Firm News

Visit the Articles area of the website to see what the lawyers have published this quarter covering corporate tax, cross-border financing, intragroup loans, M&As in Turkey, appropriation, Turkey Arbitration Guide, and corporate recovery & insolvency, which echo the new deals in the Firm on international arbitration, energy project financing and new investments in industrial manufacturing. This quarter the Firm was nominated for its innovative pro bono work. Pekin & Pekin is now leading the team of Turkish Firms advising CityUK on the Istanbul Financial Centre's Arbitration Centre. For updates please visit our website.

Banking & Finance

Amendment to Regulation Regarding Credit Transactions of Banks

The Regulation Regarding the Credit Transactions of Banks (*published in the Official Gazette dated November 1, 2006 and numbered 26333*) has been amended by the Banking Regulatory and Supervision Agency ("**BRSA**") with Regulation published in the Official Gazette dated July 11, 2013 and numbered 28704 ("**the Regulation**"). Under the amended Regulation, the unlimited guarantees granted by banks operating in Turkey to official bodies of foreign country for the obligations of their consolidated partnerships operating in such country have been included in transactions which are not subject to the credit restrictions stipulated under Article 54 of Banking Law (**Law No. 5411**). The Regulation entered into force immediately following its publication in the Official Gazette.

Amendment to the Regulation Regarding the Internal Systems of Banks

The Regulation Regarding the Internal Systems of Banks (*published in the Official Gazette dated June 28, 2012 and numbered 28337*) has been amended by the BRSA with the Regulation published in the Official Gazette dated July 16, 2013 and numbered 28709 ("the Regulation"). The amendment provides an additional exception to the restrictions applicable to audit committee members' rights of assuming duties in commercial entities as provided under Article 6(1)(g) of the Regulation. Accordingly, the appointment restrictions for the members of the auditing committee do not apply for the members of audit committees of banks which do not accept deposits or participation funds and which have been established by law or the authorisation given by law with the purpose of national development or financing of a certain sector or area.

Amendment to Regulation on the Banks Association of Turkey Risk Center and the Regulation on the Disclosure of Customer Information of the Members of the Banks Association of Turkey to the Customers Themselves and to Legal Persons by Consent

The Banks Association of Turkey has introduced an amendment to the Regulation on the Banks Association of Turkey Risk Center (*published in the Official Gazette dated April 10, 2012 and numbered 28260*) with the Regulation *published in the Official Gazette dated August 6, 2013 and numbered 28730*. The amendment enables the sharing of information recorded in the Risk Center with real persons, as well as legal persons, provided that the real or legal person with which the information is to be shared has approval enabling them to request such information. Relevant amendments have been made for the sharing of the information belonging to real or legal persons with real persons in addition to legal persons. In order to maintain compliance, the name of the Regulation on the Disclosure of the Information of the Clients of the Members of the Banks Association of Turkey to the Clients Themselves and to Legal Persons by Consent has been amended as the Regulation on the Disclosure of the Information of the Clients of the Members of the Banks Association of Turkey to the Clients Themselves and to other Real and Legal Persons by Consent. Relevant changes have

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also been made in the aforementioned Regulation including the disclosure to third party real persons.

BDDK Decision Regarding the Appointment of a Consumer Relations Coordinator

The BRSA issued a decision on August 22, 2013 (**Decision No. 5491**) (*published in the Official Gazette dated August 27, 2013 and numbered 28748*) regarding the mandatory appointment of a "**Consumer Relations Coordinator**" in banks with respect to Article 93 of Banking Law (**Law No. 5411**) (*published in the Official Gazette dated February 11, 2005 and numbered 25983*). The decision entered into force on September 27, 2013. The purpose of the decision is to improve the management of complaints and demands regarding consumer products and services offered by banks and to develop the communication between the BRSA and banks at a higher level. The decision sets forth the procedure and principles regarding the appointment of the Consumer Relations Coordinator (the "**Coordinator**"). The obligation to appoint a Coordinator has been stipulated for (i) deposit banks, (ii) participation banks and (iii) development and investment banks which provide products and services on a retail basis. The Coordinator, who will be represented at the vice general manager status, shall be appointed exclusively from among the vice general managers who do not have any authority or responsibility with regard to the products and services offered on a retail basis or the sales and marketing of the above. In addition to the above, the head legal consultant and, although being employed under a different name or status, directors of internal auditing, internal control and risk management with equal or more authority and responsibility as of the vice general managers may also be appointed as the Coordinator. Main functions of the Coordinator are to (i) regulate the products and services provided on a retail basis, (ii) research on, respond to and conclude the procedure regarding complaints or demands from customers, (iii) improve the communication channels between the bank and the BRSA or other official bodies and (iv) maintain the compliance of the banking operations with relevant legislation.

New Regulation on the Equity Capital of Banks

The BRSA has published the new Regulation on the Equity Capital of Banks (**"the Regulation")** (*published in the Official Gazette dated September 5, 2013 and numbered 28756*) to enter into force on January 1, 2014 while the former Regulation dated November 1, 2006 has been annulled. The Regulation aims to designate the principles and procedure regarding the calculation of the equity capital and consolidated equity capital which are to be taken into account while determining the mandatory limitations and standard rates of banks. Hence, the Regulation defines the term 'equity capital' and formulates its calculation as:

Equity capital= (*Main Capital + Supplementary Capital – Values to be Deduced From the Capital).*

The Regulation also aims to reflect the Turkish Accounting Standards to the calculation of equity capital. The Regulation introduces the term 'additional main capital' which consists of the capital corresponding to the privileged shares which are not calculated in the core capital, debt instruments designated by the BRSA and the issuance premiums. All the debt instruments used in the calculation of relevant amounts of capital shall fulfill the criteria set forth by the BRSA. The Regulation also sets forth certain discount items to be deducted from the core capital, additional main capital or the supplementary capital. The definition of the consolidated equity capital has also been provided as well as the calculation formula. The Regulation also sets forth the criteria required to be fulfilled for the debt instruments or loans issued by the consolidated affiliates of the bank abroad to be regarded in the calculation of the equity capital. The calculation periods have been determined as the end of each month in principle, for which the BRSA has the authority to make amendments.

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Amendment to the Communiqué Regarding the Maximum Rates of Interest Issued on Credit Card Transactions

The Central Bank has issued several amendments to the Communiqué Regarding the Maximum Rates of Interest Issued on Credit Card Transactions with Communiqué No. 2013/10 (*published in the Official Gazette dated August 3, 2013 and numbered 28727*) and the Communiqué No. 2013/11 (*published in the Official Gazette dated September 14, 2013 and numbered 28765*). Pursuant to Communiqué 2013/10, the maximum interest rates to be applied on corporate credit card transactions have been subjected to the same rates as credit card transactions for different purposes. As per Communiqué 2013/11, the maximum monthly contractual interest rate has been determined as 2.02 for the Turkish lira, 1.70 for US dollar and 1.64 for euro whereas the maximum monthly default interest rate has been determined as 2.52 for Turkish lira, 2.20 for US dollar and 2.14 for euro for all kinds of credit card transactions.

Amendment to the Communiqué Regarding the Preparation of Consolidated Financial Statements of Banks

With the Communiqué issued by the BRSA (*published in the Official Gazette dated September 20, 2013 and numbered 28771*), the provision regarding the consolidated financial statements of banks has been amended to the responsibility to prepare consolidated financial statements has been issued for the affiliates and subsidiaries of banks which operate abroad. The amendment enters into force immediately following its publication in the Official Gazette.

Amendment to the Communiqué on the Required Reserves

The Central Bank aims to regulate the amounts and principles regarding the required reserves of the finance companies with the amendment issued in **Communiqué No. 2013/13** (*published in the Official Gazette dated October 4, 2013 and numbered 28785*). Pursuant to the amendment, finance companies are required to allocate required reserves in consideration of the loans used from abroad, securities issued and the subordinated debts which are not taken into the calculation of equity capital. The notification liability regarding the activities subject to required reserves and the penal sanctions apply for the finance companies as well as the banks. The amendment enters into force on December 12, 2013.

Amendment to the Circular (No. I-M) of the Central Bank of the Turkish Republic Regarding Decree No.32 on the Protection of the Value of Turkish Lira Currency and Communiqué No. 2008-32/34 of the Prime Ministry Undersecretariat of Treasury

In accordance with Decree No. 32 and Communiqué No. 2008-32/34, Circular No. I-M has been amended with Circular No. 2013/12 (*published in the Official Gazette dated October 8, 2013 and numbered 28789*). Pursuant to the amendment, the aim is to close Currency Deposit Accounts with Credit Letters and Super Currency Accounts. Hence, the provisions regarding the opening, currency types and minimum required amounts of such accounts have been abrogated. As per the amendment, to be effective as of January 1, 2014, the opening of new Currency Deposit Accounts with Credit Letter and Super Currency Accounts will not be allowed. The terms of the accounts which have maturity dates by January 1, 2015 will not be prolonged. Unless the interest and capital of such accounts which will mature by January 1, 2015 are withdrawn by the right owner, the amount will subject to the provisions of the Code of Obligations regarding the lapse of time.

Amendments to the Regulation Regarding the Calculation and Evaluation of the Capital Adequacy of Banks

The Regulation Regarding the Calculation and Evaluation of the Capital Adequacy of Banks (*published in the Official Gazette dated June 28, 2012 and numbered 28337*) was

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subject to two different amendments on September 5 and October 8, 2013. In order to prevent the increase of the ratio of the current consumer loans to the total of loans provided in Turkey, the amendment (*published in the Official Gazette dated October 8, 2013 and numbered 28789 bis*) aims to increase the risk weights of certain credits with respect to their maturity dates immediately following the publication of the amendment in the Official Gazette. First of all, the risk weight of the loans which are provided for the purchase of products and services through credit cards or provided as cash and which have a remaining term of 1-6 months is elevated to 100% from 75%. In addition, the risk weight of real estate loans and consumer loans, with the exception of cash loans and loans provided for the purchase of products and services through credit cards have been elevated to 200% for loans which have a remaining term of 6-12 months, to 250% for the loans which have a remaining term of or more than 12 months. With the amendment issued by the BRSA (*published in the Official Gazette dated September 5, 2013 and numbered 28756*) to enter into force on January 1, 2014, the definitions of the terms 'main capital', 'rate of main capital adequacy', 'core capital', 'rate of core capital adequacy', 'consolidated main capital adequacy' and 'consolidated core capital adequacy' have been introduced in accordance with the Regulation Regarding the Equity Capital of Banks. The amendment also designates the minimum rates of main capital adequacy (of 6%), core capital adequacy (4.5%), consolidated main capital adequacy 6%) and the consolidated core capital adequacy (4.5%).

Amendment to the Regulation on the Principles and Procedure Regarding Characterization of Loans and Other Receivables and the Reserves to be Allocated for the Same

BRSA has introduced an amendment (*published in the Official Gazette dated October 8, 2013 and numbered 28789 bis*) to the Regulation on the Principles and Procedure Regarding the Characterization of Loans and Other Receivables and the Reserves to be Allocated for the Same (*published in the Official Gazette dated November 1, 2006 and numbered 26333*). The significance of the amendment is that for the first time in Turkish legislation, the term 'consumer loan' has been explicitly defined. Pursuant to the definition, consumer loans are defined as: "loans which are provided from the overdraft accounts and the loans which are designated as consumer loans by the uniform accounting plans of the banks in connection with the saving deposits of the real persons and loans provided as cash or provided for the purchase of products or services through credit cards for real persons". The purpose of the amendment is to enhance the definition of consumer loans so that the general rate for required reserves specified under Article 7 of the Regulation may also be applied on the aforementioned types of credits. Furthermore, the amendment also sets forth the rates of required reserves for consumer loans with the exception of residential loans (as 4% for first group loans and 8% for second group loans). The amendment also sets forth the required reserve rates for exportation loans as 0% for cash and non-cash loans in First Group, 0.5% for loans provided in cash and 0.1% for non-cash for small and medium sized enterprises.

Amendment to the Regulation on Bank Cards and Credit Cards

The Regulation on Bank Cards and Credit Cards (*published in the Official Gazette dated March 10, 2007 and numbered 26458*) has been amended with the Regulation published in the Official Gazette dated October 8, 2013 and numbered 28789 bis). Pursuant to the amendment, the minimum payment amounts of or credit cards have been increased with respect to the credit card limits. Article 28/A added to the Regulation stipulates a gradual increasing procedure of the minimum payment amounts to enter into force on January 1, 2014. Entities issuing credit cards are put under the responsibility of making research about the payment capacity of the clients and issue limits to the credit cards accordingly. For the persons who will be a credit card owner for the first time, the total limit of the card may not exceed twice the net income of the card owner for the first year and four times of such amount for the second and following years. For the persons whose average income cannot be determined, the total credit card limits that such person has from different entities may not exceed TL 1000. The amendment enters into force immediately following its publication in the Official Gazette with the exception of Article 3 which refers to Article 28/A of the Regulation and enters into force on January 1, 2014.

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Amendment to the Communiqué Regarding Credit Risk Mitigation Techniques

The Communiqué Regarding Credit Risk Mitigation Techniques *(published in the Official Gazette dated June 28, 2012 and numbered 28337*) has been amended by the BRSA by the communiqué published in the Official Gazette dated October 8, 2013 and numbered 28789 bis. The insurance policies issued by Türkiye İhracat Kredi Bankası A.Ş. have been designated as a new method of mitigating the credit risk on the condition that the policies are given as security to the bank providing the loan. The communiqué introducing the amendment enters into force immediately following its publication in the Official Gazette.

Capital Markets

A New Communiqué on Investment Trusts

The Capital Market Board ("CMB") introduces a new Communiqué Regarding the Principles on Investment Trusts ("**Communique No. III-48.2**") (*published in the Official Gazzette dated August 29, 2013 and numbered 28750*). Pursuant to the Communique No. III-48.2, among the transfer of shares performed after the public offering period, only the transfers which result in a change in management control shall be subject to the permission of the CMB. Furthermore, Communique No. III-48.2 states that, when it is planned to be outsourced, only portfolio management companies may provide portfolio management and investment consultancy services to investment trusts. In addition to that, the responsibilities of the board members and executive directors if any, are clarified in the Communique No. III-48.2.

A New Communiqué on Warrants and Investment Institution Certificates

The CMB issued a new Communiqué on Warrants and Investment Institution Certificates ("**Communiqué No. VII-128.3**") (*published in the Official Gazette dated September 10, 2013 and numbered 28761*) which is in line with the provisions of the new Capital Market Law. Communiqué No. VII-128.3 enables warrants and investment institution certificates, in addition to public offerings of the same, to be issued to qualified investors only without being offered to public. Communiqué No. VII-128.3 provides that, the government debt securities can be determined as the underlying for the issuance of the warrants and investment institution certificates. Furthermore with the Communiqué No. VII-128.3, an entity which is not a bank or brokerage firm but operates as an entity of a group of companies under which a bank or brokerage firm operates may also issue warrants and investment institution certificates.

Competition

As we have highlighted in previous editions of the newsletter, the Competition Board (the "Board") is spending a busy year in terms of work and studies to improve the secondary legislation in harmony with European Union legislation. This quarter, the Board's contributions to the secondary legislation included the following:

- Guideline on Situations Deemed as Mergers and Acquisitions and the Concept of Control was published by the Board on October 11, 2013. This Guideline was published in order to minimize uncertainties in the determination of transactions subject to approval of the Board as per the Communiqué on Mergers and Acquisitions Subject to Approval of the Competition Board and merger and acquisition transactions which have been prohibited by the Article 7 of the Law numbered 4054.

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- Guideline on the Evaluation of Horizontal Mergers and Acquisitions and Guideline on the Evaluation of Non-Horizontal Mergers and Acquisitions have been published by the Board on September 12, 2013. These guidelines have been prepared to establish general principles to be considered in evaluations made by the Board. Guideline on the Evaluation of Non-Horizontal Mergers and Acquisitions includes both vertical and conglomerate mergers and acquisitions.

Also, the Competition Board has published Mergers and Acquisitions Report for the first six months of the year 2013. According to the report the Board was notified of 134 merger and acquisition transaction in total in the first half of 2013. The total number of notified transactions is low compared to 2012, during which a total of 303 merger and acquisitions filings were made. The increase of the filing threshold effective from February 1, 2013 (see 2013-Q1 edition) could easily be argued to play an important role in the fall.

Corporate

International Competitiveness

The Communiqué Regarding the Support of the Development of International Competitiveness (*Published in the Official Gazette dated September 23, 2010 and numbered 27708*) was amended on September 14, 2013. The purpose of the Communiqué is to cover education and consultancy expenses and the expenses of project based work of companies operating in the software sector and carrying out industrial and/or commercial activities from Support and Price Stabilization Fund.

Electronic Signature

Communiqué on the Process and Technical Criteria Regarding Electronic Signature (*published in the Official Gazette dated January 06, 2005, No. 25692*) has been amended on September 19, 2013. Accordingly, Electronic Certificate Service Providers shall comply with Article 6 of the Communiqué regarding algorithms and parameters by September 15, 2014.

Websites of Equity Companies

Regulation on websites to be Opened by equity Companies (*published in the Official Gazette dated May 31, 2013 and numbered 28663*) was amended on September 21, 2013. Article 5 of the Regulation has been amended and equity companies which are members of a holding group but not within the scope of direct independent audits are not obliged to open websites. Furthermore, the website opening obligation of companies which are members of a holding group could be fulfilled by another other member company even though the other company is not authorised to Central Database Service Provider. The member company receiving the service is deemed to have its website opened.

Automotives

Vehicle Manufacture, Modification and Assembly

The Regulation on Manufacture, Modification and Assembly of Vehicles (*published in the Official Gazette dated November 28, 2008 and numbered 27068*) was amended on September 13, 2013. Modification of vehicles, such as buses or minibuses that have to conform with accessibility for disabled people rules has been amended.

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Motor Vehicles Approvals

Communiqué on Assembly of Warning Systems in Motor Vehicles for Roadway Departures Type Approval and Communiqué on Advanced Emergency Breaks for Certain Motor Vehicle Types Approval (*published in the Official Gazette dated September 18, 2013 and numbered 28769*) have been issued by the Ministry of Science, Industry and Technology

Consumer Goods and Retail

A Turkish Food Codex Foods Coming Into Contact with Plastic Material and Products

The Communiqué Regarding Turkish Food Codex Foods Coming Into Contact with Plastic Material and Products (*published in the Official Gazette dated July 17, 2013 and numbered 28710*) regulates the production, delivery and cultivation process of foods which may come into contact with plastic materials and products.

Official Audit of Importation of Herbal Supplements and Feed

The Regulation on the Official Audit of Importation of Herbal Supplements and Feed (*published in the Official Gazette dated December 17, 2011 and numbered 28145*) was amended on August 7, 2013. As per the amendment to Article 4, both importers and producers of herbal supplements and feeds may prepare documents to prove the cultivation procedure compliance with the standards.

Alcoholic Drinks Trading

The Regulation on Procedures and Principles of Domestic and Foreign Trade of Alcoholic Beverages (*published in the Official Gazette dated June 6, 2013 and numbered 25130*) has been amended on August 11, 2013 to be enter into force in June 11, 2014. As per the amendments to the Articles 13 and 19 of the Regulation, bottles of alcoholic beverages shall be labeled as per the requirements set forth in the Regulation.

Warning Labels on Alcoholic Beverages

Pursuant to the Communiqué Regarding Warning Labels to Be Put on Packages of Alcoholic Beverages (*published in the Official Gazette dated August 11, 2013 and numbered 28732*) warning labels and graphics shall be printed on labels on bottles of alcoholic beverages. Alcoholic beverage bottles without complying with this Communiqué shall be prohibited from sale as of June 11, 2014.

Regulation on Turkish Food Codex Labelling

The Regulation on Turkish Food Codex Labelling (*published in the Official Gazette dated December 29, 2011 and numbered 28157*) was amended on September 3, 2013. The amendment is about the labelling requirements on food packages.

Marking and Labelling of Packages numbered MSG-MS-2013/22

Communiqué on Marking and Labelling of Packages (published in the Official Gazette dated September 5, 2013 and numbered 28756) has been issued by the Ministry of Science, Industry and Technology. As per the Communiqué, the Communiqué on Compulsory Standards numbered 93/85-86 (published in the Official Gazette dated November 24, 1993 and numbered 21768) and TS 4331 Standards on the Marking and Labelling of Packages promulgated by the Ministry have been abolished; accordingly, TS 4331 standards on the labelling and marking of packages have been revised by the Turkish Standards Institution and such standards shall be followed in manufacturing and selling phases.

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Sale and Presentation of the Tobacco Products and Alcoholic Beverages

The Regulation on Sale and Presentation of Tobacco Products and Alcoholic Beverages (*published in the Official Gazette dated January 7, 2011 and numbered 27808*) was amended on September 18, 2013. Accordingly, retail sales of alcoholic beverages are prohibited between the hours 22.00 and 06.00. Furthermore, the sale and presentation of alcoholic beverages are prohibited in workplaces operating as gas stations, stadiums and indoor sports facilities, all kinds of educational institutions, places where health care services are provided and student residences. Workplaces selling alcoholic beverages by retail or in glasses or bottle shall be 100 metres away from all educational institutions, student residences and sanctuaries. Distance condition shall not be apply to workplaces obtained which have obtained workplace opening and operation license before the date June 11, 2013. Workplaces with tourism operation licenses are exempted from the distance condition. Moreover, advertisements and presentation of alcoholic beverages to consumers are prohibited.

Dispute Resolution

The New Turkish Petroleum Law entered into effect

Turkish Petroleum Law (Law No. 6491) *(published in the Official Gazette dated 11 June 2013 and numbered 28674*) **("TPL")** entered into effect as of the date of its publication at the Official Gazette and superseded the previous Petroleum Law numbered 6326 **("Law No. 6326")** which was in force for 59 years.

Pursuant to Article 1 of the TPL, the purpose of the TPL is to enable expedient, continuous and effective exploration, development and production of petroleum resources of the Republic of Turkey in accordance with the national interests. It is noted that, the national interest notion has been maintained in the purpose and scope of the law.

Articles 6-8 of the TPL set forth provisions related to the exploration license, application and licensing procedure and operating license. Under Article 6 of the Law No. 6326, it was set forth that the right to obtain a permit, exploration and operating licenses shall be exercised by Türkiye Petrolleri Anonim Ortaklığı **("TPAO")** on behalf of the state. However, the TPL does not contain such provision and abrogates TPAO's right arising from the Law. In this way, private companies will be able to file a license application under the same conditions with TPAO concerning any field.

Therefore, the abolition of the provision providing that the right of permit, exploration and operation licenses which existed during the period of Law No. 6326, shall be in favour of private companies since they will now be able to enter the relevant field. The market is now open to all public and private entities.

Moreover, it is also noted that new provisions have been adopted with regard to the period for which the exploration license may be granted. With the requirement to submit an investment plan with the extension request of the licenses, cases where the license is extended without any investment are prevented. The requirement that the TPAO must be consulted before the fields whose operation licenses have expired can be put on auction has been adopted and TPAO was granted a priority.

It must also be noted that no new applications for exploration licenses shall be accepted by the General Directorate within the first year commencing from the date of entering into force of the TPL. In other words, new exploration license applications shall be filed starting from June 11, 2014.

As far as tax provisions are concerned, the TPL also provides certain exemptions (i.e tax and investment exemptions) to the public and private entities that wish to engage in the petroleum market. In this respect, import of the necessary equipment listed under Article

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13 of the TPL will be exempt from customs tax, fees and stamp tax. Additionally, pursuant to Article 12 of the TPL, the taxes that petroleum right holders are liable to pay on their net profits and the income tax, which they are liable to withhold on behalf of their shareholders, shall not exceed fifty-five per cent.

In conclusion, the provisions brought by the TPL aim to incentivize the exploration and production activities in the relevant field with a low cost, simplification of the operations and provide a competitive environment in this sector.

Employment

Regulation on the Working Conditions of the Pregnant or Breast-Feeding Women and Nursing and Breast-feeding Rooms

Regulation on the Working Conditions of Pregnant or Breast-Feeding Women and Nursing and Breast-feeding Rooms (*published in the Official Gazette on August 16, 2013 and numbered 28737*) regulates the conditions of nursing and breast-feeding rooms and the ones who are authorized to use the rooms. The Regulation also covers the principles and procedures regarding the working conditions of pregnant and breast-feeding women. Accordingly, pregnant and breast-feeding women shall not work more than seven and a half hours and it is prohibited for women who have newly gave birth to a child to work at nights for a year as of the date that she has given birth.

Regulation on Occupational Healthcare and Safety at the Constructional Affairs

Regulation on Occupational Healthcare and Safety at the Constructional Affairs (*published in the Official Gazette dated October 5, 2013 and numbered 28786*) regulates the minimum precautions to be taken with respect to occupational healthcare and safety at the constructional affairs and sets out the obligations of the employers, liabilities of the project officers and employers.

Regulation on Healthcare and Safety Signs

Regulation on Healthcare and Safety Signs (*published in the Official Gazette dated September 11, 2013 and numbered 28762)* regulates the requirements for healthcare and safety signs to be in workplaces.

Energy & Climate Change

Soil Pollution and Point Sourced Polluted Areas

Articles regulating technical and administrative procedures for soil pollution control in industrial areas of the Regulation Regarding Control of Soil Pollution and Point Sourced Polluted Areas (*published in the Official Gazette dated June 8, 2010 and numbered 27605*) was amended on June 11, 2013 to be enter into force at June 8, 2015.

Odors from Emissions

The Regulation Regarding Emissions Producing Odors (*published in the Official Gazette dated July 19, 2013 and numbered 28712*) has been issued by the Ministry of Environment and Urban Planning. The regulation stipulates the provisions of control and decrease of odor emission in scope of environmental impact assessments, environmental audit regulations and complaints.

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Electricity Market Law

Provisional Article 17 was inserted into Electricity Market Law (*published in the Official Gazette dated March 30, 2013 and numbered 28603*) (Law No. 6446) (the "**Law**") on August 2, 2013. Accordingly, legal persons who have been approved for license by the Electricity Market Regulation Board (the "**EMRB**") for energy generation activities based on wind power but having license applications rejected before the effectiveness date of this Article (August 2, 2013) due to failure to comply with obligations stated in the approval decision shall be granted pre-licenses provided that they apply to the EMRB within one month as of the effectiveness date of the Article and the evaluation of TEIAS or electricity distribution companies on the feasibility of connections continues to be valid, and fulfil obligations stipulated by the Law.

Domestic Manufacturing of Components used in Electricity Generation Facilities based on Renewable Energy Sources

Regulation on Domestic Manufacturing of the Components used within the Electricity Generation Facilities based on Renewable Energy Sources (published in the Official Gazette dated June 19, 2011 and numbered 27969) was amended on September 4, 2013.

Intellectual Property

Communiqué on Internet Domain Names

Communiqué on Internet Domain Names (*published in the Official Gazette dated August 21, 2013 and numbered 28742*) stipulates provisions regarding the determination of internet domain names registration institutions and principles and procedures for operating internet domain names which have "tr" extension.

It also regulates the execution of the dispute resolution mechanism with respect to internet domain names, determination of dispute resolution service providers along with the principles and producers thereof. Accordingly, the complainant may apply to Dispute Resolution Service Provider's website for dispute resolution.

Real Estate and Construction

A Construction Materials

The Regulation on Construction Materials (*published in the Official Gazette dated July 10, 2013 numbered 28703*) has entered into force to introduce standard practice on labeling of "**CE"** (***C****onformité* ***E****uropéenne*) construction materials and performance declarations regarding main characteristics of construction materials in order to supply such to the market.

Land Registry

As per the Land Registry ByLaw (*published in the Official Gazette dated August 17, 2013 numbered 29738)* the utilization of Turkish Land Registry and Cadastrate Information System electronic data base and other computer based systems have been regulated. Accordingly, passports and attorney at law identity cards shall not be used in lien and land registry procedures anymore. The applicants shall have their valid Turkish Republic identity cards in order to start any procedure before Land Registry.

Planned Zones Type Approval Regulation

Planned Zones Type Approval Regulation (published in the Official Gazette dated November 2, 1985 and numbered 18916) has been amended by an Amendment

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Regulation (published in the Official Gazette dated September 8, 2013 and numbered 28759). Accordingly, planning and housing shall be made as per the instructions determined by the Ministry of Environment and Urban Planning.

Transportation, Logistics & Defence

Hydroplanes

The Regulation on Air Transportation Operations by Hydroplanes (*published in the Official Gazette dated July 23, 2013 and numbered 28716*) issued by General Directorate of Civil Aviation. Flying permit shall be obtained for landing and departing on the water from General Directorate. The registration of flights and granting operation license is regulated under the Regulation.

Multinational Agreement Executed by Turkey: RACVIAC

Turkey has become a party to the Center for Security Cooperation which aims to provide arms control training, promote confidence and security building measures and broaden cooperation in South Eastern Europe with the decision of Council of Ministers on Center for Security Cooperation RACVIAC Providers (*published in the Official Gazette dated July 26, 2013 numbered 28719*).

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

Turkey is to be a party to The Convention by means of declaration of Council of Ministers' Decision as per the decision of Council of Ministers on International Convention on Civil Liability for Bunker Oil Pollution Damage (*published in the Official Gazette dated July 27, 2013 numbered 28720*).

Tax

Protocol on the amendment of the Turkey-Belgium DTT signed

The protocol, amending Article 26 entitled "Exchange of Information" and Article 27 entitled "Assistance in the Collection of Taxes" of the Double Tax Treaty between Turkey and Belgium in accordance with the updated OECD Model Tax Treaty, was signed on July 9, 2013 in Brussels. The signed protocol will be effective upon the ratification of the parliaments of both parties and the completion of all necessary procedures.

Council of Ministers approved the "Agreement between the Government of Republic of Turkey and the Government of Jersey for the Exchange of Information in relation to Tax Matters"

The approval of the "Agreement between the Government of the Republic of Turkey and the Government of Jersey on the Exchange of Information in relation to Tax Matters" (the **"Agreement")** was ratified by Law No.6418 (*published in the Official Gazette dated February 13, 2013 and No. 28558*). Following the ratification law, the Agreement was approved with Decree of Council of Ministers No. 2013/4979 (*published in the Repetitive Official Gazette dated July 25, 2013 and No. 28718*). Accordingly, upon the approval of such Decree, Turkey has completed the constitutional procedures for the enforcement of the Agreement. The agreement will be effective upon the completion of mutual notification procedures by the parties.

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Council of Ministers approved the "Protocol Amending the Double Tax Treaty between Turkey and Malaysia"

Article 25 "Exchange of Information" of the Double Tax Treaty between Turkey and Malaysia was amended through a Protocol signed on February 17, 2010 (the "**Protocol**"). Law No. 6469 regarding the ratification of such Protocol was *published in the Official Gazette dated May 22, 2013 and No. 28654*. Accordingly, the Protocol has been approved with the Decree of Council of Ministers No. 2013/5040 (*published in the Repetitive Official Gazette dated July 25, 2013 and No. 28718*). Accordingly, upon the confirmation of the Protocol, Turkey has completed the constitutional procedures on the enforcement of the Protocol. The Protocol will be effective upon the completion of mutual notification procedures by the parties.

DDT between Turkey and Australia has become effective as of June 05, 2013

"The Convention between the Government of Australia and the Government of the Republic of Turkey for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion" (the "**DTT"**) was signed between the parties on April 28, 2010, and the DTT and its protocol have been approved by the Council of Ministers through the Decree No. 2013/4640 (*published in the repetitive Official Gazette dated May 21, 2013 numbered 28653*). In this way, mutual notification procedures have been completed by the governments, and the Government of Australia has announced that the DTT has become effective as of June 05, 2013. In addition, through the Decree of Council of Ministers No.2013/5236 (*published in the Official Gazette dated August 31, 2013 and numbered 28751*), it has been determined that the DTT has become effective as of June 05, 2013. The provisions of such Double Tax Treaty will be applicable as of January 01, 2014.

The recent position of the Tax Authority regarding the VAT correction of the credit note application

Pursuant to the recent tax ruling of the Tax Authority dated February 18, 2013 and Numbered 39044742-130-206 (the "**Tax Ruling**"), VAT, calculated due to credit notes in relation to the importation of the goods to be declared as additional VAT on a VAT return, can also be considered and declared as input VAT. Accordingly, such VAT will not constitute an additional tax burden for taxpayers.

Pursuant to Article 35 of the Value Added Tax (the "**VAT**") Law (Law No. 3065) (*published in the Official Gazette dated November 2, 1984 and No. 18563*) (the "**VAT Law**"), in the case of any changes or reduction on the taxable base of VAT, the correction to be made by both parties of such transaction is required. In this respect, if the VAT base of a transaction is changed, as a result of returning of goods, failure of a transaction, abandon of a transaction or any other situation, the taxpayer who performs the transaction that is subject to VAT, shall correct the output VAT whereas the other party of such transaction shall correct input VAT within the period when the VAT base changes.

Under the tax rulings issued by the Tax Authority until now, it has been stated that if a discount made with a credit note in favour of an importer is realized after the importation date, the change realized in the VAT base due to the discounts made by the seller (exporter) shall be corrected in accordance with Article 35 of the VAT Law. According to the said rulings, it has been also indicated that the correction shall be made by declaring the amount which has been deducted in excess under the VAT return, under the line *"the amount to be added to VAT base"* in such VAT return.

However, there was a discussion on whether the amount which is added to the VAT base will then be deductible from the VAT to be paid by the taxpayer. The Turkish Tax Authority has made a clarification on the subject matter and finalized the discussion with the Tax Ruling.

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Under the aforementioned ruling, it has been stated that the VAT which has been declared under the line *"the amount to be added to VAT base"* as a result of the correction, could also be treated as a deduction.

Law introducing VAT and corporation tax exemptions for Sale and Leaseback transactions within the scope of financial leasing effective

The Law regarding the Amendment of Certain Laws and Decrees In Force of Law (Law No.6495) (the **"Law")** was published in the *Official Gazette dated August 02, 2013 and No. 28726.* The Law provides VAT and corporation tax exemptions for sale and leaseback transactions performed within the framework of financial leasing. Please find below the summary of the newly regulated exemptions.

a) VAT exemption

Through the supplementation made to Article 17/4 of the VAT Code with subparagraph *"**y**"* by Article 29 of the Law, sale and leaseback transactions performed within the scope of financial leasing are exempt from VAT. In this respect, providing that ownership of the real estate have been purchased from the lessee and leased back by financial leasing companies, will be transferred to the lessee by the expiration of the financial leasing agreement, the following transactions are exempt from VAT;

- Sale of real estate to financial leasing companies,
- Leasing of the real estate to sellers by financial leasing companies,
- Transfer of ownership of immovable property back to the sellers by financial leasing companies.

b) Corporation tax exemption

Through the amendment made to the subparagraph No.1 of Article 5/1-e of the Corporation Tax Law (Law No. 5520) (*published in the Official Gazette dated 21.06.2006 and numbered 26205*) (the **"CIT Law"**) by Article 42 of the Law, sale and leaseback transactions performed within the scope of financial leasing are exempted from Corporation Tax. In this respect, **(i.)** the capital gain derived by the sellers (lessee) through the sale of real estate to financial leasing companies and **(ii.)** the capital gain derived by the financial leasing companies through the sale of real estate back to the sellers (lessee) will be exempt from corporation tax providing that such sales are realized with the purpose of leasing back in accordance with the Financial Leasing, Factoring and Financing Companies Law (Law No.6361) and the ownership of real estate will be transferred back to the seller party by the expiration of contract.

The Application Opportunity for Using the E-Invoice System and the Companies Given Private Integration

Under the explanation given by the Directorate of Revenue Administration on August 06, 2013; it has been stated that the electronic application system is open for the use of taxpayers who desire to benefit from the e-invoice system. Such applications shall be made by entering the official website of e-invoice "www.efatura.gov.tr" and filling in the required forms on the website.

In addition, it has been announced under the explanation made by the Directorate of Revenue Administration on August 07, 2013 that the number of companies given private integration increased to 10. The business names of such companies are stated in the website

Pursuant to the change in *the application guide for the e-invoice implementation* made by the Directorate of Revenue Administration on August 01, 2013, the deadline for

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companies to open an e-invoice user account has been extended to December 31, 2013.

Liabilities of Joint Stock Companies and Limited Companies for Public Receivables

The Communique regarding the Amendment of the General Communique on Collection (Serial No: A Order No: 5) has been published in the *Official Gazette dated September 11, 2013 and No.28762*. The Communique covers the regulations regarding the liabilities of limited companies and joint stock companies from public receivables.

a) Liabilities of Limited Companies from Public Receivables

➢ Liability of Shareholder

As known, according to Article 35 of Law on Procedures of Collection of Public Receivables (Law No.6183) (*published in the Official Gazette dated 28.07.1953 and numbered 8649*), shareholders of a limited company are liable for the public receivables with their capital shares in the company, which are not to have been collected from the company.

Having considered Article 595 of the Turkish Commercial Code No. 6102 (Law No.6102) (*published in the Official Gazette dated February 11, 2011 and numbered 27846*) (the **"TCC")**, it has been stated under the General Communique on Collection Serial No. 5 that the approval date for share transfer agreement by the Notary Public shall be taken as a basis for the date of share transfer in case such transfers are not registered in the trade registry and are not announced in Turkey Trade Registry Gazette. On the other hand, if the general assembly rejects the share transfer even though the shares have been transferred with the transfer agreement approved by the Notary Public, the share transfer will be not accepted as legally binding in terms of taxation and the shareholder will be held liable from the public receivables.

➢ Liability of Legal Representative

In accordance with Article 35 of the Law No.6183, legal representatives are jointly and severally liable for the public receivables in all.

The TCC states that the legal representative of a limited company could be one or more shareholders or all shareholders or third parties who are entitled as a manager by the articles of association. Meanwhile, it should be noted that at least one of the shareholders shall have the right to manage and authority to represent the company in order to make the third parties manage and represent the company.

Accordingly, the proceedings of public receivables against the shareholders who are not entitled as a manager or representative could be made in proportion to their capital shares in the company. On the other hand, legal representatives who are determined in accordance with the provisions of the TCC will be jointly and severally liable for the public receivables.

b) Liabilities of Joint Companies from Public Receivables

➢ Liability of Shareholder

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According to Article 329 of TCC, the shareholders who are not members of the Board of Directors of Joint Stock Company are only liable for public receivables limited with their capital shares which they undertake; they will not have any liability beyond this limit.

- Liability of Legal Representative

In accordance with repetitive Article 35 of the Law No.6183, the legal representatives of a joint stock company will be jointly and severally liability for the public receivables.

Under the application of Repetitive Article 35 of the Law No.6183, the legal representatives could be the members of the Board of Directors assigned by the articles of association or third parties entitled as manager by the Board of Directors. All the members of Board of Directors shall be considered as legal representatives in cases where the authority of representation is not given to the executive directors or third parties as managers. Legal proceedings in relation to public receivables shall not be started for other members of the Board of Directors in cases where the authority to represent the company has been delegated to executive directors or third parties as managers.

In this regard; the articles of association of a company shall be principally taken into consideration. If there is any delegation to executive directors or third parties under the company's articles of association, the legal proceedings shall be started only for the executive directors or third parties as managers. If there is not any delegation to executive directors or third parties as managers under the company's articles of association, legal proceedings shall be made for all the members of Board of Directors due to the public receivables for which those members are jointly and severally liable within the scope of Repetitive Article 35 of the Law No.6183.

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