate in other certificate programmes even if hired by another company.

Private Hospitals Regulation

According to the amendment to the Private Hospitals Regulation (published in the Official Gazette dated September 28, 2011 and numbered 29068), the operations of hospitals that employ doctors or staff members that are not doctors who do not have the right to perform their profession or who are obliged to perform a public service, are to be suspended for a temporary period and the Ministry of Health is to be informed.

In This Issue

Banking & Finance
Capital Markets
Corporate
Competition
Tax
Dispute Resolution
Energy & Climate Change
Healthcare, Pharmaceuticals & Biotechnology
Transportation, Logistics & Defence

To discuss how these developments affect your business interests please contact:

Fethi Pekin
Managing Partner
fpekin@pekin-pek.in.com

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.pek.in.com

Transportation, Logistics & Defence

Privatization of Highways & Bridges

According to the Decision of the Privatization Administration (Decision No. 2010/88) (published in the Official Gazette dated October 20, 2010 and numbered 27735) (the "Privatization Decision") and the Privatization Administration's Invitation to Investors (published in the Official Gazette dated August 25, 2011 and numbered 28036) (the "Tender Announcement"), the Privatization Administration resolved for the privatization of certain highways and bridges as well as their connection roads and the service facilities, maintenance and operation facilities, toll collection centres and other units of goods and services production and other assets located in such highways and bridges which are under the responsibility of the General Directorate of Highways and the construction, maintenance, reparation and running of which is under the responsibility of the General Directorate (together, the "Privatization"). The motorways and the bridges will be privatized in a single package. Privatization will be realized on the basis of the transfer of operational rights model. Accordingly, the operational rights will be transferred for a period of 25 years following the physical transfer of such motorways and bridges. The sealed tender method and bargaining method will be used during the negotiations phase. Offers in US dollars shall be accepted during the tender process. While the participation of foreign entities is not restricted subject to, among others, the foreign investment legislation, only legal entities and joint venture groups can take part in the tender, and those wishing to apply for preliminary qualification are obligated to apply to the Administration until November 18, 2011 at the latest. The Privatization process shall be completed by December 31, 2012. The participants are required to (i) discharge USD50,000 for the purchase of the Information Memorandum and the Tender Specifications, and (ii) submit a bid bond in the amount of USD200mn to qualify for submitting a bid for the relevant tender. After completion of the Privatization process, the obligations of the operators concerning maintenance, repair, operation and other works shall be determined by the General Directorate as well as the Privatization Administration. Additionally, the General Directorate is further authorized to supervise compliance of the operators with such obligations.

Northern Marmara Highway (including the third Bosphorus Bridge)

According to the General Directorate of Highways' Invitation to Investors (published in the Official Gazette dated March 8, 2011 and No. 27868) (the "Tender Announcement"), the tender regarding the construction, operation and transfer of "Northern Marmara Highway" (including the third Bosphorus Bridge) was scheduled to take place on August 23, 2011 through the sealed tender method. However, according to the latest announcement of the General Directorate of Highways (published in the Official Gazette dated August 15, 2011 and numbered 28026); the bidding period has been extended until January 10, 2012. The tender, which will be realized within the frame of Law on Performance of Certain Investments and Services in accordance with the Build-Operate-Transfer Model (Law No: 3996) (published in the Official Gazette dated June 13, 1994 and numbered 21959) (the "BOT Law"), will include the financial supply, project design, construction, operation, any kind of maintenance and repair during operation and the transfer back to the Administration the Northern Marmara Highway, well-kept, operative, functioning, without charge and free from all obligations and commitments. The participants are required to (i) discharge TL100,000 for the purchase of the Information Memorandum and the Tender Specifications, and (ii) submit a bid bond in the amount of TL25mn in order to qualify for submitting a bid for the relevant tender.

In This Issue

Banking & Finance
Capital Markets
Corporate
Competition
Tax
Dispute Resolution
Energy & Climate Change
Healthcare, Pharmaceuticals
& Biotechnology
Transportation, Logistics & Defence

To discuss how these developments affect your business interests please contact:

Fethi Pekin
Managing Partner
fpekin@pekin-pekın.com

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.pekın.com