

# newsletter

MONTHLY LEGAL UPDATE | TURKEY

MARCH 2016

This newsletter aims to provide a brief outlook of the main legislative changes that occurred in Turkey in the course of February 2016.

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## BANKING & FINANCE

**A new Regulation on Systemically Important Banks ("SIB Regulation")** was published in the Official Gazette dated 23 February 2016, following a series of regulatory changes implemented to meet the Basel III criteria.

The SIB Regulation specifies the procedures and principles related to determining systemically important banks ("**SIB**"), and sets out additional liabilities required from such banks due to their cushioning purpose, such as sufficient equity (core capital) to balance damages arising from potential risks.

Size, interconnectedness, complexity and lack of substitutes are the main criteria for the indicator-based measurement system to be used in determining SIBs. Banks that are above the systemic importance threshold score, the calculation of which is detailed in the Regulation, must be considered as an SIB.

SIBs are separated into three groups depending on their general score. The Banking Regulation and Supervision Agency is entitled to change a SIB from one group to another, taking into consideration the special conditions affecting the structure of the entity, such as mergers, acquisitions or takeovers.

Banks will be assessed annually, on the basis of consolidated data from December of the previous year.

Banks that are qualified as SIBs must maintain loss-absorbency (difference between the additional equity amount and the additional equity requirement) in the form of a capital buffer. The profit distribution ratio, calculation of the profit and the requirement to have a capital protection plan is determined by the compliance with loss-absorbency, according to the Regulation on Capital Maintenance and Countercyclical Buffer.

The first assessment of SIBs will be performed with the consolidated data from December 2014. The first SIBs will have to comply with the aforementioned liabilities by 31 March 2016.

## CIVIL PROCEDURE

The Turkish Constitutional Court rendered a partial abolition decision regarding Article 20/1 of the Civil Procedure Code. The decision, dated 10 February 2016 and numbered 2015/96E - 2016/9K, was published in the Official Gazette dated 23 February 2016.

Accordingly, when a civil court rejects a venue decision on the grounds of the existence of a definite venue in the relevant case, the party filing a lawsuit in the wrong venue is no longer limited by a two-week period in order to request the transfer of the lawsuit to the correct venue.

## COMPETITION

**Amending Communiqué No. 2016/3 on Mergers and Acquisitions Calling for the Authorisation of the Competition Board** was published in the Official Gazette dated 13 February 2016. Accordingly, applicants must now declare their electronic notification addresses and the MERSIS (Central Registration Recording System) numbers of their respective companies, if applicable. The same requirement applies to their representatives.

**Amending Communiqué No. 2016/4 on the Application Procedure Regarding the Infringement of Competition** was published in the Official Gazette dated 13 February 2016. Accordingly, applicants must now declare their electronic notification addresses (both for natural persons and legal persons) and the MERSIS numbers of their respective companies (only for legal persons), if applicable.

## CONSUMER

**A new Regulation on Shopping Malls** has been issued by Ministry of Customs and Trade and was published in the Official Gazette dated 26 February 2016. The regulation is in relation to Law No. 6585 on the Organisation of Retail Trade. It establishes principles regarding the characteristics, openings and operational audits of shopping malls, and also regulates the duties and liabilities of the owners, management and authorised administration of shopping

shops. Shopping malls in operation as of 29 January 2015 must comply with the requirements of this new regulation by 26 February 2017.

According to the regulation:

(a) A shopping mall has the following characteristics:

- A construction or a group of integrated constructions;
- A retail space of at least 5,000 sqm;
- Containing at least 10 stores meeting food, clothing, entertainment, leisure, cultural or similar needs, with at least one large retailer (with a minimum area of 400 sqm) or containing 30 stores if there is no large retailer;
- Common areas with specific characteristics as described in the regulation,
- A central management.

A structure satisfying the first three of these criteria is considered a shopping mall project.

(b) The municipalities (or the provincial special administrations, in the absence of municipalities) are entitled to issue, modify and renew building permits as well as occupancy and operating permits of shopping malls. In this process, written approval from professional organisations will also be requested, which will take into consideration economic, social, environmental and demographic elements when issuing their opinion (e.g. the number of shopping malls in the municipal area, their distance to each other, access to facilities, their effect on the infrastructure and traffic, and risk to the security of life and property).

(c) The following are described as mandatory areas for collective use free of charge:

- Social and cultural activity areas, constituting at least 0.5% of the retail space. All related activities must be notified in visible areas and on the mall's website (if available) at least seven days in advance;
- An immediate medical response unit of at least 20 sqm in a reachable area of the mall, with at least one emergency medical technician, an additional medical operator or technician in malls of between 20,000-50,000 sqm, an additional medical operator in malls of between 50,000-100,000 sqm, and an additional medical doctor in malls larger than 100,000 sqm. An emergency button must be available in all common areas, as well as in retailers larger than 400 sqm;
- Baby changing units, in sufficient numbers and on every floor of the mall, and playgrounds for children between ages 0-10 with sufficient supervision;
- Prayer rooms, separate for men and women, of at least 30 sqm, or 50 sqm if the mall is larger than 100,000 sqm;
- Restrooms to satisfy the needs of handicapped persons.

The Regulation mentions, however, that car parks can be chargeable for periods, in order to prevent them being used by non-visitors.

(d) An annual report on the common expenses and the incomes generated from common areas must be sent to all stores, including the amount of fees to be collected from each store.

- (e) Applications for renting stores within the shopping mall have to be made in writing to the shopping mall administration, which will decide on the rent according to criteria such as the size, potential turnover and placement of the store.
- (f) A minimum of 5% of the total rentable area of the shopping mall must be reserved for merchants and craftsmen, while a minimum of 0.3% of the total rentable area must be reserved for professions of traditional, cultural or artistic value at risk of extinction, as determined by the Ministry of Customs and Trade.
- (g) The mall owner and mall management are jointly responsible for the accuracy of discount signs, or any related signs used on the front edge of the shopping mall.
- (h) A private security service must be provided in all areas of the mall, including the parking areas, in accordance with Law No. 5188 on Private Security Services. Common areas must be under video surveillance (except for restrooms and baby changing units) and the recordings must be kept for at least 30 days. The mall management is responsible for keeping those recordings.
- (i) The Ministry of Customs and Trade is entitled to perform an audit on shopping malls on the basis of complaints and problems arising in practice. A preliminary inspection can be made by authorised administrations upon request. The Ministry and authorised administrations are empowered to impose administrative fines in accordance with Law No. 6585 on the Organisation of Retail Trade.

## EMPLOYMENT

**A new Regulation on the Reimbursement of Medicine by the Social Security Institution** was published in the Official Gazette dated 10 February 2016. This new regulation is intended to regulate the types, amounts, usage periods and payment procedures and principles of medicines financed or requested to be financed by the Social Security Institution. The regulation incorporates two new establishments named "Medicine Reimbursement Commission" and "Medical and Economical Assessment Commission". The regulation stipulates the establishment, duties and operating principles of those commissions.

**A new Regulation on Alternative Reimbursement by the Social Security Institution General Health Insurance** was published in the Official Gazette dated 10 February 2016. The regulation incorporates a new establishment named "Social Security Institution General Healthcare Insurance Alternative Reimbursement Commission". The regulation is aimed at building new reimbursement models in order to achieve two major purposes:

- Adding certain medical products and services financed / to be financed by the Social Security Institution within the scope of the reimbursement mechanism, in consideration of their economic and medical benefits, and accordingly amending the current reimbursement principles and procedures;
- Enacting principles and procedures setting out the alternative reimbursement methods introduced to promote local production and providing availability in local markets of medicines that can only be imported and not produced in Turkey.

**A Regulation amending the Regulation on Working Principles and Procedures of the Social Security Institution Healthcare Services Pricing Commission** was published in the Official Gazette dated 10 February 2016. The regulation incorporates new establishments named "Social Security Institution General Healthcare Insurance Alternative Reimbursement Commission" and "Medicine Reimbursement Commission". Furthermore, (i) the Pricing

Commission is now able to delegate its authorities to the Medicine Reimbursement Commission or the Alternative Reimbursement Commission, and (ii) the decisions of the Pricing Commission will henceforth be published in the Official Gazette.

**The Regulation amending the Regulation on Shut-Downs in the Workplace** was published in the Official Gazette dated 11 February 2016. Accordingly, the following situation constitutes new grounds for workplace shut-down: applying life-threatening working models aimed at forced production without providing technological developments or innovation in production methods, or without increasing labour capacity in a manner contrary to the production plans or work plans. Furthermore, a new annex has been incorporated by the regulation, indicating those situations that require an urgent shut-down in mining operations.

**Communiqué No. 2016/1 on the National Occupational Standards** was published in the Official Gazette dated 12 February 2016. The Communiqué regulates the national occupation standards of the following employees: digital printing operator, printing vice operator, printing production manager, pre-offset print preparation, lamina printing operator, photographer, photograph image processing and printing operator, search and rescue personnel, search and rescue specialist, search and rescue dog trainer, salvage diver, pre-accountancy personnel, vice accounting personnel.

**A new Regulation on Active Labour Force Services** was published in the Official Gazette dated 12 February 2016. The regulation aims to provide occupational lessons and other services to prevent unemployment, and to maintain the functionality of the active labour force. The regulation amended an important number of provisions regarding the principles and procedures for occupational lessons applicable by the Turkish Labour Institution to contractors and employers.

**A Regulation amending the Regulation on the Duties, Powers, Liabilities and Trainings of Occupational Safety Specialists** was published in the Official Gazette dated 15 February 2016. The regulation amends various provisions regarding the training, warnings and licences of occupational safety specialists.

**A Communiqué amending the Communiqué on Workplace Hazard Classes regarding Occupational Health and Safety** was published in the Official Gazette dated 20 February 2016. Accordingly, the hazard classes of some businesses have been changed, such as:

- Gold, silver, platinum production and plating, and the production of precious metal alloys are classified as "very dangerous".
- Cotton, natural silk, imitation fur, artificial textiles, curtains and jewellery production are classified as "dangerous".
- Except for financial leasing – leasing of motor vehicles and bicycles without a driver and other sporting equipment; leasing of household appliances, music equipment, agricultural machinery and office appliances/computers; leasing of water, rail and air transportation devices, construction machinery, mining machinery, motors and turbines; leasing of measurement and control devices without an operator; and leasing of containers, telecommunication equipment, and intellectual property rights are all classified as "less dangerous".

## ENERGY

**A decision of the Energy Market Regulatory Authority dated 28 January 2016 and numbered 6087-3** has amended the Principles and Procedures regarding the Tariffs of the License Holder Legal Entities and Authorized Supply Companies dated 30 December 2015 and numbered 5999-3. The amending decision provides that the tariffs applicable to producers using the distribution system for their production activities will also include the power fees and the power overflow fees.

**The Prime Minister's circular numbered 2016/6 regarding the establishment of the Energy Investment Surveillance and Coordination Council** (the "Council") was published in the Official Gazette dated 24 February 2016. The Council has been established for the purpose of surveillance, supervision and coordination of the authorisation process of current and future private and public investments, accelerating the investment process of all electricity production and transmission facilities, including the lignite fields to be opened to the private sector and the new fields to be subject to royalty tenders.

**A Communiqué on administrative fines to be imposed for the year 2016 under the framework of the Energy Efficiency Law** has been published in the Official Gazette dated 24 February 2016. By the Communiqué, the administrative fines have been increased by of 5.58%, which is the revaluation ratio determined for 2015.

**A Regulation amending the Regulation on Electricity Market Consumer Services** was published in the Official Gazette dated 25 February 2016. The regulation brings the following changes:

- (a) The definition of "singular code" has been added. The singular code means the exclusive registration code determined by the distribution companies for each consumption spot in the relevant distribution zone and used to register the consumption spot in the Market Management System.
- (b) The singular code must also be mentioned in the payment notice given by the authorised supply company.
- (c) The cut-off notice must also mention the index values, seal information and the registration number of the employee cutting off the electricity, or the code determined by the company.
- (d) A provision has been added with respect to meters. In this respect, regarding facilities consuming / using electricity:
  - for the purpose of advertising, announcements or publicity for or involving public legal entities;
  - for electronic communication services or for public security relying on an authorisation, permit, licence or document delivered by a public legal entity;

a retail sale agreement or a bilateral agreement and/or billing can be made between the requesting facility (consumer) and the distribution company without providing any meter, taking into consideration the installed power of the facility, the working hours and any consumption in the previous period.

- (e) The authorised supply companies should complete their preparation regarding the addition of the singular code information into invoices by 1 April 2016. It is essential that the singular code derives from the information mentioned on the invoice, in order to avoid any restricting or restraining effect on the competition.



## ENVIRONMENT

**A new Regulation on Design, Calculation and Building Principles of Steel Constructions** was published in the Official Gazette dated 4 February 2016. The main purpose of this regulation is to determine the principles and procedures regarding steel and reinforced concrete composite architectonics in accordance with the safety measures. In this respect, a very detailed and technical annex titled "*Design, Calculation and Building Principles of Steel Constructions*" with headings such as quality control, basic principles of design, moment of flexion effect and axial tractive force effect has been introduced by the regulation.

**A Regulation amending the Regulation on Environmental Impact Assessment** was published in the Official Gazette dated 9 February 2016. The amendments may be summarised as follows:

- The institutions/organisations authorised (to prepare an environmental impact assessment application / report) by the Ministry of the Environment and Urbanisation are now charged with reporting the progress of the work on projects that have obtained an "affirmative environmental impact assessment report".
- Two new definitions have been introduced: "announcement" and "written announcement". An "announcement" is made orally by the relevant municipalities in order to inform people that may be affected by a project subject to the environmental impact assessment process.
- The provisions regarding the "suspension of activities" have also been amended: if the project owner does not perform the work in accordance with the affirmative environmental impact assessment report, or the report affirming that an environmental impact assessment is not required, the Ministry of the Environment and Urbanisation becomes entitled to grant the project owner an additional time of up to one year in which to ensure compliance. Otherwise, the project will be stopped.
- A new provision has been introduced, providing that the principles and procedures regarding capacity increases and/or expansions will be determined through a communiqué to be issued in line with Article 28 of the Regulation.

**A Communiqué on the Principles and Procedures regarding the Audit of the Activities of Building Inspection Authorities and Laboratories, the Imposition of Administrative Sanctions and the Collection of Administrative Fines** was published in the Official Gazette dated 28 February 2016. This communiqué basically replaces the communiqué published in the Official Gazette dated 26 February 2011. In addition to that, the new communiqué also introduces (i) the audit of laboratories, (ii) the imposition of administrative sanctions and (iii) the collection of administrative fines. The hierarchy of administrative sanctions imposed by the new communiqué is as follows: warning, administrative fine, prohibition from getting new offers, suspension of the licence, decertification, and restrictions regarding technical personnel.

## INFORMATION TECHNOLOGY

A new Law No 6669 on the Ratification of the Convention for the Protection of Individuals with Regard to the Automatic Processing of Personal Data, was published in the Official Gazette dated 18 February 2016. The Convention was signed by Turkey in 1981.

The Convention aims to extend the safeguards for human rights and fundamental freedoms with respect to personal data, taking into account in particular the right to respect for privacy and a commitment by the signatories to the freedom of information.

It must be noted that, pursuant to Turkey's declarations and as per Article 3.2(c) of the Convention, the Convention will also apply to personal data files that are not processed automatically.

In addition, Turkey has declared that the Convention will not apply to the following personal data:

- Automatic processing of personal data by natural persons exclusively for their personal use, or household purposes;
- Public registers specifically regulated by law in Turkey;
- Data available to the general public in accordance with the law;
- Personal data that is processed by public institutions for the purposes of national security and defence, as well as for the investigation and prevention of criminal offences.

The Convention also requires that each signatory State should enact the necessary domestic laws to ensure the basic principles on data protection as set out in the Convention. In this regard, the draft Law on the Protection of Personal Data was submitted to the Turkish Grand National Assembly on 18 January 2016, and is likely to be enacted soon.

## INSURANCE

The Undersecretary of the Treasury has issued a **Communiqué amending the General Conditions of Mandatory Motor Third Party Liability Insurance**, which was published in the Official Gazette on 2 February 2016.

According to this communiqué:

- If support indemnity is paid in situations that would normally be out of the scope of the liability risk or covered by the liability risk but arising from the personal fault of the supporting person, the insurers are now entitled to have recourse towards the inheritance estate or the successors.
- Indemnity calculations regarding a given accident must be made on the basis of the insurance coverage limits of the General Conditions in force on the date when the accident occurred.
- The insurance company benefits from a right of recourse towards its insured in case the accident giving rise to indemnity results from a breach of the traffic rules arising from the gross fault of the insured.

The provisions set out under the first two bullet points above entered into force with immediate effect, whereas the provision set out under the last bullet point will be effective starting from 1 June 2016.

## INTELLECTUAL PROPERTY

**The Official Trademark Bulletin and the Official Industrial Design Bulletin**, which used to be published by the Turkish Patent Institute once a month (during the first half of the month), will now be published twice per month, beginning from February 2016.

Pursuant to an announcement made by the Turkish Patent Institute, the Trademark Bulletin will be published on the 12<sup>th</sup> and 27<sup>th</sup> day of each month, and the Industrial Design Bulletin is to be published on the 9<sup>th</sup> and 24<sup>th</sup> day of each month.



Due to this change, there will now be two separate opposition periods with respect to newly published trademark and industrial design applications in accordance with the relevant bulletin's publication date.

**A draft Industrial Property Law** was published by the Turkish Patent Institute on 24 February 2016 in order to receive opinions and suggestions from the public. Industrial property is currently regulated by several Decree-Laws, but the new draft is a single text including all provisions relating to trademarks, geographical signs, traditional product names, industrial designs, patents and utility models.

The draft law includes revised provisions ensuring further conformity with the TRIPS agreement and The Hague Agreement Concerning the International Registration of Industrial Designs, as well as various EU directives and regulations regarding the protection of industrial property rights.

On the other hand, in recent years the Constitutional Court has cancelled several articles of Decree Law No. 551 on the Protection of Patent Rights and of Decree Law No. 556 on the Protection of Trademark Rights, on grounds of Article 91/1 of the Turkish Constitution, which states that property rights cannot be regulated by Decree Laws other than in states of emergency or martial law. Accordingly, one of the major objectives of the draft law is to ensure that the area of industrial property is fully regulated by laws, thereby preventing the cancellation of further articles.

## TAX

### **Income Tax Exemption for Young Entrepreneurs has entered into force through the Omnibus Law No 6663**

Law No. 6663 on the Amendment of the Income Tax Law and Certain Other Laws was published in the Official Gazette dated 10 February 2016 ("**Omnibus Law**").

Accordingly, valid from 10 February 2016, a tax exemption has been introduced for young entrepreneurs under the age of 29. In this respect, TRY 75,000 of the revenue generated over three taxation periods by a full taxpayer natural person under the age of 29 who is subject to income tax liability for the first time (due to commercial, agricultural or professional activity) will be exempt from income tax if the following conditions are met:

- The employment commencement date is notified in due time;
- The entrepreneur is either (i) self-employed or (ii) has management responsibilities;
- Where the activity is carried out within an ordinary partnership or sole proprietorship, all the partners must meet the conditions of the Omnibus Law;
- Professional activities or businesses are not taken over from spouses, blood-relatives, or relatives up to third degree (save for professional activities or businesses taken over by spouses and children through inheritance);
- The entrepreneur will not become a partner to an existing business or professional activity by joining it afterwards.

Even in the case of generating an annual income less than TRY 75,000, an annual tax declaration should still be submitted to the relevant tax administration.

This exemption will not apply to withholding taxes to be paid pursuant to Article 94 of the Income Tax Law.

Furthermore, Article 85 of the Fees Law No 492 has also been amended by the Omnibus Law. Accordingly, passports issued for anyone under the age of 25 who is still pursuing academic studies will be exempt from fees.

### **Exemptions Introduced for Deliveries and Services made to Turkey Red-Crescent Association**

Communiqué No.5 amending the General Practice Communiqué on Value Added Tax ("**Amending Communiqué**") was published in the Official Gazette dated 11 February 2016.

The Amending Communiqué provides a *numerous clausus* list of welfare types, such as disaster management and recourses, sheltering, alimentation, social welfare, health, immigration and refugee services, as well as international contributions and welfare activities as part of the delivery and services made to the Turkey Red Crescent Association (*Türkiye Kızılay Derneği*, in Turkish) which are exempt from value added tax.

### **Introduction of Tax Credits and Exemption for Technology Companies and Support Staff**

Law No. 6676 amending certain provisions of the Income Tax Law and Corporate Tax Law as well as other By-Laws was published in the Official Gazette dated 26 February 2016, and entered into force on 1 March 2016.

Accordingly;

- (a) System management, data management, business practice, sectorial, internet, mobile and military command and control application software related deliveries and services provided by businesses operating in the technology development area or specific technology development area and whose incomes are exempt from income and corporate tax, are exempt from value added tax.
- (b) Until 31 December 2023, the following income tax credit rates (after subtracting subsistence allowance) will be applied to the salary incomes of research, development, design and support personnel mentioned under Law No. 5746 on Support of Research and Development Activities:
  - 95% for salary incomes of PhD and masters' degree holders in one of the basic sciences mentioned in Law No. 5746;
  - 90% for salary incomes of holders of a bachelor's degree;
  - 80% for salary incomes of other personnel.

### **Enlargement of the Scope of the Prepared Tax Return System**

General Communiqué No 470 on the Tax Procedure Law ("**Communiqué No. 470**") was published in the Official Gazette dated 25 February 2016 and entered into force on 1 March 2016.

The "Prepared Tax Return System" has allowed taxpayers to submit their tax returns to the Revenue Administration electronically since 2012, but the system was only available for taxpayers obtaining income from immovable property. Communiqué No. 470 aims to enlarge the scope of this system by including taxpayers obtaining salary income, income from movable or immovable properties or other incomes and revenues.

The system will start to apply for tax declarations related to incomes of 2015. The system can only be used by taxpayers who:

- obtain salary income, immovable and/or movable property incomes or other income and revenues; and
- do not obtain income from commercial, agricultural activities or self-employment.

Taxpayers can correct errors or deficiencies in income amounts through the web page of the Tax Authority, [www.gib.gov.tr](http://www.gib.gov.tr), by entering their username and password or answering the determined security questions.

*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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