

client alert

INVESTMENT | TURKEY

JULY 2017

NEW PRODUCTION REFORM PACKAGE AIMS AT BOOSTING TURKISH ECONOMY

“The Law on Amendments on some Laws and on a Statutory Decree for the Improvement of the Industry and Supporting the Production”, also known as the “Production Reform Package” (the “Law”), which entered into force when published in the Official Gazette no. 30111 dated 1 July 2017 has brought many changes to Turkish legislation in many fields, in particular industry, education and taxation.

According to its preamble, the objectives of the Law are to boost the Turkish industry, create new industrial areas for domestic and foreign investors, expand existing industrial areas, conduct investment projects without delay and without being slowed down by bureaucratic processes, and grant state incentives to organised industrial zones, industrial zones, technology development zones, industrial sites, and free zones.

The amendments can be broken down into two groups: (I) the amendments that promote the domestic industry in a general manner and (II) the amendments that encourage domestic high technology production. However, it should be noted that the amendments aiming to promote the domestic industry will also be applicable to information technology and software producers which are qualifying as "manufacturers" for the purpose of this Law.

AMENDMENTS TO PROMOTE THE DOMESTIC INDUSTRY

The Law no. 4652 on Organised Industrial Zones (“OIZ Law”) takes the lion's share of amendments wrought by the Production Reform Package. Significant amendments related to organized industrial zones (“OIZ”) may be summarised as follows:

- Processes to prepare OIZ zoning plans have been shortened. In the new regulation, public display of subscale plans, previously set at 1 month in the Law of Zoning, has been reduced to 1 week. However, where OIZ participants request plan changes that are not processed within 3 months of the application with the OIZ, such participants may now apply directly to the Ministry of Science, Industry and Technology with plan change requests.
- In order to prevent basic infrastructure service outages, water, electricity, and natural gas revenues collected by OIZs may not be seized on the grounds of OIZ debt.
- The restrictions based on subject, region, and specialisation for ministerial loans provided to OIZs have been abolished, and OIZs are assured of obtaining loans from the Ministry of Industry and Commerce for their projects approved by said Ministry.
- In addition, for loans taken out by OIZs with banks or financial institutions, the Ministry of Industry and Commerce is now competent to give interest support to OIZs.

- Prior to the amendment to the Law on Organised Industrial Zones, only OIZ participants or their tenants were able to operate on one plot of land. The amendment of the Production Reform Package now provides that a controlling company may share its plot with its affiliates.
- The Law on Organised Industrial Zones provides that the lands assigned to the OIZ participants may not be sold, transferred, or assigned until the related debts are fully paid and the facility has started production. Under the OIZ Law, this matter will be annotated to the attention of the land registry records. The annotation must read "It is mandatory to obtain conformity opinion of OIZs in order to transfer to third parties including the forced sale of the immovable by auction" on the land registry records of all immovable properties within the boundaries of an OIZ but not subject to its ownership. Existence of these annotations previously reduced the creditability of the beneficiaries/owners of these properties; higher creditability was observed without annotations. As of now, in order to facilitate access to finance, the amendment allows, under some conditions (such as taking 50% investment credits or the provision of a letter of guarantee), title deeds to be given without any annotation regarding the debts of the investor. The amendment thereby enables participants to increase their creditability.
- Prior to the amendment, under the Law on the Energy Market, it was possible for OIZs to produce/distribute energy in order to meet their own needs with the authorization of the Energy Market Regulatory Authority (the "**EMRA**") without any obligation to incorporate a company. With the amendment, OIZs will now need both the authorization of the Ministry of Science, Industry and Technology and the EMRA. However, the incorporation of a company will still not be required. OIZ participants will also have the right to set up energy facilities with the permission of their OIZ, without incorporating a company.
- Electricity distribution prices in the OIZs were annually determined by EMRA according to the Regulation on the Electricity Market Activities of Organized Industrial Zones. This EMRA competence has indirectly become invalid, with the addition of the following clause by the Production Reform Package: "Regulations on OIZ participants' energy expenses are made by the Council of Ministers without interfering with the free market conditions and prices". Thus, the competence of making regulations on the outgoings of OIZ participants is given to the Council of Ministers.
- Companies and OIZs in Turkey may now establish OIZs abroad, while the Council of Ministers has become competent to determine the plot allocations given to these OIZs established abroad.
- OIZs now have the competence to establish real estate investment companies, provided that they operate only within the boundaries of the OIZ. OIZ participants may thereby gain access to different financing models.

The Law on Stamp Duty no. 488, the Law on Fees no. 492, the Law on Real Estate Tax no. 1319, and the Law on Municipality Incomes no. 2464 have been amended. As regards organised industrial zones, industrial zones, technology development zones, and industrial sites, land plot allocation contracts and commitments concluded for these zones are exempt from **stamp duty**. Furthermore, (i) procedures requiring land registry annotations because of plot allocations on these zones, along with (ii) assignments and registrations made accordingly to the allocation contracts and (iii) procedures about classification changes of buildings that have been constructed on these zones, are exempt from **fees**. Lastly, the buildings on these zones are now exempt from **real estate tax**.

Weekend Holiday Law no. 394 is now abolished. Accordingly, the obligation to obtain a licence in order to be able to work on weekends, which has been a financial burden for industrial businesses, has also been abolished. Consequently, industrial businesses will not be obliged to obtain a licence to operate on Sundays, on the condition that employees have at least one whole day off per week under Labour Law no. 4857.

The Law on the Incomes of Radio and Television Institution ("TRT") no. 3093 has been amended in such a way that companies registered on the Industrial Registry are now exempt from the TRT cut, i.e. 2% of their electricity consumption fees.

The Zoning Law no. 3194 has been amended so that taking zoning decisions regarding industrial sites and technology development zones and making changes to these decisions are now conditioned to the conformity opinion of the Ministry of Science, Industry and Technology. The purpose of this article is to prevent distorted industrialisation deriving from the creation of industrial zones by local administrations, despite the fact that there are sufficient zones in the OIZs.

The Law on the Establishment of the Directorate of Improving and Supporting Small and Medium Sized Enterprises ("SMEs") no. 3624 has been amended such that the Directorate has now the competence to pay incentives to SMEs under Law no. 3624. For instance, payments related to the nonrecourse loans granted to SMEs by the Directorate, amounting to TRY 50,000 and paid in quarterly instalments spread over two years, may now be disbursed earlier without any instalment.

The Law on the Preparation and Application of the Technical Legislation Related to Products no. 4703 has been amended. Institutions that will conduct all kinds of tests, inspections, and certifications must now be registered in the EU's Nando (New Approach Notified and Designated Organisations) Information System. Compliance with the EU's energy legislation has been set as another criterion for the preparation of the technical legislation related to the placement of the products on the market. Furthermore, it is now possible for the State to forbid or recall from the market those products that do not comply with the EU Energy Efficiency Regulations.

The Pasture Law no. 4342 has been amended, making it possible for regional governorates to change the zoning status of pasture zones upon request of the related directorate (the Science, Industry and Technology provincial directorate is competent for organised industrial zones, for instance) and the conformity opinion of the commission and provincial treasury office in the event that they are needed to establish or expand industry zones, organised industrial zones, technology development zones, free zones, and industrial sites. Furthermore, in the event of such a zoning status change, OIZs may benefit from an exemption from the "grass fee" whose payment was previously needed. In such event, the title deed will initially be registered in the name of the State Treasury. Subsequently, it will be possible to donate/sell those zones to OIZs under the Law on OIZs.

The Law on Coasts no. 3621 now makes it possible to build health facilities on bulkhead lines upon proposal of the Ministry of Health and the "interest decisions" of the Council of Ministers.

AMENDMENTS TO ENCOURAGE DOMESTIC HIGH TECHNOLOGY PRODUCTION

Industrial Registry Law no. 6948 now includes enterprises producing information technology and software under the definition of "industrial enterprise". Companies producing information technologies and software, they must now register both with the Trade Registry and the Industrial Registry, regardless of how many employees they have.

The registration of companies with the Industrial Registry imposes some rights and obligations on them. The most important obligations are the notification to the Registry of any significant changes related to the corporate structure, and submitting on-line an annual enterprise management schedule to the Ministry of Science, Industry and Technology by the end of April every year. The most significant rights granted to the enterprises registered to the Industrial Registry are:

- TRT-Share exemption for their electric expenses, granted under the Production Reform Package;
- exemption from Banking and Insurance Transactions Tax for the financing of machinery and equipment;
- VAT exemption on the sale to exporters of goods to be exported (*KDV Tecil-Terkin*); and
- benefitting from an advantageous electricity tariff.

Law on Higher Education no. 2547 has been amended to clear the way to financially support students studying in the vocational schools set up by OIZ administrations or public universities in OIZs. Moreover, a legal basis has been established for those institutions named "Technology Transfer Office", which aim to improve university-industry integration by supporting technology transfer processes and speeding up R&D studies. Technology Transfer Offices will be equity corporations aimed at safeguarding inventions within the scope of intellectual property rights and transferring them to the industrial application.

Law on Technology Development no. 4691 has been amended to provide state incentives for the employment of fundamental sciences (maths, physics, and biology) graduates. The State will thus reimburse the salaries of such personnel, limited to the gross minimum wage during two years. However, it should be noted that the amount of personnel that may benefit from such incentive is limited to 10% of the enterprise's total personnel headcount.

Public Procurement Law no. 4734 has been amended to include software products in the obligation of public institutions to provide a compulsory 15% price deduction on domestic products during their tenders regarding middle- and high-technology products.

In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

CONTACTS

ARPAT ŞENOCAK
senocak@odsavukatlik.com

MEHMET KÖSOĞLU
kosoglu@odsavukatlik.com

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