

# newsletter

QUARTERLY LEGAL UPDATE | TURKEY

SEPTEMBER 2016

This newsletter aims to provide a brief outlook on the main legislative changes that occurred in Turkey in the course of June, July and August 2016. Previous newsletters and publications issued by our firm are available [on our website](#).

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## ANTI-MONEY LAUNDERING

*Contributed by Nilay Çelebi*

### REGULATION ON THE POSTPONEMENT OF TRANSACTIONS IN THE SCOPE OF THE PREVENTION OF LAUNDERING OF CRIME REVENUES AND FINANCING OF TERRORISM

On 29 July 2016, a new regulation was issued regarding the Postponement of Transactions in the Scope of Prevention of Laundering of Crime Revenues and the Financing of Terrorism (the "Regulation"). As per the Regulation:

- The real or legal persons (e.g. banks, financial institutions, notary public, postal and courier companies, sports clubs etc.) (the “**Obligors**”), that are liable to notify any suspicious transactions to the Presidency of the Financial Crimes Investigation Board (*Mali Suçları Araştırma Kurulu Başkanlığı*) (the “**Board**”) under the Regulation Regarding the Measures for the Prevention of Laundering of Crime Revenues and Financing of Terrorism dated 9 January 2008, shall notify the Board of any request for the postponement of a suspicious transaction (with details of such request) where a serious indication and supporting documentation evidencing that such transaction is related to the laundering of crime revenues and the financing of terrorism.
- The Obligors shall refrain from executing the transaction for a maximum period of 7 business days, until the decision by the Board is delivered to them.
- Any request for postponement of suspicious transactions filed by a counterpart institution based abroad must also be notified to the Board. Any such request must include at least (i) detailed information regarding the transactions subject to postponement and the Obligor to perform such transaction, (ii) detailed information and supporting documentation evidencing that said transaction is related to the laundering of crime revenues and financing of terrorism, (iii) personal information of the related persons, (iv) information regarding the investigation process in the relevant country.

## BANKRUPTCY AND PROCEDURE

*Contributed by Safa Cenanoğlu*

**Law No. 6723 Amending Council of State Law and the Other Laws was published in the Official Gazette and entered into force on 23 July 2016** - Various provisions regarding the assignment of the members of the Council of State and of the Court of Appeal have been amended, in particular as follows:

- Members of the Council of State shall be elected for 12 years, with no possibility of re-election. A membership of at least 6 years as judge at the Council of State is required in order to be elected as president or chief prosecutor of the Council of State. The Council of State was restructured and is now composed of nine lawsuit departments and one administrative department.
- The Court of Appeals was also restructured and is now composed of twelve criminal departments and twelve civil departments. According to the amendments, judges of the Court of Appeals shall be elected for 12 years, with no possibility of re-election.
- For the purpose of court specialisation, trials relating to anti-terror law crimes shall be brought before the high criminal courts of the province in which the crime is committed.

**Statutory Decree No. 669, on Taking Certain Measures within the Scope of the State of Emergency and the Establishment of the National Defence University and the Amendment of Certain Laws published in the Official Gazette on 31 July 2016** - According to the amendments made by this Decree to Article 179 of the Bankruptcy and Enforcement Law, the possibility of applying to the courts for postponement of a declaration of bankruptcy has been removed for as long as the state of emergency is in force. Please refer to our [Client Alert dated 8 August 2016](#) for further information in this regard.

**Law No. 6728 Amending Certain Laws to Improve the Investment Climate, published in the Official Gazette on 9 August 2016** - Amendments were made to the Bankruptcy and Enforcement Law No. 2004 with an Omnibus Law targeting the improvement of the investment climate. Amendments are focusing on provisions regarding the postponement of bankruptcy declarations. The content of the recovery project to be submitted to the court for the postponement of a bankruptcy declaration has been updated. According to the amendments, the court shall be allowed to take preventive measures to protect the assets of the relevant company, such as suspending initiation or pursuit of enforcement proceedings launched against the company. Also, interim injunctions or ancillary attachments shall not be imposed and prescriptions and foreclosures shall not be applied during this period. Please refer to our [Client Alert dated 26 August 2016](#) for further information in this regard.

## CAPITAL MARKETS

*Contributed by Nilay Çelebi*

### LAW REGARDING THE ESTABLISHMENT AND MANAGEMENT OF A TURKISH SOVEREIGN WEALTH FUND

A new law No. 6741 establishing a Turkish Sovereign Wealth Fund (the "Fund") came into effect on 26 August 2016 (the "Law No. 6741"). Main highlights of this new law can be summarised as follows:

- The purpose of the Law No. 6741 is to contribute to the variety of the capital markets instruments, bring public assets to the economy, obtain foreign funding resources as well as establish the Fund and sub-funds as participants in strategic and important investments.
- According to the new Law, a joint stock company with trade name *Türkiye Varlık Fonu Yönetimi Anonim Şirketi* shall be deemed incorporated *ex officio* to manage the Fund, with TRY 50 million share capital contributed through the Privatisation Fund (the "**Company**"). The registered shares of the Company shall be issued in the name of the Privatisation Administration (*Özelleştirme İdaresi Başkanlığı*).
- Among others, the Company may carry out the following transactions on national or international primary and secondary markets: (i) purchase/sale of shares of domestic or foreign companies, shares or debt securities of foreign issuers, precious-metal-backed securities, securities and derivative transactions, real estate certificates; (ii) money market transactions; (iii) utilisation of real estate and rights arising from real estate; (iv) implement project developments, create project-related resources and obtain foreign resources for projects; and (v) perform commercial and financial activities.
- The resources and financing of this Fund shall consist of (i) the entities and assets that are under privatisation program and are transferred to the Fund by decision of the Privatisation High Council, and cash surplus that is transferred to the Fund; (ii) any public sector surplus income, source and assets that are transferred to the Fund and managed by the Company by decision of the Council of Ministers; (iii) any financing and resources obtained by the Fund from domestic and foreign capital and money markets and do not require consent or authorisation, and (iv) any financing and resources obtained from transactions that do not concern money and capital markets.
- Securities, pledges, suretyships and mortgages may be created over the Fund's portfolio to provide financing.

- The Fund and sub-funds, the Company and other companies to be established by it shall be subject to independent audit. The Company shall comply with the corporate governance rules set out under the Capital Markets Law.
- The assets of the Fund and the assets and rights managed by the Company shall be separate from the assets of the Company. The assets of the Fund may not be granted as a security or pledged other than for the operations and transactions considered by it in order to obtain funds from capital and money markets, may not be subject to seizure and interim injunction, and cannot be included in the bankruptcy estate. Debts and liabilities of third parties cannot be set off against the Fund's receivables from such third parties.
- The Fund, the Company, any companies to be established by the Company and any sub-funds shall be exempt from income and corporate tax and documents executed or transactions performed by the same shall be exempt from stamp duty, banking and insurance transaction tax and resource utilisation support fund.

## COMPETITION

*Contributed by İklim Keleşçi*

### NEW REGULATION ON THE PRINCIPLES AND RULES OF RETAIL TRADE

A new Regulation on the Principles and Rules of Retail Trade was published in the Official Gazette No. 29793 dated 6 August 2016 (the "**Regulation**") and entered into force on the same date. The Regulation aims to specify the implementation principles of the Law No. 6585 on the Regulation of Retail Trade, which was published in the Official Gazette No. 29251 dated 29 January 2015. The main provisions of the Regulation are as follows:

- Retail store chains and distributors may request an additional premium from their product manufacturers or suppliers so long as (i) it is stated in the relevant supply agreement and (ii) it directly affects the product's demand, including but not limited to activity premium, premium for advertising, magazine, announcements, shelf allocation etc.
- Where the producer or supplier is a small-scale business and the retailer is a large-scale business, the payment of products perishable within 30 (thirty) days of their production date shall be made within a maximum of 30 days. Exceptions may apply where the above parties' operational sizes change.
- Additional formal requirements were made concerning the packaging of store own-brand products.
- Promotional sales and discounts shall comply with the provisions of the Consumer Protection Law No. 6502 and shall not be made without a time limitation; all banners, signs and website announcements related thereto shall clearly indicate a start and end date. In any event, promotional sales and discount sale campaigns shall not exceed 3 (three) months from the date of opening of the workplace, change of address or of scope of activity, or 6 (six) months from the starting date of the liquidation process as per the Turkish Commercial Code No. 6102.
- Shopping festivals shall not last more than 60 (sixty) days in one year. A festival plan shall be submitted to the provincial directorate if organised in a specific province, or to the Ministry of Customs and Trade if organised regionally or in the entire country, at least 1 (one) month prior to the starting date.

- Products subject to continuous discount sales are defined as a group of products 70% of which correspond to one of the criteria listed in *numerus clausus* in the Regulation, such as having a legal or economical defect, being produced in limited quantity etc. Formal requirements were brought for the sale of such products, which retail stores will have to adapt to by 29 January 2017.
- The Regulation provides for a 1% minimum shelf space allocation for regional products in retail stores to be complied with by 6 August 2017, so long as such products are part of the product range of those stores. The regional products are to be determined by the relevant regional directorate, which will update the list every two years.
- Determining the working hours for retail stores is subject to the authority of:
  - the Ministry of Customs and Trade for retail chains, shopping centres and certain specific retail activities, for which the opinion of the Union of Chamber and Commodity Exchanges (TOBB) or of the Turkish Confederation of Artists and Artisans, must be obtained. Working hours determined in this way may be applicable to a region or the entire country;
  - the relevant Governorship, for all other retail activities. Working hours determined in this way may be applicable to certain province or districts only.

Failure to comply with the Regulation after the specified dates shall be sanctioned by an administrative fine of TRY 2,000.

## EMPLOYMENT

*Contributed by Safa Cenanoğlu*

**Regulation on Occupational Health and Safety Services, published in the Official Gazette and entered into force on 30 June 2016** - Some innovative changes have been made on the assignment of Occupational Health and Safety Specialists and the related online procedure for the registration and follow up programme (i.e. ISG- KATIP in Turkish):

- In workplaces operating in sectors that require the assignment of more than one occupational health and safety specialist (i.e. mine, construction, metal, textile, furniture, forestry, food, waste management, energy, water supply etc.), only one of those specialists is required to hold the certificate evidencing his/her compliance with the workplace category (under the former regulation, all the specialists assigned were required to hold the relevant certificate).
- In workplaces classified as “low hazard” with fewer than 50 employees, the employer and the relevant service provider are entitled to agree on an appropriate time schedule to allocate the mandatory monthly service periods, provided that this allocation remains within the same contract year.
- When an employer holds the relevant certification for occupational safety specialist or workplace doctor, or the other healthcare personnel decides to carry out these duties alone, said employer must prepare and approve within 15 (fifteen) days at the latest the relevant undertaking applicable for such duties in accordance with the sample on ISG- KATIP.

**Regulation on Health and Safety Conditions Regarding Use of Work Equipment, published in the Official Gazette on 23 July 2016** - This regulation entered into force on 25 April 2016 and reforms a number of matters regarding the use of work equipment and maintenance, repair and periodic inspections. Terms for the periodical inspections and the inspection criteria regarding pressure vessels and equipment, lifting tools and facilities have also been updated.

**Law No. 6728 Amending Certain Laws to Improve the Investment Climate, published in the Official Gazette on 9 August 2016** - Amendments were made to the Social Security and General Health Insurance Law No.5510 with an Omnibus Law targeting the improvement of the investment climate. Amendments focus on combining the financial notifications required by the stipulations, extending the scope of responsible persons regarding the accuracy of notifications to be made to the Social Security Institution. Please refer to our [Client Alert dated 26 August 2016](#) for further information in this regard.

**International Labour Force Law, published in the Official Gazette and entered into force on 13 August 2016** - Law No. 4817 on Work Permits for Foreigners has been repealed by this law regulating the new procedures regarding the application for and assessment of foreigner work permits. According to the provisions newly issued, the possibility of obtaining a turquoise card for an indefinite-term work permit has been approved.

The Law also details work permit exemptions. Within the scope of the work permit exemption, further requirements have been introduced for foreign employees wishing to work in Turkey. Please refer to our [Client Alert dated 23 August 2016](#) for further information in this regard.

## ENERGY

*Contributed by Pınar Veziroğlu Dilek*

**Law No. 6719 Amending the Electricity Market Law and other legislation was published in the Official Gazette No. 29745 dated 17 June 2016.** Significant amendments were made to the Electricity Market Law No.6446, including:

- Any zoning plans to be prepared or issued must take into consideration the potential impact on the usability and productivity of immovable properties located in the relevant zone and which qualify as renewable energy sources in accordance with Law No. 5346 on the Use of Renewable Energy Sources. Private properties to be used as renewable energy sources may be subject to urgent expropriation. The amendments also provide that a secondary legislation will be issued in order to determine the procedures and principles applicable to the usage conditions of renewable energy sources, the requirements of legal entities that will operate said sources, and the conditions for pre-licensing and licensing renewable energy plants;
- As a matter of principle, pre-licenses shall be cancelled in the event of a change of control in the shareholding structure of license holders. The only exception, applicable to bankruptcy situations, has been extended to include other situations that will be decided by the Energy Market Regulatory Authority (the "EMRA");
- A new paragraph has been added on the construction of certain nuclear power plant buildings: prior to obtaining the production license, pre-license holders are entitled to initiate the construction of buildings that do not directly relate to the production facility;

- Share transfers of companies having applied for wind and/or solar power plant licences (installed capacity of up to 1 MW) are prohibited until said companies obtain the relevant "temporary acceptance". Failure to comply with this requirement may result in the cancellation of the call letter granted for the connection agreement. Furthermore, shareholders of the electricity distribution or supply companies, employees working for such companies, or legal entities controlled by such companies, shall not be entitled to apply for production of wind and/or solar powers in the same region in which said distribution or supply company is active;
- Companies subject to the Electricity Market Law no. 6446 which were or will be privatised before or after the entry into force of the above-mentioned amendments, shall be granted with an extension until 31 December 2019 in order to comply with the provisions of the environmental legislation.

The Amending Law No. 6719 has also made significant amendments to the Natural Gas Law No.4646, including:

- If more than one distributor applies to extend the scope of distribution licences for regions that do not fall within the scope of any specific distribution area, the applicant with the most subscribers shall be given priority;
- Where relevant legal entities holding distribution licenses so request, regions may be united under a single distribution licence or separated into several licences, provided that the approval of the EMRA is obtained. A secondary legislation is expected to be issued in this regard to clarify implementation principles.
- Where there is no extension request for those regions that do not fall within the scope of any specific distribution area, the EMRA may arrange a tender to grant a distribution licence for such regions.
- As a matter of principle, and to protect competition, legal entities operating natural gas power plants are prohibited from participating in legal entities with the same activity. Distribution licence holders may therefore be permitted to take participations in only one legal entity operating in the same activity upon approval of the EMRA. The EMRA shall take into consideration the technical and economic grounds of the licence holders. A secondary legislation is expected to be issued in this regard to clarify implementation principles.
- Legal entities operating in the natural gas sector shall inform the EMRA of their activities, based on the grounds listed under the Amending Law No. 6719. The scope and details of such information requirement will be determined in secondary legislation.
- The Amending Law No. 6719 further specifies that accounts of companies operating multiple activities in the natural gas sector shall be kept separate for each activity.

**The Regulation on the Support of Local Components used in Power Plants producing Electricity from Renewable Energy Sources was published in the Official Gazette No. 29752 dated 24 June 2016.** This Regulation abolished the former Regulation dated 19 June 2011 and applies only to those electricity market companies holding a production licence. The Regulation includes the "registered electronic mailing address", the "certificate of conformity", the "domestic production document" and the "committee determining domestic production" as new definitions and accordingly reformulates the procedures to be followed to determine local content rates and the additional prices for local components.

**Communiqué No. 2012/1 on the Implementation of the Decision on State Aids in Investments was amended by the Communiqués No. 2016/2 and 2016/3.** Communiqué No. 2016/2 was published in the Official Gazette No. 29753 dated 25 June 2016 and entered into force on the same date. The most important amendment of Communiqué No. 2016/2 is that imported solar panels have been removed from the scope of incentive certificates granted by the Ministry of Economy. Furthermore, the list of documents to be submitted in order to obtain incentive certificates and Completion Visa of the Investment Incentive has been updated as regards investments in sectors such as tourism, railway, airport ground services and financial leasing.

As a matter of principle, an extension is given if the contemplated investment could not be achieved in due time despite appropriate investment expenses having been made. Such condition is no longer required to request a time extension for the relevant incentive.

In order to clarify the situation for solar panels whose import process had started by the time the above Communiqué came into force, additional Communiqué No. 2016/3 was issued specifying that the Ministry of Economy is competent to assess the situation of solar panels upon request of the companies concerned, subject to written application to the Ministry at the latest within a period of 30 (thirty) days from 27 August 2016. Applications can be made in the following circumstances:

- (i) Imports made before 25 June 2016 by companies holding a licence or pre-licence; and
- (ii) Imports for which the bill of lading was issued on behalf of the relevant investor and shipped for delivery before 25 June 2016.

**Decision No. 6381-1 of the Energy Market Regulatory Authority dated 30 June 2016 amends the tariffs applicable to the supply of active electricity power.** According to the Decision, the active electricity fee to be paid by TETAŞ (Turkish Electricity Trade and Contracting Company) to the distribution companies and authorised supply companies has been determined as TRY 0.148/kWh as from 1 July 2016.

**Decision No. 6389 of the Energy Market Regulatory Authority dated 14 July 2016 regarding the new tariffs applicable to liquefied natural gas storage companies entered into force on 22 July 2016.** According to the Decision, new procedures and principles must be taken into account for calculation methods of items such as the annual revenue demand, tax base of assets, investment amounts, investment difference correction, minimum inventory cost, revenue ceiling etc. Liquefied natural gas storage companies shall submit their data, information and documents necessary for the calculation to the Energy Market Regulatory Authority eight months at the latest prior to the new tariff period.

**Regulation Amending the Electric Market Connection and System Usage Regulation, published in the Official Gazette No. 29786 dated 30 July 2016.** The main purpose of this amendment is to clarify the fact that the quantity of electricity agreed between the consumers and TEİAŞ (Turkish Electricity Transmission Company) under the connection and system usage agreements shall have the same value range as the quantity of electricity initially allocated by TEİAŞ when giving its opinion on the transfer system connection.

If the electricity quantities are lower than those allocated by TEİAŞ and the relevant consumers do not apply to TEİAŞ within 3 (three) months as from 30 July 2016 for an adaptation of their agreement, TEİAŞ is entitled to cut the electricity supply of said consumers.

**The Regulation Amending the Regulation on Electricity Market Consumer Services entered into force on 4 August 2016.** The mandatory information to be stated on consumer electricity bills has been updated. Furthermore, the billing periods of electricity usage agreements signed by consumers may now be determined on a monthly or longer basis, but shall not exceed a one-year-period. If the billing period exceeds three months, an option for instalment payment shall be mandatorily presented to the relevant consumer.

Companies with an electricity distribution licence shall read the electricity meters every 25-35 days and enter the data into the Market Management System within 3 (three) days from such reading.

## ENVIRONMENT

*Contributed by İklim Keleşçi*

### NEW COMMUNIQUÉ ON ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

A new Communiqué on the capacity increase to be applied to projects deemed as "EIA positive" or "EIA exempt" and/or extensions intended to be made on said projects (the "**Communiqué**") was published in Official Gazette No. 29736 dated 8 June 2016 and entered into force on the same date.

According to this Communiqué, the competent authority for submission of EIA reports depends on the total amount of the target capacity increase exceeding the thresholds under the relevant annexes of the Regulation. Accordingly, the competent authority may either be the Governorship of the location in which the project is being implemented, or the Ministry of Environment and Urbanism.

It should be noted that categorisation of the competent authority also applies to projects deemed as "*EIA exempt*", provided that the calculation is made on the basis of the total amount of both the current capacity of the project and the expected increase amount.

## INSURANCE

*Contributed by Ece Çakırel Eşkinat*

### Changes to Motor Third Party Liability Insurance

Effective from 20 July 2016, some of the main amendments made to the Regulation on the Tariff Implementation Principles for Motor Third Party Liability Insurance ("MTPL") are as follows:

- The notification period to TRAMER (Turkish Traffic Insurance Information Centre) of the changes (increase and decrease) made to premiums has been lowered from ten to five days.
- Insurance for high-risk drivers may be subject to special provisions set out by the Treasury for sharing the premium and claims among insurance companies.

Effective from 2 August 2016, certain amendments to the General Terms and Conditions of MTPL are reviewed in our recent Client Alert on "Recent Changes Affecting Motor Third Party Liability Insurance in Turkey", available [here](#).

### Changes to Insurance Agencies

In January 2016, the Undersecretariat of Treasury published the long-awaited legislation regarding insurance agents. Following the entry into force of this new legislation in April, the Undersecretariat of Treasury has deemed necessary to provide several clarifications as to the scope of the implementation of the new legal regime through the Circular on the Implementation of the Regulation on Insurance Agents published on 15 July 2016 ("the **Circular**").

Pursuant to this Circular, the following reforms were enacted:

- Insurance agents who would like to establish a branch must submit the necessary documentation to the relevant chamber of commerce. Following the submission, this chamber will examine the application, the results of which will be announced on [www.sigorta.org.tr](http://www.sigorta.org.tr).
- Individuals may work as a general manager, vice general manager, branch manager or technical personnel **at only one agency branch**. However, if such person or his/her first degree relatives hold more than 51% stake in companies incorporated as insurance agencies, such persons are allowed to work as general manager in up to 3 different agencies.

Changes made by the Circular (in line with the Regulation on Insurance Agents) provide that the following terms and conditions should also be included in the agent agreements:

- Procedures and principles pertaining to the payment of commissions and other benefits for each branch;
- Rights and obligations of the parties;
- List of grounds for termination of the agreement for default;
- Procedures and principles regarding the impact of the termination of the agency agreement.

According to the Circular, sectorial announcements No. 2014/30, 2015/4, 2015/16, 2016/31 and circulars No. 2014/8, 2014/14, 2015/5, 2015/43, 2015/51 focusing on various subjects have been abolished. It should however be noted that although the Undersecretariat of Treasury appears to have made an important number of changes to previously issued texts, the legislative reshuffling operated with this new Circular does not have any significant impact in terms of content, since most of the matters covered under previous texts have been injected into the new Circular.

### Changes to the Private Pension System: Auto-Enrolment

The Law Amending the Private Pension Savings and Investment System Law No. 4632 was published in the Official Gazette on 25 August 2016 (the "**Amended Pension Law**").

According to the Amended Pension Law, individuals will be automatically enrolled into the private pension system from 1 January 2017, where said individuals:

- hold Turkish citizenship or have alienage permissions according to Article 28 of Law No. 5901 on Turkish Citizenship;
- are under the age of 45 (including individuals being under the age of 45 as of 1 January 2017); and
- qualify as employees (under Article 4/1-a of the Social Security and General Health Insurance Law No. 5510) or as contracted personnel for public authorities (under Article 4/1-c of the same law).

The minimum contribution amount is set as 3% of the revenues taken as basis to calculate social security premiums, subject to the minimum and maximum limits of such basis, as set out under the social security legislation. Pursuant to provisions of the Amended Pension Law, employers are liable for the transfer of such contribution amounts to the relevant pension accounts. If the employer breaches its liabilities, the Ministry of Labour and Social Security is entitled to apply fines up to TRY 100 for each case of breach.

The auto enrolment system will become effective on 1 January 2017.

For further information, please go to our Client Alert "New Era for the Turkish Private Pension System: Auto-Enrolment" by clicking [here](#).

## INTELLECTUAL PROPERTY

*Contributed by Neşe İnanç*

**The Turkish Patent Institute has announced that the Electronic Mailbox System became available to trademark and patent lawyers on 17 August 2016.** Official notifications regarding all applications before the Institute will be sent to the electronic mailboxes created for trademark and patent lawyers within the Institute infrastructure. To begin receiving notifications via the System, lawyers must log into the System with their electronic signatures and sign the necessary undertaking online.

Once this undertaking is signed, the date of notification of any communication from the Institute will be determined not as the date the notification is sent by the Institute, but as the log-in date of the lawyer to the system. If an attorney does not log into the System for at least ten days, the date of notification shall be considered as ten days from the sending date of any document.

Only trademark and patent lawyers may join the Electronic Mailbox System. Accordingly, other individuals applying to the Institute will continue to receive their official notifications via post or registered electronic mail.

**The Telecommunications Directorate was shut down on 17 August 2016** in accordance with the Decree-Law No. 671 on the Regulation of Certain Institutions and Organizations within the Scope of the State of Emergency. Previously, the Directorate had handled, among other duties, the blockage of web pages in accordance with Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting, as well as the monitoring of telephones in accordance with Law No. 5271 on Criminal Procedure.

With Decree-Law No. 671, all duties and responsibilities of the Directorate have been transferred to the Information and Communication Technologies Authority. In this respect, any official or written inquiries made previously to the Directorate by Courts or individuals will need to be redirected to this Authority.

## STATE OF EMERGENCY

*Contributed by Arpat Şenocak*

## FRAMEWORK DECISION AND COMPLEMENTARY MEASURES

After consulting with the National Security Council, the Council of Ministers of the Republic of Turkey, meeting under the chair of the President of the Republic of Turkey, has declared a state of emergency throughout Turkey, starting from 1 a.m. on 21 July 2016 and lasting for a period of 90 days. This decision was ratified by the Grand National Assembly of Turkey on 21 July 2016 and followed by a number of complementary Decisions of the Council of Ministers.

Further details on the ground, scope and duration of such measures are available in our [Client Alerts dated 22 July](#) and [8 August 2016](#).

## TAX

*Contributed by Zehra Akkirman*

## ANNUAL CLOSING TRIAL BALANCE DECLARATION

Communiqué No. 472 abrogating General Communiqué No. 403 of the Tax Procedures Law was published in the Official Gazette No. 29783 dated 27 July 2016.

Accordingly, the obligation of submitting annual closing trial balance declarations via electronic media, imposed on taxpayers keeping their books on the basis of balance as from 2010, has been cancelled. In other words, these taxpayers must no longer submit their annual closing trial balance declaration via electronic media.

## GENERAL COMMUNIQUE NO. 10 AMENDING THE GENERAL COMMUNIQUE NO. 1 OF CORPORATE TAX LAW

General Communiqué No. 10 Amending the General Communiqué No. 1 of Corporate Tax Law ("General Communiqué No. 10") was published in the Official Gazette No. 29792 dated 5 August 2016.

General Communiqué No. 10 provides explanations as to (i) interest discounts applicable to advance payments made for cash capital increase, and (ii) the application of reduced corporate tax to investments falling under the scope of the investment incentive system.

Accordingly, advance payments made for a cash capital increase can be deducted from the corporate tax provided that:

- such payments are recorded under the "Other Share Capital Reserves" item of equity capital of the relevant company's balance sheet, and
- the share capital increase is registered in the relevant trade registry until the end of the account period during which such advance payment is made.

Furthermore, incomes arising from investments falling under the scope of the investment incentive system should be subject to reduced corporate tax as from the temporary tax period in the course of which the investment started to be operated partially or wholly.

Lastly, Communiqué No. 10 clarified, with detailed examples, the application of reduced corporate tax to incomes other than those obtained within the framework of the investment incentive system. Prior to the entry into force of this Communiqué, the application of reduced corporate tax for such investors was unclear.

## NEW MEASURES TO PROMOTE INVESTMENT

The "Law Amending Certain Laws to Improve the Investment Climate" No. 6728 ("Law No. 6728") was enacted on 15 July 2016 and published in the Official Gazette No. 29796 dated 9 August 2016. This Law made changes to several important laws affecting the financial well-being of investors conducting or intending to conduct business in Turkey, such as (i) Income Tax Law No. 193, (ii) Stamp Tax Law No. 488, (iii) Corporate Tax Law No. 5520, (iv) VAT Law No. 3065, (v) Expenditure Taxes Law No. 6802, (vi) Turkish Commercial Code No. 6102, (vii) Bankruptcy and Enforcement Law No. 2004, (viii) Social Security and General Health Insurance Law No. 5510 and (ix) Cheque Law No. 5941.

Please refer to our [Client Alert dated 26 August 2016](#) for further information in this regard.

## LAW NO. 6736 ON RESTRUCTURING CERTAIN PUBLIC RECEIVABLES

The "Law on Restructuring Certain Public Receivables" No. 6736 ("Law No. 6736") was published in the Official Gazette No. 29806 dated 19 August 2016.

It introduced the following major changes, thereby enabling taxpayers to restructure their public debts:

- Update of deferred tax liabilities (i.e. taxes, penalties arising therefrom, default interest, late fees) and insurance premiums, pension deductions, unemployment insurance premiums, social security support premiums, irredeemable voluntary insurance premiums and group insurance premiums, general health insurance premiums, and Social Security Institution related stamp taxes, special transaction taxes, and contribution to education receivables accrued before 30 June 2016 (included) *pro rata* of Monthly Change Ratio of Domestic Producer Price;
- An extra 50% discount if tax liabilities are paid early;
- Discount on Motor Vehicles Tax and Traffic Penalties;
- Upon benefiting from the provisions of this Law relating to a voluntary tax base increase, Turkish companies may apply for a tax amnesty entitling them to close the accounts of the previous years against a tax audit. Voluntary tax base increases shall be available on the basis of corporate tax/withholding tax and VAT declared in the previous years (from 2011).
- Discount of up to 80% where tax disputes are solved through conciliation;

- Modification of companies' records;
- Tax audit exemption in the event of an increased tax base and tax;
- Restructuring of the debts during the audit and assessment stage;
- Possibility of declaring undeclared incomes and gains without penalty and interest in case of repentance;
- Possibility of paying restructured debts via credit card;
- Cancellation of debts equivalent to or lower than TRY 50, and due before 31 December 2011.

Taxpayers wishing to benefit from the provisions of this Law must apply by 31 October 2016 and pay the first instalment of the restructured amounts to the Ministry of Finance, Ministry of Customs and Trade, special provincial administrations and collection offices connected to municipalities from November 2016. Payment of the restructured amounts shall be conducted in 18 instalments with two-month intervals, starting from December 2016.

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

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