

Banking & Finance

Amendments introduced to taking and withdrawing Deposits and Participation Funds

The Regulation on Principles and Procedures for Taking and Withdrawing Deposits and Participation Funds as well as Principles and Procedures for Prescribed Deposits, Participation Funds, Custody and Receivables (the "Regulation") (*published in the Official Gazette dated November 1, 2006 and numbered 26333*) has been amended. Paragraph 6 has been replaced with a new paragraph. In addition, a new provision has been added to Article 4 of the Regulation as paragraph 7 and the numbering of the following paragraph has been increased by one. Pursuant to Article 4(6) of the Regulation, one copy of the agreements and passbooks must be given to customers in cases where account opening is made at branches of banks rather than online. The agreements must be signed by customers in their entirety. A separate section must be added to the agreements saying that the customer has obtained a copy of the agreement. This section must separately be signed by customers. In cases where accounts are opened using electronic media rather than branches of banks, the customers should be informed of the following: (i) passbooks legally have an evidentiary power evidencing existence of a deposit or a participation fund account with the bank in question, (ii) obtaining a copy of the passbook from a branch of the bank would serve the benefit of the customer, (iii) the customer will be provided with a copy of the passbook if applied to a branch of the bank, (iv) the process of account opening may only be completed if the customer consents to the foregoing and (v) the customer must keep copies of the agreements and passbooks he has been provided with from the bank. Such notification must be made via the medium where account opening is made and other media, which the bank deems efficient. Agreeing to the foregoing shall not mean that the customer has waived its right to request for a copy of the passbook or the bank has been relieved from its duty to provide one to the customer. No credit account (i.e. overdraft account) must be opened without the customer signing an agreement with the bank or without receiving a request from the customer which request shall be capable of evidencing.

Paragraph 7 goes on to list the details that a passbook must have. These include a full name and title of the customer, code number and name of the branch with which the account is opened, account opening date, account and passbook number, account balance and all of the provisions of the framework agreement entered into between the customer and the bank relating to accounts (or in the alternative a reference must be made to date of the framework agreement and numbers of the relevant provisions). In addition, depending on the type of the account interest rate or participation rates to profit and loss, term and notification periods must also be added.

First sentence of paragraph 1 of Article 7 of the Regulation has been amended. The amended text provides that participation banks are allowed to establish separate special fund pools without being subject to maturity terms and types determined by the Central Bank of Turkey as per Article 60 of the Banking Law provided that their term is more than or equal to one month and such funds are to be used for financing of pre-determined projects and other investments.

Paragraphs 2 and 3 of Article 8 of the Regulation have been amended. The term during which lists of prescribed deposits, participation funds, custody and receivables must be announced has been extended from three months to four months. In addition, the requirement to publish such lists by unions and the Saving Deposit Insurance Fund will be valid until May of each year instead of April. Finally, the term during which customers may apply for their prescribed deposits, participation funds, custody and receivables has been extended until June of each year instead of May.

Paragraph 1 of Article 9 of the Regulation has been amended. The amended text provides that prescription time for assets kept in leased safety boxes starts from the last

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date on which rental charge for the leased safety box has been paid or the last date on which the safety box has been unlocked.

The amended provisions summarized above will come into force within six months from November 1, 2012 which is the date they have been published in the Official Gazette except for the amendment in relation to establishment of separate fund pools by participation banks, which shall come into force as of November 1, 2012.

Treasury Support on Credit Guarantee Institutions

A number of amendments have been introduced under the Decree No. 2009/15197 of the Council of Ministers on Treasury Support on Credit Guarantee Institutions (the "Decree No. 2009/15197") (published in the Official Gazette dated July 15, 2009 and numbered 27289). Under Article 1, the definition of "Credit" has been expanded to cover treasury backed loans under a surety mechanism. In addition, some amendments have been introduced to eligibility criteria of entities receiving treasury support and loans that will benefit from treasury support.

Establishment of Banks

The Banking Regulation and Supervision Agency issued an operation license (*faaliyet izni*) for Odea Bank A.Ş. in its decision dated September 28, 2012 and numbered 4963. Odea Bank A.Ş. is a member of the Bank Audi Group.

The Banking Regulation and Supervision Agency issued an establishment license (*kuruluş izni*) for The Bank of Tokyo-Mitsubishi UFJ, Ltd. An operation license is to be obtained in the following days.

Capital Markets

The new Capital Market Law

With the objective to approach EU and global standards on capital markets, the Capital Market Law (Law No. 6362) (published in the Official Gazette dated December 30, 2012, No. 28513) (the "Capital Market Law") has entered into force on December 30, 2012. Subsequently, the previous law (the "Law No. 2499") was promulgated. Below is a short list of important provisions stipulated within the Capital Market Law. It should be noted that the Capital Market Board (the "CMB") is authorized to determine and regulate principles and procedures regulated under the Capital Market Law, including below listed provisions with a separate, secondary legislation to be issued by the CMB. Such secondary legislation shall enter into force within 1 year of the date of effectiveness of the Capital Market Law, which is December 30, 2012.

- **Definition of derivative instruments:** The definition of derivative instruments has been broadened.
- **CMB approval process for public offerings:** The procedure of the Law No. 2499 with regards to registration of capital market instruments with the CMB in order to publicly offer such instruments has been replaced with approval of offering documents by the CMB. Subsequently, in order for capital market instruments to be offered to public, the CMB shall not register the relevant capital market instruments but approve the offering documents.
- **Issuance certificate:** In issuance of capital market instruments without a public offer, the Capital Market Law requires an issuance certificate which shall be approved by the CMB.
- **Issuance of shares below a nominal value:** Publicly traded companies are allowed, subject to the approval of the CMB to issue shares below their nominal value, provided that the market price or the book value of the shares is below their nominal value. The CMB is authorized to determine and regulate these principles and procedures regarding such issuances with a separate legislation to be issued by the CMB.

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- *New shareholder threshold:* The number of shareholders required for a company to be deemed as a publicly traded company has been increased from 250 to 500. Furthermore, such company is required to apply to the stock exchange in order for its shares to be traded, within two years starting from its being deemed as a publicly traded company.
- *Corporate governance authority:* The CMB is now authorized to take *ex officio* measures on publicly traded companies, in case they do not comply with the corporate governance principles.
- *Hidden profit distribution:* It is clearly stipulated within the Capital Market Law that in case a hidden profit distribution would be detected by the CMB, the receiving party shall return the amount together with applicable legal interest.
- *Significant transactions:* Certain types of transactions (e.g. mergers, delisting, shareholder privilege etc) are defined as significant transactions of publicly traded companies which require shareholder approval via general assembly meetings. The CMB is authorized to determine general assembly approval procedures for publicly traded companies to enter into such transactions.
- *Right to exit:* In case a shareholder votes against a significant transaction, as briefly described above, in a general assembly meeting, such shareholder obtains a right to exit from such company by selling his/her shares. If the shareholder uses that right, the company is required to purchase such shareholder's shares.
- *Squeeze-out right:* In case the shareholding of a shareholder reaches a threshold which shall be determined by secondary legislation of the CMB, such shareholder shall have the right to purchase shares of minority and the minority shall have the right to sell their shares.
- *Removal of privileges:* In the event a publicly traded company makes a loss for five years in a row, the CMB is authorised to remove shareholder privileges with regards to voting rights and representation at the board of directors.
- *New definitions of capital market and brokerage activities:* The definition of brokerage and authorized capital market activities by capital market institutions has been changed.
- *Trading platforms:* The CMB is expressly granted the supervisory and regulatory authority of establishment and operation of systems and platforms (e.g. trading platforms) which brings together the buyers and sellers of capital market instruments outside of exchanges. The CMB is authorized to determine and regulate the principles and procedures regarding such platforms with a separate legislation to be issued by the CMB.
- *Turkish Capital Markets Association:* A new association by the name of Turkish Capital Markets Association will replace the existing association exclusively for intermediary institutions.
- *Borsa Istanbul:* Within the scope of the Istanbul International Financial Centre project, the Istanbul Stock Exchange, the Istanbul Gold Exchange and Turkish Derivatives Exchange (subject to shareholders' approval of this exchange) are united under the name of "Borsa Istanbul A.Ş.", a joint stock company which shall start its operations further to the completion of its establishment and operational procedures. Subsequently, Borsa Istanbul A.Ş. will be a private company, in contrast to the quasi-public character of the Istanbul Stock Exchange.
- *Supervision, measures and sanctions:* The Capital Market Law introduces further measures and detailed sanctions in case of certain criminal and administrative actions. in comparison with the Law No. 2499.

Competition

Merger control thresholds revised

Effective February 1, 2013, [Communiqué 2012/3](#) (published in the Official Gazette numbered 28512 and dated 29 December 2012) has brought two significant changes to the rules which determines whether a merger and acquisition transaction is subject to prior approval of the Competition Board by amending Article 7 of [the Communiqué Regarding Mergers and Acquisitions Subject to Approval of the Competition Board \(No.2010/4\)](#).

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The first of these changes is in respect of the turnover threshold for merger and acquisition transactions involving at least one party with a global turnover exceeding TL 500 million. Previously in such transactions, the relevant Turkish turnover threshold of at least one of the parties merely had to exceed TL 5 million for the Competition Board approval requirement to be triggered, causing unnecessary backlogs of transactions reviewed to fulfil formalities. The amendment has increased this threshold for requiring Competition Board approval to read:

“Article 7(ii) in acquisition transactions, the acquired asset or operation, and in merger transactions, at least one party to the merger, has a Turkish turnover that exceeds TL 30 million, while the global turnover of one of the other parties to either kind of transaction exceeds TL 500 million.”

Besides the increased threshold of TL 30 million, it is worth underlining that with regards to acquisition transactions, this Turkish turnover threshold is now sought in the targeted asset or operation as opposed to in either party.

The first threshold in Article 7(i) (requiring at least two parties to individually have a turnover exceeding TL 30 million in Turkey and all parties collectively having a turnover in excess of TL 100 million in Turkey) remains the same.

The second change concerns the “affected market” exemption in the old regime whereby except for joint ventures, transactions that did not lead to an affected market in Turkey were exempted from notification to the Competition Board. [Communiqué 2012/3](#) revoked this exemption so that the absence of any horizontal and vertical relationships no longer impacts whether the transaction triggers a Competition Board approval requirement.

Communiqué 2012/3 amending the Communiqué Regarding Mergers and Acquisitions Subject to Approval of the Competition Board (No.2010/4) comes into effect on February 1, 2013. Accordingly, the transactions that will close before February 1, 2013 will be subject to the old regime.

Corporate

Communiqué Regarding Increase of Capitals of Joint Stock and Limited Liability Companies up to the New Thresholds and Determination of Companies which are Subject to Permission for Incorporation and Amendment of Articles of Association

The “Communiqué Regarding Increase of Capitals of Joint Stock and Limited Liability Companies up to the New Thresholds and Determination of Companies which are Subject to Permission for Incorporation and Amendment of Articles of Association” was published on November 15, 2012. The Communiqué covers the procedures and principles for mandatory capital increase of capital companies, which had been primarily envisaged under the Turkish Commercial Code. Another aim of the Communiqué is to specify the companies which are subject to the permission of the Ministry of Customs and Trade for incorporation and amendment of their Articles of Association.

Regulation on the Procedure and Principles of General Assembly Meetings of Joint Stock Companies and Representatives of the Ministry of Customs and Trade who will attend such Meetings

The “Regulation on Procedure and Principles of General Assembly Meetings of Joint Stock Companies and Representatives of the Ministry of Customs and Trade who will attend such Meetings” was published on November 28, 2012. The Regulation sets forth the new procedures to be followed in the general assembly meetings and the subjects such as the documents which shall be provided during such meetings, meeting place, time and quorum. The Regulation also specifies the circumstances where a Ministry Representative shall be present at a general assembly meeting.

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Law on Financial Leasing, Factoring and Financing Companies

The “*Law on Financial Leasing, Factoring and Financing Companies*” was published on December 13, 2012. The purpose of the Law is to regulate procedures and principles for factoring and financing agreements and to settle operating principles for financial leasing, factoring and consumer finance companies that act as financial institutions.

Communiqué on Commercial Books

The “*Communiqué on Commercial Books*” was published on December 19, 2012. The Communiqué sets forth the commercial books which shall be kept by real person and legal entity merchants and the methods regarding keeping such books i.e. electronically or physically. The aim of the Communiqué is to indicate the approval and renewal procedures of commercial books of companies. The Communiqué also shows what kind of information is required for different types of commercial books.

Dispute Resolution

The Regulation about Procedures and Principles for the Acceptance and Withdrawal of Deposits and Participation Funds and for Time-Barred Deposits, Participation Funds, Custody Accounts and Receivables became effective after its publishing on 01.11.2006 and was subsequently amended on 28.05.2011 and 01.11.2012.

Article 62 of the Law states that any deposit, participation fund, custody account and receivable unclaimed by their owners or for which their owners communicate no request or instruction to the bank for a period of **ten years** starting from their **latest request, transaction or written instruction** will be treated as a dormant account, and the principles to apply to such accounts will be determined by the Banking Regulation and Supervision Agency.

Owners of all kinds of deposits, participation funds, custody accounts, and receivables classified as time-barred with a value above TL 50 and above are **notified** by the bank through a letter sent by **registered post** until the end of **January** in next calendar year that their accounts will be transferred to the Saving Deposits Insurance Fund unless they make an application to the banks. This list will be posted on the bank’s website for a period of 4 months.

Additionally, this announcement on the bank’s own website is advertised nationwide for two days until February 15 in two dailies with the highest circulation. Lists announced on the websites shall be sent simultaneously to Associations of Credit Institutions and the Savings Deposit and Insurance Fund by the banks. The Fund and Associations of Credit Institutions will publish the consolidated lists on their own websites until the end of May.

Profit or loss which arises from the operation of the participation accounts, shall be distributed at the currency base, at the rate of the weight of each maturity group within the total participation accounts, in accordance with the Daily Unit Value Calculation Table. Time-barred items that are not claimed by June 15 will be transferred to the Central Bank of the Republic of Turkey or the Fund’s accounts in other banks along with interest and dividends. Banks are obligated to report the breakdowns to the Fund within one week.

The starting date for the calculation of the period according to which assets in leased safes will be classified as dormant commences as of the date on which the subject safe has been opened last or the last date rent was collected for the safe. In accounts opened on condition of payment to a person when he reaches a lawful age; the period to deem an account dormant starts as of the date the subject person reaches the lawful age. The period on which dormant classification is based in other blocked accounts is halted at the date the blockage is imposed and restarts on the date the blockage is removed.

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Employment

The new Turkish Code of Obligations (Law No. 6098) (*published in the Official Gazette dated 4 February 2011 and numbered 27836*) became effective on 1 July 2012. The new Turkish Code of Obligations sets out provisions on employment relationship that are in parallel to the Turkish Labour Code numbered 4857 and further stipulates release of employer by the employee.

Law Regarding Trade Unions and Collective Bargaining Agreement (Law No.6356) (*published in the Official Gazette dated November 07, 2012 and numbered 28460*). As stated in the first article of the Law, the purpose of the Law is to regulate the establishment of employee and employer trade unions and confederations; and to regulate the procedures and principles of collective bargaining agreements, strikes and lock-outs in order to resolve disagreements in a peaceful manner.

Regulation on Lines of Businesses (*published in the Official Gazette dated December 19, 2012 and numbered 28502*). The Regulation sets out which businesses enter into which line of business and their class and sub class codes.

Energy & Climate Change

Regulation on Service Quality Regarding Distribution and Retail Sale of Electricity

The “*Regulation on Service Quality Regarding Distribution and Retail Sale of Electricity*” was published on December 21, 2012. The Regulation sets forth the principles and procedures with respect to the rules on commercial and technical quality to be followed by distribution companies, electricity retail sale companies and end-users.

Communiqué on Monetary Penalties to be Applied to Electricity Market Law, Natural Gas Market Law, Petroleum Market Law and Liquefied Petroleum Gases Market Law

The “*Communiqué on Monetary Penalties to be applied to Electric Market Law, Natural Gas Market Law, Petroleum Market Law and Liquefied Petroleum Gases Market Law*” was published on December 19, 2012. The Communiqué sets forth the new monetary penalties to be applied with respect to the operations and licenses requirements.

Amendment on the Electricity Market License Regulation

The Electricity Market License Regulation (*published in the Official Gazette dated August 4, 2002 and numbered 24836*) was amended on December 30, 2012. The amendments are with respect to the articles on renewal, termination, and cancellation of licenses, general provisions regarding distribution license, and general provisions regarding the retail sale license.

Insurance

Life Group Insurances Regulation

The “*Life Group Insurances Regulation*” was published in October 10, 2012. The Regulation introduces different groups of life insurances and regulates the benefits and rights of the policyholders, insured persons and beneficiaries. It also sets forth the tariffs to be applied to life insurances as well as the implementation of such tariffs.

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