

client alert

BANKING & FINANCE | TURKEY |

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CHEQUES ENTER DIGITAL ERA WITH MANDATORY IMPLEMENTATION OF QR CODES

Due to the long payment terms in Turkish market, cheques are circulated for a considerable period of time from one cheque holder to another through very long endorsement chains. Hence, it becomes very hard, if not impossible, for the cheque holder to know the drawer's repayment ability at the payment date.

Within the scope of a series of measures taken in 2016 to boost the Turkish economy, some amendments have been made to the cheque-related articles of Turkish Commercial Code No. 6102 ("**TCC**") by the Law Amending Certain Laws to Improve the Investment Environment No. 6728, and on the Cheque Law No. 5947 ("**Cheque Law**"). Serial numbers given by the relevant bank and QR Codes have been included as mandatory elements for cheques, and the implementation of the QR Code Reading and Information Sharing System has been introduced by way of the said amendments. The QR Codes aim to increase the trustworthiness of cheques and remedy the deficiency of intelligence in terms of the drawer's repayment ability.

Accordingly, the Ministry of Customs and Trade and the Undersecretariat of Treasury issued the "Communiqué on the Implementation of QR Codes in Cheques" ("**Communiqué**") which entered into force on 1 January 2017 (except for one article). The essential points with respect to the QR Code in cheques can be summarised as follows:

WHAT IS THE QR CODE READING AND INFORMATION SHARING SYSTEM?

The QR Code Reading and Information Sharing System is established by the Risk Centre of the Banks' Association of Turkey ("**Risk Center**"). The Risk Center may share all information in the system with companies established by at least five banks pursuant to paragraph 4 of Article 73 of the Banking Law No. 5411 ("**Authorized Information Exchange Institution**"). As per the Communiqué, the Risk Center may also decide to establish the QR Code Reading and Information Sharing System in an Authorized Information Exchange Institution. Kredi Kayıt Bürosu A.Ş. (Credit Registration Bureau Corp.) ("**KKB**") will act as an Authorized Information Exchange Institution within the context of its agreement with the Risk Center.

WHAT INFORMATION CAN BE OBTAINED FROM THE QR CODED CHEQUE REPORT?

By using an application installed in smartphones or tablets, the information below may be obtained via the QR Coded Cheque Report:

- name, surname or business name of cheque account's holder, names and surnames or business names of their registered officials if they are merchants;
- total number of banks where the account holder has cheque accounts, the number and amounts of the cheques which have not yet been presented to the banks, the number and amounts of the cheques delivered to the banks;
- number and amounts of the cheques paid upon presentation in the last five years, the dates of the first and the last cheques presented, the presentation date of the latest cheque paid upon its presentation;
- the number and amounts of the cheques which have been processed as "returned" (bounced cheques) and not been paid yet, and the number and amounts of the cheques which are paid afterwards, and the presentation date of the latest cheque treated as "returned" in the last five years;
- whether the cheque account holder is prohibited from opening cheque account, and if so, the date of the relevant prohibition;
- information about the interim injunctions with respect to each cheque, if any; and
- in the case where the cheque account holder is a merchant, whether the merchant is declared bankrupt or not, and if so, the declaration date of such bankruptcy.

Moreover, a pro rata breakdown of the number and amounts of the cheques which are paid upon their presentation, a pro rata breakdown of the number and amounts of the returned (bounced) cheques which have not been paid yet, and monthly, quarterly and yearly breakdowns of the said information can be accessed through the QR Coded Cheque Report which contains an analysis of the abovementioned information.

HOW DOES THE QR CODE READING AND INFORMATION SHARING SYSTEM WORK?

Banks will record into the QR Code Reading and Information Sharing System the real and legal persons together with their authorised signatories on whose name the cheque accounts are opened. In addition, as per Article 7 of the Communiqué, the real or legal persons on whose name a cheque has been drawn will register the cheque to the QR Code Reading and Information Sharing System on the presentation date at the latest. As the Article 7 of the Communiqué will enter into force on 31 December 2017, it should be noted that the real or legal persons on whose name a cheque has been drawn shall not be obliged to register the cheques that they have received to the QR Code Reading and Information Sharing System within the grace period of one year from the entry into force of the Communiqué.

The Risk Centre will first share the registered information with KKB as per the Communiqué. Further, KKB will provide access to the QR Coded Cheque Reports via QR Code Reading and Information Sharing System by means of a downloadable mobile application which is provided to its customers under the trademark FINDEKS.

DOES THE ABSENCE OF QR CODE OR SERIAL NUMBER ON CHEQUES FROM FOREIGN BANKS AFFECT THE VALIDITY OF SUCH CHEQUES?

According to the Communiqué, from 31 December 2016 Turkish banks are no longer entitled to print cheque leafs without QR codes. However, the absence of “serial number” and “QR code” will not impact the validity of cheques printed by foreign banks.

It became obvious that the fundamental principles established by the “Convention for the Settlement of Certain Conflicts of Laws in Connection with Cheques” dated 19 March 1931 were insufficient to meet the needs of modern day commerce. By means of the QR Code Reading and Information Sharing System, the data pool of cheque drawers' repayment ability, which so far was only accessible to banks, will be shared with all market participants. In light of the obligation of merchants to act as “prudent merchants”, and the obligation of board members to fulfill their duties with the prudence of a diligent board member (*business judgement rule*), it is expected that companies trading with cheques will greatly benefit from the QR Code Reading and Information Sharing System and the use of cheques will become more popular in the coming years.

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

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