

## newsletter

MONTHLY LEGAL UPDATE | TURKEY

DECEMBER 2015

This newsletter aims at providing a brief outlook on the main legislative changes which occurred in Turkey in the course of November 2015. You may also find previous publications issued by our firm [by visiting our website](#).

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### BANKING & FINANCE

Following the entry into force of the new regulations on consumer credit agreements and housing finance agreements, the Banking Regulation and Supervision Authority ("BRSA") has made several amendments to its regulations related to credit transactions, bank and credit cards and housing finance. Such amendments, published in the Official Gazette on 25 November 2015, can be summarised as follows:

- Regulation on Bank Credit Transactions: According to the modifications made under sub-paragraph (3) of Article 12/A of this regulation, the term of standard consumer credits cannot be longer than 36 months and the term of vehicle loans and vehicle-backed loans cannot be longer than 48-months, except for (i) loans that are extended for the purposes of financing and refinancing the acquisition of houses and purchase

of goods or services within the scope of the refurbishment of houses; (ii) financial leasing of residences; (iii) other loans for the acquisition of immovable property; and (iv) loans to be extended for the financing of tuition fees.

- Regulation on Principles for Establishment and Operations of Financial Leasing, Factoring and Financing Companies: in line with the above, an identical provision has been introduced in sub-paragraph (2) of Article 11/A of this regulation. Accordingly, the term of standard consumer credits cannot be longer than 36 months and the term of vehicle loans and vehicle-backed loans cannot be longer than 48 months, except for (i) loans that are extended for the purposes of financing and refinancing the acquisition of houses and purchase of goods or services within the scope of the refurbishment of houses; (ii) financial leasing of residences; (iii) other loans for the acquisition of immovable property; and (iv) loans to be extended for the financing of tuition fees.
- Regulation on Bank and Credit Cards: sub-paragraph (7) of Article 26 of this regulation has been amended to limit the instalments for the payment of credit card debts. Accordingly, the instalment period for the purchase of goods or services or cash withdrawals by way of credit cards shall not exceed nine months, including cases where the payment of credit card debts is postponed or restructured by way of instalments in consideration for a service fee following the purchase of the goods or services. While such instalment period shall not be longer than 4 months as regards the purchasing of jewellery, it shall not be longer than 12 months for payments related to domestic (white) appliances, furniture and tuition.

Except for the payments made by way of corporate credit cards, no instalment shall be applied to payments pertaining to telecommunications, restaurant, food, fuel or products that are not specifically determined as a product or service such as gift vouchers etc.

## CAPITAL MARKETS

The Turkish Constitutional Court recently annulled the last part of the third sentence and fourth, fifth and sixth sentences of Article 13 (Dematerialisation of capital market instruments) of the Capital Markets Law No. 6362, which states that "... Undelivered capital market instruments cannot be traded after the dematerialisation decision, intermediary institutions cannot provide intermediary services for the purchase and sale of such capital market instruments and **fund certificates cannot be redeemed. Capital market instruments which are not delivered until the end of the seventh year following the date when they started to be monitored on record shall be transferred to the Investors Compensation Centre. Limited real (in rem) rights on them shall be automatically deemed as terminated. They shall be sold within three months starting from the date when they were transferred to the account of the Investors Compensation Centre.**" by its decision No. 2015/29 E. - 2015/95 K. which has been published in the Official Gazette on 12 November 2015.

By stating that property rights are among the fundamental rights of citizens and that they can only be restricted by law for the purposes of public interest, the Constitutional Court resolved that such provisions violated Article 13 (Restriction of Fundamental Rights and Freedoms) and Article 35 (Right to Property) by not respecting a fair and reasonable balance between the public interest and individual property rights.

## ENERGY

### Regulation on approval of electricity-generation facilities

The Electricity Generation Facilities Approval Regulation ("Regulation") was published in the Official Gazette on 6 November 2015, entering into force on the same date.

The Regulation outlines the principles and procedures for testing, monitoring, and approving electricity-generation facilities, the requirements to be met during the operation period thereof, the authorisation of the legal entities carrying out the above-mentioned activities as well as their rights and obligations.

The Regulation shall apply to electricity-generation facilities subject to the Electrical Facilities Project Regulation published in the Official Gazette no. 29221 and dated 30 December 2014, except for those pertaining to interconnected electric networks with a voltage level below 1 kV. In the event of doubt regarding whether an electricity-generation facility is subject to the Regulation, the Ministry of Energy and Natural Resources shall decide thereon.

The Regulation covers general terms and principles as regards:

- the authorisation of the Controlling Institutions by the Ministry of Energy and Natural Resources and the requirements to be met by the Controlling Institutions,
- the construction process of the facility and the obligations to be fulfilled by the licence/facility owner, applying voltage to the facility,
- upon completion of the construction of the facility, the controlling and commissioning processes to be carried out by the Controlling Institutions until the end of the temporary approval period,
- applying for and assessing pre-approvals and temporary approvals, as well as the documents to be submitted to the relevant authority,
- operation and maintenance of the facility to be approved, health and safety principles to be applied,
- qualification and education of the employees and the certificates to be obtained by the engineers (Electrical Facility Operating Personnel) working at the facilities,
- technical and administrative liability.

The Regulation also provides that it is compulsory to employ personnel with an Electrical Facility Operating Personnel Certificate at the licenced electricity generation facilities as of 1 January 2019.

It is worth noting that the design of electrical facilities and equipment to be used for the construction shall be in compliance with the Turkish Standards. If there is no applicable standard, a Compliance Certificate, product certificate or design certificate will be required, based on other internationally accepted standards, such as the European Norms.

### Regulation amending the electrical facilities project regulation

The Regulation Amending the Regulation on Electrical Facilities Project Regulation, which regulates the approval principles and procedures for the electrical facility projects dated 30 December 2014 ("**Regulation**") was published in the Official Gazette on 7 November 2015. The

Regulation made some minor changes to the scope of the projects under Annex 1. Some technical items, such as:

- Fire detection and fire alarm systems plan,
- AG (AC,DC) single-line diagram
- Map, cut-away view and appearance of the transformers
- Lighting and emergency lighting single-line diagram
- Earthing and lightning protection plans etc.

have been removed from the "Map Section" (paftalar, in Turkish) of the projects.

The compliance items listed below have also been added to the "Certificates and Accounts" section of the projects to be prepared for electrical facilities:

- The "Installation Site Compliance Certificate" shall be obtained from the relevant administration authorised to prepare a zoning map in order to evidence that the relevant site complies with the zoning legislation.
- The "Compliance Report" shall include manufacturing and quality certificates, test reports, engineering estimates as regards the equipment required for the manufacturing, installation and testing periods.

Additionally, the new Regulation provides that the effective date of implementation of the provisions as regards the "Project Expertise Certificate", which the engineers who prepare and sign the projects must obtain, is postponed to 1 June 2016.

### **Communiqué on import surveillance (Communiqué no. 2015/9)**

A new surveillance measure was implemented by the Ministry of Economy on 19 November 2015, via Communiqué no. 2015/9 on Import Surveillance (**Communiqué no. 2015/9**).

The surveillance will apply to products classified under 8541.40.90.00.11 and determined as "solar cells (only solar panels)" with a unit value determined under the customs value which is determined as 35 USD/Net Kg.

According to Communiqué no. 2015/9, investors must obtain a *surveillance certificate* issued by the Ministry of Economy in order to import solar panels whose customs value is under 35 USD/Net Kg. The *surveillance certificates* obtained in this way shall remain valid 6 months and cannot be transferred to any third party.

The Communiqué entered into force on 19 December 2015.

### **Council of ministers decree no. 2015/8216 amending decree no. 2012/3305 on state aids for investments**

The Council of Ministers Decree no. 2015/8216 ("**Amending Decree**") amending the Decree no. 2012/3305 on State Aids for Investments dated 19 June 2012 was published in the Official Gazette on 19 November 2015.

According to the Amending Decree, investments in the manufacture of turbines, blades and generators used in renewable energy generation have been included to the primary investment matters. The Amending Decree entered into force on 19 November 2015.

## COMMERCIAL LAW

The Union of Turkish Public Notaries issued a letter on 11 November 2015 pertaining to the practical issues occurring as regards approving commercial books, based on the Communiqué on Commercial Books published in the Official Gazette no. 28502 and dated 19 December 2012. This letter supersedes the previous one and clarifies the following issues:

- In limited companies, resolutions adopted by the board of directors can be recorded in the shareholders' meeting and negotiation book, as well as in a separate book to be kept specifically for the board of directors' resolutions. In this second scenario, the provisions applied to the board of directors' resolution books of joint stock companies shall also be applicable. Board of directors' resolutions can therefore no longer be recorded in the shareholders' meeting and negotiation book.
- The form and registration procedures for each commercial book are described. Accordingly, all commercial books shall be in hardcover, save for the general journals, general ledgers and inventories if compatible with the tax legislation.
- If there is a sufficient number of pages, (i) share ledgers and shareholders' meeting and negotiation books can be used for the following accounting period, without a notarial attestation for opening, and (ii) board of directors' resolution books, general journals, stock books may be used for the following accounting period provided a notarial attestation for renewal is made within the first month of the new accounting period.
- Commercial Registry Certificates ("Certificate") are required by the Notary (i) only from commercial companies for the opening process of their commercial books at the incorporation and (ii) from commercial companies, as well as all natural or legal persons for the opening process of their commercial books following the initial incorporation.
  - Certificates issued before 27 January 2013 when the Trade Registry Regulation entered into force, should be deemed valid provided that any information appearing therein is not changed,
  - Submission of Certificate is not required and necessary for the merchants and craftsmen registered with the Registry of Merchants and Craftsmen,
  - The opening process of commercial books cannot take place if the company is not registered with a trade registry directorate,
- The procedure and conditions that require the renewal of books are described separately for the commercial books.
- A certificate of loss for commercial books lost within the mandatory retention period due to disasters such as fire, flood, earthquake or theft etc. shall be requested from the Commercial Court where the company is located.
- The commercial books can be approved for the previous year only if less than one month has elapsed from the start of the year's activity or the last certification date of the additional books.
- Without prejudice to the administrative penalties of the Turkish Commercial Code, a board of directors' resolution book that was not approved for renewal in the previous year but that the company still uses, should also be approved in the following year.
- In the absence of a share ledger, a new share ledger should be formed by obtaining the written statement of the relevant persons and a notarial approval should be given for the new ledger as if being certified for the first time.

- The applicant's statement shall be taken into consideration for the information regarding the subscribed and paid-in capital amount to be indicated in the relevant commercial book, without requiring any evidencing document in this respect.

## COMPETITION

The Turkish Competition Authority (the “TCA”) has published a Draft Communiqué on Block Exemption for R&D Agreements (the “**Draft Communiqué**”) from its official website for the purpose of public consultation.

In this respect, the TCA has reviewed the current Communiqué on Block Exemption for R&D Agreements no. 2003/2 and prepared the Draft Communiqué in order to comply with new arrangements introduced by the European Union Commission through its Communiqué no. 1217/2010 dated 14 December 2010.

## INSURANCE

a) A Sector Announcement no. 2015/39 on the Replacement of the Operator in Mandatory Motor Third Party Liability Insurance was issued by the Undersecretariat of Treasury on 18 November 2015.

As background information, Article C.4 of the General Conditions of MTPL provides that the existing insurance agreement terminates *automatically* with the replacement of the insured (in cases such as the sale of the related motor vehicle). However a fifteen-day survival period is granted under said General Conditions to cover any lack of insurance and ensuring the protection of third parties until the conclusion of a new policy.

This new Sector Announcement aims to clarify that any accident occurring during such period of fifteen days and being covered under the previous policy shall be under the responsibility of the new owner/insured, so that the "no-claim" status of the former insured shall not be impacted.

b) The Sector Announcement no. 2015/13 on Termination of Mandatory Motor Third Party Liability Insurance has been amended by the newly issued Sector Announcement no. 2015/41 dated 24 November 2015.

According to the Sector Announcement no. 2015/13, the MTPL insurance policy could only be terminated on specific grounds expressly stated therein.

The recent amendment to this Sector Announcement provides for an exception to the above principle, whereby these conditions for termination of insurance policies do not have to be met when a public institution (acting as the insured) terminates an MTPL policy for the purpose of synchronisation with the terms of other MTPL policies.

## TAX

### 5.58% revaluation rate for 2015

The revaluation rate has been set at 5.58% for 2015 by the General Communiqué no. 457 of Tax Procedure Law, published in the official gazette no. 29528 dated 10 November 2015.

Accordingly, some limitations and amounts expected to be applied in 2016 are as follows:

- Passport fees vary between TRY 111.70 and TRY 533.18 depending on the validity term of the passport;
- Motor vehicle tax for automobiles vary between TRY 66.52 and TRY 22,716.59 depending on the age and the engine capacity of the vehicle;
- Exempted amounts for income from immovable property shall be equivalent to TRY 3,800;
- Exempted amounts for food shall be equivalent to TRY 13.70;
- Exempted amounts for capital gains shall be equivalent to TRY 11,191;
- Non depreciable amounts shall be equivalent to TRY 930; and
- Declaration submission threshold for the incomes from movable and immovable property not subject to withholding tax and exemption shall be equivalent to TRY 1,584.

#### **Amendments to principles and procedures for tax audits have entered into effect**

The Regulation Amending the Procedures and Principles regarding to the Tax Audit was published in the Official Gazette no. 29524 dated 6 November 2015, and entered into effect on the same date.

Accordingly, the equity thresholds, conditions for forming groups of first rank traders, have been amended. Furthermore, principles regarding tax audits conducted for the international exchange of information have also been inserted into the Regulation on the Procedures and Principles regarding Tax Audits.

Please find below some of the substantial changes wrought by the Regulation Amending the Procedures and Principles regarding Tax Audits:

- The definition for "equity size" is amended to become the total equity calculated on the balance sheet, as at the end of the accounting period, according to the Tax Procedure Law no. 213;
- The auditing assignment is subject to approval by the designating authority;
- Taxpayers shall be informed that the statements provided under the audit report shall be considered as proof in the event of proceedings that can be launched in accordance with the provisions of the tax laws. Explanations regarding such potential procedures shall also be made to the relevant tax payers;
- Rulings submitted by taxpayers about controversial issues within the context of tax regulations during the audit will be included in the audit report, and the audit officer will consider them in the audit analysis;
- Tax audits intended for international information exchange shall be drawn up as a priority and finalised within 2 months as from the reception of the information request by the Ministry of Finance;
- The conditions to be met in order to be qualified as "first rank merchant" are amended. Accordingly, the companies fulfilling the following conditions shall be considered as "first rank merchant":
  - arithmetic average of net sales and total assets (indicated in the balance sheet) in excess of TRY 50,000,000, or
  - equity capital in excess of TRY 15,000,000.

## INTELLECTUAL PROPERTY

The Regulation regarding changes made to the Regulation on the Application of the Decree-Law no. 556 on the Protection of Trademarks was published in the Official Gazette on 26 November 2015. While most of the Regulation concerns minor changes in wording, there is a newly added Article 38/A entitled Withdrawal of Oppositions that is important to prosecution practices before the Turkish Patent Institute (the "TPI").

The article states that opposition to decisions by the TPI and to trademarks published in the Gazette may be withdrawn, and that opposition may not be withdrawn if *i)* such opposition to a decision by the TPI was examined and decided upon by the Board of Re-Examination and Re-Evaluation or *ii)* such opposition to a trademark published in the Gazette was denied.

The Article also states that if an opposition to a trademark published in the Gazette was partially or wholly accepted, such opposition may only be withdrawn if the decision was opposed by the application holder. In this case, the request for withdrawal shall be evaluated and decided upon by the Board of Re-Examination and Re-Evaluation.

Finally, it should be noted that while a simple signed Power of Attorney is usually sufficient for proceedings before the TPI, in the case of opposition withdrawal, a notarized Power of Attorney containing the specific authority to withdraw oppositions or a notarized copy of such Power of Attorney is necessary.

## EMPLOYMENT LAW

The Regulation on Duties, Authorities, Responsibilities and Educations of Occupational Safety Specialists Implementation published in the Official Gazette no. 28512 of 29 December 2012 was amended by the Regulation published by the Ministry of Labour and Social Security in the Official Gazette no. 29537 of 19 November 2015.

In this regard, Article 20 paragraph 1 of the Regulation has been amended to *"the licenses belonging to persons and institutions that are authorised within the scope of this Regulation should be endorsed every 5 years."* With the addition of the words *"persons and"*, the scope of the implementation of the article is extended.

The Regulation on Duties, Authorities, Responsibilities and Educations of Workplace Doctors and Other Medical Personnel published in the Official Gazette no. 28713 of 20 July 2013 was amended by the Regulation published by the Ministry of Labour and Social Security in the Official Gazette no. 29537 of 19 November 2015.

In this regard, Article 27 paragraph 1 of the Regulation has been amended to; *"the licenses belonging to persons and institutions that are authorized within the scope of this Regulation should be endorsed every 5 year."* With the addition of the words *"persons and"*, the scope of the implementation of the article is extended.

## CONSUMER LAW

By way of background, the Law on the Protection of the Consumer no. 6502 ("**Law no. 6502**") entered into force on 28 May 2014. According to Article 22 of Law no. 6502, the consumer credit agreement is defined as the agreement whereby the lender extends or undertakes to extend loans to consumers in consideration for a certain interest or similar benefit, by way of cash borrowings, postponement of payments and/or other financing options. The credit card

agreements will also be considered within the scope of consumer credit agreements in case they provide an opportunity to postpone the payments for more than 3 months or payment of credit card debts by way of instalments.

Based on the Law no. 6502, the Regulation on Consumer Credit Agreements ("**Consumer Credit Regulation**") and the Regulation on Housing Finance Agreements ("**Housing Finance Regulation**") were published in the Official Gazette on 22 May 2015 and 28 May 2015. After a grace period of six months granted to all financial institutions so that they may revise and adapt their consumer credit agreement and housing finance agreement models according to the mandatory conditions of the said regulations, the above Regulations entered into force respectively on 22 November 2015 and 28 November 2015.

While the Housing Finance Regulation is only applicable to housing finance agreements, the Consumer Credit Regulation applies to all consumer credit agreements, except for housing finance agreements and non-cash loans. Both regulations address a number of controversial issues that have been strongly debated between Turkish financial institutions and NGOs for the protection of consumer rights in recent years:

- **Right of Withdrawal:** Consumers shall be entitled to withdraw from the credit agreement within a period of 14 days, without stating any termination grounds or paying any contractual penalty. In such cases, the principal amount of the credit, any accrued interest and expenses paid by the credit institution to public authorities and any third party may be requested from the consumers. This right of withdrawal has not been granted to the consumers in the Housing Finance Regulation.
- **Insurance:** No insurance policy pertaining to consumer credit can be concluded without the explicit consent of the consumer. The consumer is free to conclude such insurance policy with the insurer of his/her choice.
- **Pre-Contractual Information:** Credit institutions, housing finance institutions and intermediaries are required to inform consumers on the terms of the agreement in advance by providing them an information sheet within a reasonable time period before such agreements are concluded.
- **Interest Rates:** With respect to definite period consumer credit agreements, parties may only agree upon a fixed interest rate that cannot be altered, to the detriment of the consumer during the credit period. In indefinite period consumer credit agreements, a variable interest rate can be agreed upon subject to a 30-day notice to be made to the consumer. In addition, no compound interest can be applied in consumer credit agreements.

In case a fixed rate of interest is determined in the housing finance agreement, an indemnity amounting to a maximum of 1% of the credit can be imposed on the consumer for credits granted for a term up to 36 months, while an indemnity amount of 2% of the credit can be imposed on consumers for credits granted for a term exceeding 36 months.

- **Early Repayment:** In case of full repayment of the outstanding credit amount, the credit institution shall deduct from the credit's outstanding amount all applicable interest and other expenses that relate to the period following the date of such early repayment.
- **Suretyship:** The suretyship granted in favour of the consumer shall be deemed as ordinary suretyship. On the other hand, the suretyship granted by the other party in order to secure the receivables of the consumers, shall be considered as joint suretyship.
- **Joint Liability:** Additionally, the credit institution/the housing finance institution shall be jointly liable with the seller/service provider if the latter fails to duly perform its obligations towards the consumer (e.g. failure to deliver the product/service or the house) and the consumer

decides to terminate the agreement or requests a discount from the price of the product/service.

## PUBLIC PROCUREMENT LAW

The Ministry of Development has issued Guidelines regarding Procurements to be made as per Paragraph (f) of Article 3 of the Public Procurement Law no. 4734 ("**Guideline**"). The Guideline entered into force on 5 November 2015. The Guideline supersedes the ones issued by the Council of Ministers Decree no. 2010/850 dated 18 August 2010 prepared by the State Planning Organization, which merged into the Ministry of Development in 2011.

The Guideline broadens the scope of the previous one and regulates the recruitment process of all sorts of R&D operation services from domestic and/or foreign natural/legal persons by the Ministry.

Article 3 of the Public Procurement Law relates to the exceptions that are not subject to this Law. According to Article 3/f, product and service procurement and the entire financing necessary for R&D projects carried out and supported by national R&D institutions fall outside the scope of the Public Procurement Law, except where an administration uses the information obtained to undertake exclusively its own activities.

Significant provisions regulated by this Guideline as regards the procurement of R&D services are as follows:

- Regarding the procurement procedures, the *negotiation with announcement* method has replaced the notice method used for purchases within the scope of the Guideline, the other two being *direct procurement method* and *invitation method* (Article 10). Direct procurement procedure does not qualify as a tender. According to Article 34, negotiation with announcement is carried out when technical and material aspects of the business cannot be specified as required due to their complexity. The negotiation process shall be made in three sessions: a first one for the sufficiency of documents (Article 37), a second one for structuring the technical specifications (Article 38) and a third one for the final offer (Article 39).
- In some specific situations, the administration may address the needs with the direct procurement method by way of administrative and technical specifications without making any announcement (Articles 11, 20 and 21)
- Changes to and cancellation of the procurement documents have been newly regulated as per articles 26 and 27, stating that an addendum describing the changes, by request of applicants or by the administration itself, has to be sent to all applicants at least 3 days before the last bidding day. The bidding period can be extended twice, if estimated necessary by the administration. The administration can also cancel the procurement by written notice, if there are incorrigible elements preventing the procurement in the documents.
- Article 48 provides, for all procurement procedures, that the administration has a right to cancel the procurement by declining all the offers without having any liability. In such an event, the administration shall notify the applicants about the reasons for cancellation, if requested.
- The administration may take temporary guarantee in the procurements made by way of invitation method and negotiation with announcement method. The temporary guarantee to be taken should be stated in the relevant procurement documentation and shall not be lower than 1% of the first financial offer.

- Inspection of and receiving the project has been regulated in detail. An Inspection and Receiving Commission composed of no less than three persons is in charge of inspecting the finished project. This Commission takes the decision with simple majority (Article 67).

## ENVIRONMENT

### Amending Regulation on the Implementation for Organized Industrial Zones

The regulation on the Implementation for Organized Industrial Zones (OIZ), which was published in the Official Gazette no. 27327 dated 22 August 2009 (the “**Regulation**”), has been amended by the Amending Regulation published in the Official Gazette no. 29536 dated 18 November 2015 . The amendments are related to (i) air quality, (ii) noise management and (iii) management of hazardous chemical materials and products.

The basic amendments are as follows:

- The disposal of dust, gas emissions and similar wastes leading to air pollution, resulting from the activity of the participants of OIZ (the “Participants”), should be made in accordance with Regulation on Control of Air Pollution due to Warm-up published in the Official Gazette no. 25699 dated 13/01/2005 , with the Regulation on Control of Air Pollution due to Industry published in the Official Gazette no. 27277 dated 03/07/2009 (referred together as the “Control of Air Pollution Regulations”) and with the Instruction in the Protection of Air Quality prepared by the Organized Industrial Zones in the context of this Regulation.
- The noise levels reached as a consequence of the activities of the Participants shall be reduced in accordance with the Regulation on the Assessment and Management of Environmental Noise published in the Official Gazette no. 27601 dated 04/06/2010 (the “Noise Management Regulation”) and with the Instruction on Noise Control prepared by the Organized Industrial Zones in the context of this Regulation.
- Environmental permits shall be obtained at the onset of production, according to the Control of Air Pollution Regulations and the Noise Management Regulation.
- Companies carrying out their activities as either the Participant or a lessee in the Organized Industrial Zones (OIZ) shall inform the Organized Industrial Zone with respect to the Environmental Management Unit, Environmental Officer or environmental consulting firm that they appoint in accordance with the Regulation on Environmental Permit and License, published in the Official Gazette no. 29115 dated 10/09/2014, within one month at the latest.
- The Organized Industrial Zone is entitled to ensure the compliance of the Participants with their responsibilities and auditing, in the context of Regulation on Classification, Packaging and Labelling of Hazardous Material and Patent Medicine published in the Official Gazette no. 27092.bis dated 26/12/2008.

### Amending Regulation on the Assessment and Management of Environmental Noise Regulation

The Regulation on the Assessment and Management of Environmental Noise, published in the Official Gazette no. 27601 dated 4 June 2010 (“Regulation”), was amended by the Amending Regulation published in the Official Gazette no. 29536 dated 18 November 2015. The main objective of this amendment consists in responding to the practical nuisances caused by

human-driven noises by broadening the scope of the legislation's implementation area. The basic amendments may be summarised as follows:

- The "residence" term has been included in the scope of sensitive and highly sensitive usage areas.
- The scope of noises occurring due to "house and neighbourhood activities" has been broadened with the addition of further indoor noises coming from internal infrastructures such as air channels, hydrophores, elevators, as well as some outdoor noises of weddings, military farewells and similar celebrations in the neighbourhood alleys and quarters (Article 4) Internal infrastructure noises are included in the total noise limitation of 5dBA in sensitive usage areas (Article 26)
- The geographical limitation of highly sensitive usage areas with a diameter of 250 m has been abrogated and replaced with the term "noise sensitive areas" comprising highly sensitive, sensitive, and mildly sensitive usage areas (Article 4).
- The terms "outdoor leisure place", "indoor leisure place", "semi-outdoor leisure place" have been defined. Accordingly, principles regarding the control of noises in leisure places have been restructured, with a more general "noise sensitive areas" term replacing "highly sensitive and sensitive usage areas" in most paragraphs (Articles 24 and 26).
- In airports, aircraft no longer need a noise certificate for take-off and landing without noise indemnity, by abrogation of the relevant paragraph in Article 20.
- The noise limitation of concerts, meetings, and similar noisy activities to 5dBA in sensitive and mildly sensitive usage areas is abolished, and their prohibition in highly sensitive usage areas is reserved to between 12 pm and 7 am instead of all time. The time of the prohibition can be altered with a decision of the provincial directorate of environment and town planning, or a delegated mayorship (Article 26). Similarly, live music prohibition between 12 pm and 7 am in all leisure places may be altered by decision of the Provincial Board of Environment.
- An exception has been brought to the prohibition of activities with use of explosives and fireworks in highly sensitive and sensitive usage areas, for "religious and national festivals as well as local national days and province-wide festivals".
- The compliance deadlines for the preparation of (i) strategic noise maps have been delayed from 30.06.2013 to 31.12.2016, and (ii) action plans have been delayed from 18.07.2014 to 31.12.2017.

## CONTACTS

*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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