

newsletter

MONTHLY LEGAL UPDATE | TURKEY

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This newsletter aims at providing a brief outlook on the main legislative changes which occurred in Turkey in the course of January 2016. You may also find previous publications issued by our firm [by visiting our website](#).

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BANKING & FINANCE

An international treaty establishing the Asian Infrastructure Investment Bank (the "**Bank**") was signed on 29 June 2015 by the Republic of Turkey and the law on the establishment of this "multilateral development bank" has been recognised officially through the adoption of Law No. 6658 on the Approval of Recognition of the Treaty Establishing the Asian Infrastructure Investment Bank (the "**Law**") on 12 January 2016.

The Bank aims to contribute to investments in the emerging Asian markets and sectors such as energy, infrastructure and telecommunication.

The Law stipulates that capital subscriptions and related payments from Turkey to the Bank cannot exceed USD 2,609,900,000. The Council of Ministers is entitled to increase this amount by up to five times.

Communiqué No. III-37.1 on the Principles of Investment Services, Activities and Auxiliary Services, and Communiqué No. III-39.1 on the Establishment and Operation Principles of Investment Enterprises have been amended by their respective amending communiqués, published in the Official Gazette on 14 January 2016, effective on the same date. The amendments focus on encouraging investment transactions and preventing risks from leveraged transactions. The most significant amendments brought by the amending communiqués are as follows:

- In order to encourage investment and development banking activities, intermediary institutions are now allowed to make transactions on shares in investment and development banks in Borsa Istanbul (Istanbul Stock Exchange), provided that they take over an existing intermediary institution of the relevant banks.
- The maximum financial leverage ratio has been set at 100:1 for leveraged transactions performed through gold, as well as transactions involving assets based on the parities of Turkish Lira, U.S. Dollar and Euro, and to 50:1 for other assets. The leverage ratio for small investors (with an initial margin amounting up to TRY 20,000 or its equivalent) has been capped at half of the aforementioned rates, in order to limit their risks.
- Before opening an account related to leveraged transaction, investors must first make at least 50 transactions through a trial account that will remain active for at least six business days. Minimum requirements will be determined by the Capital Markets Board of Turkey ("CMB").
- Advertising the leveraged transactions must comply with the provisions of consumer legislation, and specifically with the Regulation of the Commercial Advertisement and Unfair Commercial Practices.
- Intermediary institutions must report all electronic platforms, including their programs, modules and expansions used for their transactions and over-the-counter derivatives to the CMB. In this respect, independent audits must be conducted at those institutions at least twice a year, without prior notice, in order to determine whether or not these institutions comply with their legal obligations. Portfolio intermediary investment institutions must also provide a list of over-the-counter derivatives and underlying assets in their website. All technical issues arising from the transaction platform and extraordinary price movements on processed securities must be reported to the CMB.
- In order to be protected from risks, intermediary institutions are required to establish collateralisation policies and determine each customer's position limit.
- Intermediary institutions are now entitled to request directly from professional investors the indemnification of any losses occurred on down payments made by such professional investors in leveraged transactions.
- Contracts for difference ("CFD") are now subject to the provisions on leveraged transactions.

The Regulation on the Authorisation and Activity of Rating Agencies was amended by an Amending Regulation dated 20 January 2016 and numbered 29599 ("**Regulation**"). Major changes brought by the amendments are as follows:

- Turkish representatives of international rating agencies cannot use the ratings determined by their international counterparts as if issued by them. The amended Article 27 explicitly prohibits this practice.
- Authorisations given to international branches of an agency by the respective official institution cannot replace the authorisation to be given by the Banking Regulation and Supervision Agency ("**BRSA**").

- Verification tests of rating methodology used by rating agencies must be made at least once a year by the BRSA.
- Rating agencies must have a practice of at least five years in total, in Turkey and in foreign countries. The BRSA can reduce this year count to a minimum of three years, depending on the number and scope of the ratings accomplished by the agency. The Authority must decide on whether or not the criteria for the market acceptance of the agency have been fulfilled.
- Further requirements have been added for the rating agencies applying for authorisation, namely (i) to be authorised by the Capital Markets Board of Turkey or the relevant foreign banking authority in terms of credit rating, and (ii) to be meeting the business principles, the qualification applicable to rating surveyors as well as independence, market acceptance, business rigor and quality assurance principles.
- Ratings of seven non-default clients and one default client must be mentioned in the main rating schedule.
- The period of non-compliance with the requirements of the Regulation causing the permanent cancellation of the authorisation has been modified from "three accounting periods", to a period to be determined by the BRSA.

ENERGY

Decision of the Energy Market Regulatory Authority on Procedures and Principles regarding the Tariffs of the Licence Holder Legal Entities and Authorised Supply Companies dated 30 December and numbered 5999-3 was published in the Official Gazette dated 31 December 2015. Through this decision, new amendments have been made to the subscriber groups and tariffs, and the previous decision of the Energy Market Regulatory Authority dated 28 December 2012 and numbered 4193 has been abolished. The major amendments brought by the amending decision are as follows:

- Under the industrial subscriber group, "authorised retail companies" have been replaced by authorised supply companies.
- The categories of mid-voltage and low voltage industrial subscriber groups have been removed.
- Licensed electricity producers are classified in the industrial subscriber group, whereas unlicensed electricity producers are classified in their own corresponding subscriber group.
- Residential subscribers will benefit from corresponding subscriber rights and advantages only for their permanent residence.
- The supplier companies will supply electricity to individuals or legal entities requesting electricity for compulsory reasons and short-term duties (e.g. movie sets) by providing an electric meter and applying the tariff applicable to the commercial subscriber group. The period of this service will be one month, but can be extended by no more than two months.
- The reactive energy meters are provided by the distribution company. For subscribers, who do not have a reactive energy meter installed, reactive energy costs will not be charged.
- Regarding retail sale tariffs, multiple time tariffs may be applied to consumers, consumer groups, consumption levels or connection types for those with adequate infrastructures in order to use transmission and distribution networks efficiently. In this respect, the approval of the board must be obtained.

The Regulation Amending the Petroleum Market Licensing Regulation (the "Regulation") was published in the Official Gazette dated 23 January 2016 entering into force on 1 February 2016. The Regulation implements the following changes:

- Activities regarding the production of base oil from waste mineral oils may be carried out by the mineral oil licence holders or distributor licence holders, provided that the relevant production is registered in their licence as a sub-registration. The production of base oil from waste mineral oil is deemed to be part of the mineral oil production activity.
- In light of the above, the relevant provisions of the Regulation on granting mineral oil licences have been amended accordingly. Furthermore, it has been stated that any amendment to be made on a licence regarding (i) the insertion of a sub-registration for base oil production activity in the relevant licence, or (ii) the removal thereof from the licence, must also be examined by the Petroleum Market Head of Department within 15 (fifteen) days.
- A new provision has been inserted under Article 17 of the Regulation stating that, where the activities are not carried out by the licence holder for more than six months without any just cause or force majeure event, the relevant licence will be cancelled by the relevant authority.
- Pursuant to a new temporary article of the Regulation, existing mineral oil or distributor licence holders with a mineral oil sub-registration in their licences will be entitled to produce base oil from waste mineral oil without the need for any further insertion in the licence for base oil production activity until 1 January 2018.

Decision of the Energy Market Regulatory Authority dated 12 January 2016 and numbered 6065/1-b has amended two previous decisions dated 31 May 2011 and numbered 3242/2 and 3242/3 regarding licence and amendment applications on the petroleum market in line with the amendments made in the Petroleum Market Licensing Regulation. The decision was published in the Official Gazette dated 23 January 2016 and entered into force on 1 February 2016. In this respect, the decision provides that:

- Environmental Permits and Authorisation Certificates to be obtained from the Ministry of Environment and Urbanism on the recycling of waste mineral oils must also be submitted to the Energy Market Regulatory Authority by the licence holders, who will register in their licence the base oil production activity as a sub-registration.
- Regarding applications to be made to amend the licence on the petroleum market, additional documents will be required for mineral oil licence holders who register in their licence the base oil production activity as a sub-registration.

Decision of the Energy Market Regulatory Authority dated 21 January 2016 and numbered 6079 amending the Energy Market Notification System Instruction Manual was published in the Official Gazette dated 27 January 2015. Through this decision, "Exhibit 2: Natural Gas Market Obligation of Notification Table" of the previous instruction manual dated 20 November 2014 has been updated. In this respect, the deadlines, periods and dates of the notifications, or whether any revision can be requested, have been re-determined for each licence holder.

Decision of the Energy Market Regulatory Authority dated 28 December 2015 and numbered 5991 regarding the transmission system usage and operating tariffs of the Turkish Electricity Transmission Company (TEİAŞ) was published in the Official Gazette dated 9 January 2016. The decision updates the transmission system usage and operating tariffs of the Turkish Electricity Transmission Company (TEİAŞ) with respect to the year 2016, based on 14 zones for producers and consumers. In this regard, a new calculation and implementation method is annexed to the decision.

INSURANCE

On 19 January 2016, **several amendments were made in the Insurance Arbitration Regulation through the publication of the Amending Regulation to the Insurance Arbitration Regulation ("Regulation")** in the Official Gazette. The main changes stipulated by the Undersecretary of the Treasury (the "**Treasury**") are as follows:

- In addition to delivering arbitral awards to the competent court (for custody purposes), the Chairman of the Arbitration Commission must also notify the arbitral awards directly to the parties within three business days (as opposed to notification through the competent court under the previous regulation);
- Exemptions for the proficiency examination of arbitrators have been abolished and must thereafter be regulated by the Treasury;
- Experience requirements for arbitrators have been strengthened and clarified. Fulfilment of such requirements will be assessed on a case-by-case basis, and experience periods must be uninterrupted and consist in direct involvement with the related insurance business;
- If deemed necessary by the Arbitration Commission, transfers may be made among the lists of life and non-life arbitrators. The workload must be taken into account for such transfers;
- For the purpose of increasing the reliability of the arbitration institution, arbitrators are now expected to provide an impartiality undertaking to the Arbitration Commission.
- For the sake of clarification, the Regulation specifies that arbitrators are entitled to appoint experts to analyse technical matters;
- The Treasury is entitled to determine further principles for the appointment of the arbitrators and the tariff of experts;
- The former list of circumstances requiring the abdication of the arbitrators has been extended so that the existence of any doubts about the impartiality of the arbitrator are now considered as grounds for abdication;
- All arbitral awards must be registered and made accessible by the Arbitration Commission in a publicly available database.

COMPETITION

The Competition Authority has published an Amending Communiqué on the right of access to the file and protection of trade secrets (the "**Communiqué**"), published in the Official Gazette dated 31 January 2016 and numbered 29610, which entered into force on the same day.

A new form, the *File Access Request Form*, has been introduced by the Communiqué. In this respect, any request for access to the file should be made by filing the File Access Request Form, as attached in Annex-I to the Communiqué. In line with this amendment, several amendments have also been made in order to highlight that any request for access to the file will therefore be assessed [by an investigation committee] taking into consideration the content of the form.

TAX

Some provisions of the **Expenditure Tax Law, Income Tax Law, Value Added Tax Law, Personal Pension Savings Law, Law on Sentencing and Security Measures, Social Security and General Health Insurance Law and Corporate Tax Law** have been amended by Law No. 6655, which was published in Official Gazette No. 29580 dated 1 January 2016.

The major amendments brought by the amending Law are as follows:

- The Banking and insurance transactions tax will not apply for amounts received by industrials holding an industrial registry certificate in accordance with the provisions of the Industrial Registry Law No. 6948, arising from loans obtained for the purpose of financing machinery and equipment purchased specifically to be used in the manufacturing industry.
- The validity period for tax deductions applicable to banks and intermediary institutions has been extended until 31 December 2020.
- The exemption period for computer and software donations made to the Ministry of National Education is extended until 31 December 2020.
- The Council of Ministers will remain authorised to make procedures as per groups, regions or good categories for the delivery of materials to be used for manufacturing goods to be exported within the framework of the inward processing regime and the temporary acceptance regime until 31 December 2020.
- The period for partially or completely transferring pension amounts to a personal pension system is extended until 31 December 2017.
- The period during which certain earnings and revenues are not deemed to be a commercial enterprise is extended until 31 December 2020.

ENVIRONMENT

The Regulation on Construction Supervision, which was published in the Official Gazette dated 5 February 2008 and numbered 26778 (the "**Regulation**"), has been amended by the Amending Regulation published in the Official Gazette dated 28 January 2016 and numbered 29607 (the "**Amending Regulation**"). In this respect, the two amendments made to the Regulation by the Amending Regulation can be summarised as follows:

- The definition of *assistant controller* has been extended by indicating that, in the absence of the controller, the technical instructors, superior technicians and technicians may work as the assistant controller, provided that the relevant construction and/or construction group is within the limits/conditions determined in the Regulation; and
- In this respect, the limit/condition for the assignment of the assistant controller instead of controller is re-determined as *including* the constructions set out under Section 3(b) of the Communiqué on Construction Approximately Unit Coast to be used for the Calculation of Architecture and Engineering Services' Fees (i.e. marinas, discotheques, health care centres etc.), provided that the relevant construction unit cost does not exceed TRY 700 per m², and the total construction area is below 15,000 m².

The Ministry of Environment and Urbanisation has published two regulations amending (i) the regulation on water pollution control, which was published in the Official Gazette dated 31 December 2004 and numbered 25687, and **(ii) the regulation on urban wastewater purification**, which was published in the Official Gazette dated 8 January 2006 and numbered 26047, (together referred as the "**Amendment Regulations**"). The Amendment Regulations were published on 10 January 2016 through the Official Gazette numbered 29589.

The modifications made through the Amendment Regulations are interrelated. In this respect, the discharge standards for domestic wastewater, which have been classified as 2nd, 3rd and 4th degrees on the basis of their pollution load, are to apply on the basis of relevant provisions of (i) the regulation on water pollution control until 31 December 2017, and (ii) the regulation on urban wastewater purification after 31 December 2017. The deadline was previously determined as 31 December 2014.

In addition to this amendment, the Provisional Article 1 of the regulation on urban wastewater purification, stating the compliance deadlines in respect of the discharge of urban wastewaters, has also been abrogated.

The Ministry of Science, Industry and Technology (the "Ministry") has introduced a new communiqué for the implementation of the TS IEC 60502-4 Standard, published in the Official Gazette dated 21 January 2016 numbered 29600. The TS IEC 60502-4 Standard basically includes the testing features for the type testing of ancillary equipment of power cables (with rated voltages from 7.2kV up to 36 kV). The Communiqué will enter into force on 21 July 2016.

The Ministry of Forestry and Water Affairs has published the Communiqué on Administrative Fines, to be imposed pursuant to Article 20(k) of Environmental Law No. 2872 (the "Communiqué") through the Official Gazette dated 27 January 2016 and numbered 29606.

In addition to the list of revised amounts of administrative fines determined and published by the Ministry of Environment and Urbanisation through the Official Gazette dated 28 December 2015 and numbered 29576, the Communiqué excludes *specifically protected environment areas* from the scope of the implementation of the abovementioned administrative fines. In this respect, the administrative fines remain the same as they were previously determined for the year 2015, and therefore the administrative fines to be applied for 2016 vary between TRY 38,751 and TRY 193,772.

EMPLOYMENT LAW

Circular No. 2016/1 on the Friday Prayer Break Time (the "**Circular**") was issued by the Prime Ministry and published in the Official Gazette dated 8 January 2016 and numbered 29587. Pursuant to the Circular, as required by freedom of thought and faith protected by the Constitution and relevant legislation, if working hours coincide with the Friday Prayer, then employees working in state institutions and organisations will be allowed to attend prayers without causing a loss of working hours. This rule will only be applied for employees working in state institutions and organisations, and private sector employees cannot benefit from the right given by this circular.

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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