

client alert

STATE OF EMERGENCY | TURKEY |

JULY 2016

LEGAL ASPECTS OF THE STATE OF EMERGENCY IN TURKEY

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.

This Client Alert aims to briefly outline the legal aspects governing the state of emergency and to describe recent market-related developments following this decision.

LEGAL GROUNDS

The rules governing the declaration of a state of emergency are set out under Articles 119 to 122 of the Turkish Constitution, which provide that a state of emergency may be declared in the event of:

- A natural disaster, dangerous epidemic disease or serious economic crisis (Art. 119); or
- Serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution, or of fundamental rights and freedoms, or a serious deterioration in public order (Art.120).

DURATION AND TERMINATION

A state of emergency may first be declared by the Council of Ministers, under the chair of the President, for a maximum period of six months. The Grand National Assembly is entitled to subsequently extend this period for up to four months at a time, each time at the request of the Council of Ministers.

The state of emergency ends when:

- the Grand National Assembly rejects the decision of the Council of Ministers;
- the duration of the state of emergency expires; or
- the Grand National Assembly lifts the state of emergency at the request of the Council of Ministers.

SCOPE OF THE MEASURES

Being subject to the provisions of the Constitution and of the Act on a State of Emergency dated 27 October 1983, a declaration of a state of emergency grants certain specific powers to the Council of Ministers:

- The Council of Ministers, under the chair of the President of the Republic, is entitled to issue decrees with the force of law *on matters necessitated by the state of emergency*. These decrees are published in the Official Gazette and submitted to the Grand National Assembly of Turkey on the same day for approval.
- The exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

It is worth mentioning that, in compliance with the provisions of Article 15 of the European Convention of Human Rights, the current situation of a state of emergency allows Turkey to *take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law*.

If such measures are taken, Turkey will have to keep the Secretary General of the Council of Europe fully informed of the measures and the reasons for taking them. It must also inform the Secretary General of the Council of Europe when such measures have ceased to operate, and the provisions of the Convention are again fully executed.

According to a recent press release, we understand that the Secretary General of the Council of Europe has been informed by the Turkish authorities that Turkey will notify its derogation from the European Convention on Human Rights under Article 15 of the Convention.

RECENT DEVELOPMENTS FOLLOWING THE STATE OF EMERGENCY DECISION

As described above, the scope of the actions that will be taken by Turkey under the state of emergency will be further defined (i) in accordance with the provisions of the Act on State of Emergency dated 27 October 1983, (ii) under decrees to be issued by the Council of Ministers and (iii) with related possible changes in legislation.

Even though no clear information is available so far on the scope of such actions, the overall approach contemplated by the government was recently presented by the Deputy Prime Minister in charge of economic affairs, Mr Mehmet Şimşek. It is accordingly expected that the state of emergency will be used to act swiftly against the perpetrators of the coup, and that the government will stay within the market rules. Mr Mehmet Şimşek further emphasised that the market would function with all sound institutions in the strongest way.

Additionally, the Capital Markets Board also published a press statement on 21 July 2016, in which it announced that, until further notice, publicly listed corporations are entitled to repurchase their own shares without any limitation (regardless of whether or not they benefit from an adopted valid repurchase programme), subject to disclosure to the stock market. Corporations having a valid repurchase programme are additionally required to provide information to their authorised bodies. This announcement is intended to ensure the safe operation of the markets in light of the recent developments affecting Turkey.

We will continue to stay abreast of all legal developments regarding the current situation and will keep you informed of further changes affecting the business environment in Turkey. In the meantime, we remain ready to answer any questions you may have regarding your specific investment projects in Turkey in light of the current situation.

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

CONTACTS

MATTHIEU ROY

roy@gide.com

ARPAT SENOCAK

senocak@odsavukatlik.com

You can also find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).