

Banking & Finance

Communiqué on Legal Reserves Amended

The Communiqué on Legal Reserves (*published in the Official Gazette dated November 16, 2005 and numbered 25995*) has been amended by the (i) Amendment Communiqué I (*published in the Official Gazette dated July 20, 2012 and numbered 28359*), (ii) Amendment Communiqué II (*published in the Official Gazette dated August 3, 2012 and numbered 28373*), (iii) Amendment Communiqué III (*published in the Official Gazette dated August 17, 2012 and numbered 28387*) and (iv) Amendment Communiqué IV (*published in the Official Gazette dated September 11, 2012 and numbered 28408*) (collectively the “**Amendment Communiqués**”) pursuant to which banks may set aside legal reserves for their Turkish Lira liabilities (a) in foreign currency denominated in USD or Euro (and 50% of such legal reserves set aside in foreign currency must be denominated in USD) only up to a maximum limit of 60% of such liabilities provided that (i) first 40% of such amount shall be multiplied with a coefficient of 1.1, (ii) second 5% of such amount shall be multiplied with a coefficient of 1.4, (iii) third 5% of such amount shall be multiplied with a coefficient of 1.7, (iv) fourth 5% of such amount shall be multiplied with a coefficient of 1.9, and (v) fifth 5% of such amount shall be multiplied with a coefficient of 2; and (b) in standard gold and only up to a maximum limit of 30% of such liabilities provided that (i) first 20% of such amount shall be multiplied with a coefficient of 1, (ii) second 5% of such amount shall be multiplied with a coefficient of 1.5, and (iii) third 5% of such amount shall be multiplied with a coefficient of 2. The first amendment via the Communiqué enacted by the Central Bank of the Republic of Turkey (*published in the Official Gazette dated May 12, 2012 and numbered 28290*) has extended the definition of deductible items prescribed under Article 4. Local banks and headquarters and branches of banks established by international agreements are no longer subject to mandatory reserves.

Furthermore, Turkish Lira equivalents of foreign currency legal reserves are calculated as per the foreign exchange rates announced under the Official Gazette by the Central Bank of the Republic of Turkey on the date of calculation of such legal reserves.

Capital Markets

First Sovereign Sukuk

On September 5, 2012, the Undersecretariat of Treasury announced that it mandated Citigroup, HSBC and Liquidity House (a Kuwait Finance House subsidiary) to explore lease certificate (i.e. sovereign sukuk) issuance opportunities in international capital markets. On September 18, 2012, the lease certificates were priced with a size of USD1.5bn, maturity of 5.5 years (26 March 2018) and lease rate of 2,803% (185bps over the Mid Swap rate). The offering attracted an orderbook of nearly 5 times of the actual issue size from 250 accounts. 58% of the certificates have been sold to investors in Middle East, 13% in Europe, 12% in Asia, 9% in Turkey and 8% in US.

Competition

Communiqué on the Application Procedures for Infringements of Competition

The Communiqué on the Application Procedure for Infringements of Competition (the “**Communiqué**”) prepared in order to establish and announce the procedures and principles concerning the applications to be made to the Competition Authority for claims of infringement of articles 4, 6 and/or 7 of the Act no 4054 on the Protection of Competition as well as concerning the assessment of such applications entered into force after its publication in the *Official Gazette dated 23.08.2012 and numbered 28390*.

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The Communiqué introduces regulations and explanations concerning the form and conditions of applications to be made to the Competition Authority, as well as the assessment of the application and the notification to be made to the relevant applicants in relation to their applications.

Within this framework, in summary, the Competition Authority practice on the following points was clarified:

- 1- Applications made to the Competition Board by natural persons and legal persons such as organizations, unions and associations may be in the form of Ministry requests, denouncements or complaints,
- 2- Applications by e-mail, fax, telephone and similar means will be regarded as denouncements,
- 3- Despite the fact that the principle is to take no action in response to applications without the name and last name, ID number, address and signature of the applicant, the Competition Authority may initiate proceedings concerning such applications if they are deemed to be of importance,
- 4- The principle is to take no action concerning applications which simply consist of abstract declarations suggesting the existence of an infringement, which are not based on concrete information and/or documents, and which fail to establish their claims in a serious and satisfactory manner;
- 5- The applications will be addressed in light of the resources and priorities of the Competition Authority, within a schedule deemed suitable by the Competition Authority and with an effort to handle applications with a common nature together to the extent possible;
- 6- In case of a request for confidentiality, identity information of the person concerned or any other information which may lead to the disclosure of his identity will not be included in the communications to be made, including intra-organizational correspondence;
- 7- Legal action may be taken concerning those who intentionally include false or misleading information in their applications to the Competition Authority.

It is expected that the regulations introduced by the Communiqué will be important in terms of ensuring a more efficient utilization of the resources of the Competition Authority and the public by allowing prioritization by the Competition Authority and by enabling allocation of resources to more serious applications

Corporate

Foreign Direct Investment Law Practice Regulations

Certain provisions of the Regulation on Foreign Direct Investment Law (*published in the Official Gazette dated August, 8 2003 and numbered 25205*) have been amended on July 3, 2012. The Ministry is authorized to give permission to open a liaison office and to extend the duration of these permits for companies established under the laws of the foreign country but which carry out commercial activities in Turkey. This regulation also covers the documents needed to open a liaison office and the operating period of these offices.

Regulation on Audit of Trade Companies by Ministry of Customs and Trade

The Regulation on Audit of Trade Companies by Ministry of Customs and Trade was published on August, 28 2012. The Regulation sets out the procedures of the audit. It also regulates the principles and procedures for auditing these processes by the Ministry. Audit of other actions subject to law is also covered.

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The Communiqué on Cumulative Voting in General Assembly for Non-Public Joint Stock Companies

The Communiqué on Cumulative Voting in General Assembly for Non-Public Joint Stock Companies was published on August, 29 2012. The Communiqué covers voting of the shareholders that do not have a majority.

The Communiqué on Assemblies except the General Meetings of the Joint-Stock Companies in the Trade Companies

The Communiqué was published on August, 29 2012. The Communiqué covers principles and procedures of the meetings of the board of directors, board of managers, board of partners and general assembly. Issues such as the administration of the meeting, notification of participation in electronic form are also covered.

Electronic System Procedure in General Assembly of the Joint-Stock Companies

The Communiqué on Electronic System Procedure in General Assembly of the Joint-Stock Companies was published on August, 29 2012. This Communiqué relates to how to participate in the general assemblies in electronic form, make suggestions, comments, to vote. It also covers technical issues and identification of the principles and procedures relating to security criteria of the establishment of an electronic system for general Assembly.

Dispute Resolution

The Competent Authority on the Cancellation of Cheque Lawsuits

Pursuant to Article 383 of the Civil Procedure Law (No. 6100) ("CPL"):

"Unless otherwise provided, the competent Court in relation to the ex parte proceedings shall be the Civil Court of Peace"

Paragraph 1 of Article 757 of the new Turkish Commercial Code (No. 6102), which has become effective as of June 1, 2012, provides that;

"The one whose policy is disposed from its possession without its will may file a request before the Commercial Court of First Instance in the area of payment or residency of the drawer for the drawee to be prohibited from the payment of such policy"

therefore, it would appear that such provision is contrary to the abovementioned Article 383 of the CPL.

The Judgment of the 11 Civil Chamber of the Court of Appeals dated December 2, 2011 and numbered 2011/13181 E, 2011/16340 K. provides that;

"The attorney of the plaintiff, claiming that the cheque which is issued by his client is lost, requested a decision be rendered for the cancellation of the same. It has been decided on the non-competency of the Court due to the ground that the Civil Courts of Peace shall be competent in the cheque cancellation lawsuits pursuant to Article 382/10-e of the CLP. The civil lawsuits arising from the matters regulated under the Commercial Code are deemed to be commercial lawsuits and are tried by the Commercial Courts of First Instance. In the lawsuits in relation to the cancellation of the negotiable instruments due to loss, as there is a provision regulated in contrary to Article 383 of the CLP, not the Civil Courts of Peace but Commercial Courts of First Instance shall be competent."

therefore, the Local Court's decision has been reversed by the 11. Civil Chamber of the Court of Appeals, as a provision contrary to Article 383 of the CLP is present in relation to the lawsuits for the cancellation of the negotiable instruments due to loss.

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In this respect, the 11. Civil Chamber of Court of Appeals provides in its decision herein that in the cancellation of the cheque lawsuits, which is subject to the appeal request, the competent Court shall be the Commercial Courts of First Instance, as also understood from Article 757/1 of the new Turkish Commercial Code numbered 6102.

Employment

A new law regarding health and safety in the workplace entered into force on June 30. According to the Law regarding Occupational Health and Safety (*Law no: 6331 and published in the Official Gazette dated June 30, 2012 and numbered 28339*), health and safety in the workplace has been extended and more details have been added in comparison to the present provisions of the Labour Code numbered 4857 and consequently, several provisions of the Labour Code have been repealed.

The Employer Implementation Communiqué (*published in the Official Gazette dated September 1, 2012 and numbered 28398*) has been issued by the Directorate of Social Security Institution. The Communiqué regulates the social security premium payments made or to be made to the Social Security Institution and the preparation of the certificate of monthly premiums and services.

Energy & Climate Change

Communiqué on the Support of the Energy Efficiency

The Communiqué was announced on July, 3 2012. This Communiqué covers the procedures and principles to increase the efficiency of the project and supporting applications for existing systems of industrial enterprises.

The Communiqué on Measurement of Wind and Solar for License Applications based on Wind and Solar Energy

The Communiqué on Measurement of Wind and Solar for License Applications based on wind and solar energy was published on July, 10 2012. The Communiqué covers the standards of measurements for wind and solar energy and evaluation of these measurements.

The Communiqué on Giving Certificate of Authorization to the Companies Responsible for Energy Efficiency Services and Establishments

The Communiqué on Giving Certificate of Authorization to the Companies Responsible for Energy Efficiency Services and Establishments was published on July, 25 2012. This Communiqué covers principles and procedures which will be applied for authorization on energy efficiency training, coaching, projects and consultancy services.

Amendment on the Regulation on Production in Domestic Components of Facilities that Produce Electrical Energy from Renewable Energy Sources

Regulation on Production in Domestic Components of Facilities that Produce Electrical Energy from Renewable Energy Sources published in the Official Gazette on June, 19 2012 numbered 28365 was amended in July, 26 2012. This regulation includes articles on determination of the resource areas, on RES certificate and on renewable energy sources.

Safety Requirements for Gas Stations

Safety Requirements for GAS Stations were published on July, 11 2012. The Requirements Compulsory Standards Communiqué was implemented on a mandatory

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basis for fuel station license holders. The Communiqué also covers safety requirements for fixed stations.

Insurance

Amendments to the Regulation on Technical Reserve for Insurance and Reinsurance of the Retirement Companies

Regulation on Technical Reserve for Insurance and Reinsurance of the Retirement (published in the Official Gazette on August, 7 2012 and numbered 26606) was amended on July, 17 2012. The Regulation amends articles about reserve for unearned premiums, reserve for unexpired risks, provision for outstanding claims and actuarial unit.

Industrial and Manufacturing and Service Industries

Amending Regulation on Organized Industrial Zones in the Regulation of Application

The Regulation on Organized Industrial Zones Application published in August, 22 2009 numbered 27327 was amended on August, 8 2012. The regulation amended articles regarding how to vote, terms in election of enterprising committee, terms of the Board of Directors to be elected for enterprising committee and the duties and powers of the General Assembly.

Pharma, Healthcare & Biotechnology

The Communiqué on Support the Payment of the Fight against Vegetable Production of Biological and/or Bioengineering

The Communiqué on Support the Payment of the Fight against Vegetable Production of Biological and/or Bioengineering was published on August, 10 2012. The aim of the Communiqué was to provide alternative techniques to chemical control in crop production, to reduce the use of chemical drugs in order to protect human health and natural balance of open field tomatoes, citrus fruits, apples, vineyards and greenhouse vegetable production, biological, and / or biotechnical

Real Estate and Construction

The Communiqué on Classes of Building Materials According to the Response to Fire, Resistance of the Construction, Performance of the Roof to the External Fire

The Communiqué on Classes of Building Materials According to the Response to Fire, Resistance of the Construction, and Performance of the Roof to the External Fire was published in July, 25 2012. The Communiqué regulates safety in case of fire.

Regulation on Building Materials Regulation Regarding the Scope of Building Materials

Regulation on Building Materials and Building Materials Regulation Regarding the Scope of Building Materials was published on July, 25 2012. This regulation covers the building materials, levels and classes and confirmation of the systems which are determined by the decisions of the European Commission.

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